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State Bar Court of California Hearing Department Los Angeles		
Counsel For The State Bar Bitu Shasty Deputy Trial Counsel 1149 S.Hill Street Los Angeles, California 90015-2299 Bar # 225177	Case Number (s) 07-O-14651, 08-H-13519 <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div>	(for Court's use) <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center;">DEC 2 2009 </div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
In Pro Per Respondent John Earl Mortimer 44489 Town Ctr Way #D-466 Palm Desert, California 92260 Bar # 130526	Submitted to: Assigned Judge	
In the Matter Of: JOHN EARL MORTIMER Bar # 130526 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 11, 1987**.
- (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."



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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):
- 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: **Two 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 **06-O-11452-RAH**
 - (b) Date prior discipline effective **July 21, 2007**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **B & P Code, section 6068(i)**
 - (d) Degree of prior discipline **Public Reproval**
 - (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

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.
- (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 Page 4

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **2 years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

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.

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- (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:**

requested that Respondent provide her with a status report. Respondent received the messages and e-mail.

8. Respondent did not return Greaux's messages, respond to Greaux's e-mail, or otherwise communicate with Greaux.
9. On October 25, 2005, Greaux hired attorney Steffen Lieber ("Lieber") to represent her in the workers' compensation proceeding against Wal-Mart.
10. On November 16, 2005 and January 31, 2006, Lieber prepared and mailed letters to Respondent at his then official State Bar membership address, *i.e.*, P.O. Box 391259, Pasadena, California 91109, stating that Greaux had terminated Respondent, Greaux had employed Lieber to represent Greaux in the workers' compensation proceeding against Wal-Mart, and requesting that Respondent forward Greaux's file to Lieber. The November 16, 2005 letter enclosed a copy of the dismissal of Respondent and substitution of attorney signed by Greaux. Respondent received the letters.
11. Respondent did not forward Greaux's file to Greaux or Lieber, or otherwise communicate with Greaux or Lieber.
12. Between September 19, 2006 and August 28, 2009, Respondent's official State Bar membership records address had been P.O. Box 391259, Anza, California 92539 (the "Anza address").
13. On October 12, 2007, the State Bar opened an investigation, Case No. 07-O-14651, pursuant to a complaint filed by Greaux (the "Greaux matter").
14. On April 22, 2008, a State Bar Investigator prepared a letter to Respondent regarding the Greaux matter. The letter requested that Respondent provide a written response to the allegations set forth in the Greaux matter. The letter was placed in a sealed envelope correctly addressed to the Respondent at the Anza address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business.
15. On April 24, 2008, the letter was returned to the State Bar with the notation that the U.S. Postal Service was unable to deliver the letter because the post office box was closed.
16. On July 15, 2007, the State Bar Court filed and served on Respondent at the Anza address its Decision in *In the Matter of John Earl Mortimer*, Case No. 06-O-11452 ("*In the Matter of Mortimer*"). The State Bar Court imposed a Public Reprimand with, *inter alia*, the requirement that Respondent attend and complete State Bar Ethics School on or before July 21, 2008.
17. On September 10, 2007, a Probation Deputy from the State Bar's Office of Probation prepared a letter to Respondent regarding the Decision in *In the Matter of Mortimer*. The letter attached a copy of the Decision and provided Respondent with directions on how to comply with the terms and conditions of the Public Reprimand. The letter was placed in a sealed envelope correctly addressed to the Respondent at the Anza address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business.

18. On October 5, 2007, the letter was returned to the State Bar with the notation that the U.S. Postal Service was unable to deliver the letter because the post office box was closed.
19. Respondent has not attended and completed State Bar Ethics School as required by the Decision in *In the Matter of Mortimer*.
20. By failing to maintain a current address with the State Bar, Respondent intentionally or recklessly made himself unavailable for actual service of disciplinary documents.

CONCLUSIONS OF LAW (COUNT ONE)

21. By failing to respond to the telephone messages left by Greaux and e-mail requesting a status report left by Greaux between in or about March of 2005 and in or about September of 2005, Respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of Business and Professions Code, section 6068(m).

