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

| | | |
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| Counsel For The State Bar<br><br>**TREVA R. STEWART**<br>**180 HOWARD STREET, 7TH FLOOR**<br>**SAN FRANCISCO, CA 94105**<br><br>Bar # **239829** | Case Number (s)<br>**07-N-15059** | (for Court's use)<br>**PUBLIC MATTER**<br><br>**FILED**<br>AUG 06 2008<br><br>STATE BAR COURT CLERK'S OFFICE<br>SAN FRANCISCO |
| **MATTHEW UNGER**<br>**2814 GRASSLANDS DRIVE, #612**<br>**SACRAMENTO, CA 95833-3519**<br><br>Bar # **137742** | Submitted to: **Hearing Judge**<br><br>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING<br><br>**ACTUAL SUSPENSION**<br><br>☐ PREVIOUS STIPULATION REJECTED | |
| In the Matter Of:<br>**MATTHEW UNGER**<br><br>Bar # **137742**<br><br>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 **12/7/88**.

(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 **10** pages, not including the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.

☒ costs to be paid in equal amounts prior to February 1 for the following membership years: **2009, 2010, 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 **06-O-10557; 06-O-11149**

(b) ☒ Date prior discipline effective **9/9/08**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **rule 3-110(A), B&P 6068(m), rule 3-700(D)(2), B&P 6103, B&P 6068(i)**

(d) ☒ Degree of prior discipline **one year suspension, stayed; six months actual and until comply with rule 1.4(c)(ii)**

(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.

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**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 $ o n i n restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted in good faith.

(8) ☒ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. **Respondent's physical disabilities are permanent in nature, however, his condition has improved sufficiently to permit him to comply with his probation conditions.**

(9) ☒ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

## D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **four (4) years. Said suspension to be imposed concurrent with any suspension pending in case #06-O-10557, et al at the time the Supreme Court order in this matter becomes effective**.

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 **four (4) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **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: .

## 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: **Respondent required to complete ethics school in case number 06-O-10557, et al.**

(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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

No MPRE recommended. Reason: **Respondent required to complete MPRE in case number 06-O-10557.**

(2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .

(5) ☒ **Other Conditions: See Attachment**

## ATTACHMENT TO

## STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MATTHEW UNGER

CASE NUMBER(S): 07-N-15059-LMA

**FACTS AND CONCLUSIONS OF LAW.**

Facts

1. On or about March 26, 2007, the State Bar Court filed its decision in case numbers 06-O-10557-PEM and 06-O-11149-PEM ("consolidated cases"). On the same day, respondent was served with the State Bar decision at his membership records address.

2. The Supreme Court Order ("Order") in the consolidated cases (Supreme Court case number S153612) was filed on August 10, 2007 and served on respondent at his membership records address. The Supreme Court ordered respondent suspended from the practice of law for one year, stayed, and that he be actually suspended for six months and until the State Bar Court grants a motion to terminate his actual suspension. Respondent was ordered to comply with rule 9.20 of the California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Order. The Order was effective as of September 9, 2007.

3. Respondent was required to comply with rule 9.20, paragraphs (a) and (c) by October 9, 2007 and October 19, 2007, respectively.