CONCLUSIONS OF LAW (COUNT TWO)

22. By failing to forward Greaux's file to Greaux or Lieber upon receipt of letters notifying him that he had been terminated and Greaux had employed Lieber to represent Greaux, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

CONCLUSIONS OF LAW (COUNT THREE)

23. By failing to provide a current address to the State Bar, Respondent willfully violated Business and Professions Code, section 6068(j), by failing to comply with the requirements of section 6002.1.

CONCLUSIONS OF LAW (COUNT FOUR)

24. By failing to attend and complete State Bar Ethics School as required by the Decision in *In the Matter of Mortimer*, Respondent has failed to comply with all conditions attached to any disciplinary probation in willful violation of Rules of Professional Conduct, rule 1-110.

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 May 22, 2009, in case nos. 07-O-14651 and 08-H-13519 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 a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

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PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was October 27, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 27, 2009, the approximate costs in this matter is \$5,290. 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.

ADDITIONAL MITIGATING CIRCUMSTANCES

Cooperation and Remorse

Respondent has been candid and readily admitted to all four counts in the Notice of Disciplinary Charges. Respondent has been in contact with the State Bar and as explained in more detail below, been fully cooperative during these proceedings. On August 18, 2009, the State Bar, as part of its due diligence efforts to locate Respondent, wrote a letter to an address not previously known to the State Bar. This address was a valid mailing address for Respondent. On August 20, 2009, Respondent promptly contacted the State Bar, advising that this was the first time he had received any communication from the State Bar. Respondent stated that he had changed his membership records address online in mid-July of 2006. However, he contends that he did not realize the change of address he made online did not properly take effect. Respondent would have communicated with the State Bar had he been aware that proceedings were pending against him. As soon as he realized his mistake, he took corrective measures to change his address with the California State Bar Membership Department. Respondent recognizes his mistakes and in recognition of that has stipulated to all four counts of misconduct.

Good Character

Respondent presented the State Bar with three letters from references in the general community attesting to his good character. These letters are from people who are aware of the full extent of Respondent's misconduct and who have worked with Respondent in a professional capacity. These letters attested to Respondent's highly ethical character, honesty and trustworthiness. He is described as having an excellent work ethic and an outstanding character.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system 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."

Recently, the Supreme Court emphasized the importance of the standards and held that great weight should be given to the application of the standards in determining the appropriate level of discipline. The Court indicated that unless it has "grave doubts as to the propriety of the recommended discipline," it will uphold the application of the standards. *In re Silverton* (2005) 36 Cal. 4th 81, 91-92.

Standard 2.4(b) provides that “culpability of a member of wilfully failing 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. Respondent failed to respond to Greaux’s messages including phone calls and email requesting a status report on her case.

Standard 2.6(a) provides that “Respondent’s violations of Business and Professions Code, section 6068 shall result in suspension or disbarment “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.” Respondent failed to update his membership address as required with the State Bar Membership Records.

Standard 2.9 provides that “culpability of a member of a wilful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.” Respondent failed to comply with the conditions attached to his disciplinary probation as required by the Decision in *In the Matter Mortimer*.

Standard 2.10 provides that a violation of any provision of the Rules 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.” Respondent failed to release Greaux’s file upon termination of employment.

Standard 1.7(a) addresses the effects of prior discipline as follows: “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” As stated above, Respondent has one prior imposition of discipline where he received a public reproof.

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In the Matter Of JOHN EARL MORTIMER	Case Number(s): 07-O-14651, 08-H-13519
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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.)**

12-2-09
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 Los Angeles, on December 2, 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 Los Angeles, California, addressed as follows:

JOHN E. MORTIMER
44489 TOWN CTR WAY #D-466
PALM DESERT, CA 92260

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:

Bitu Shasty, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 2, 2009.



Cristina Potter
Case Administrator
State Bar Court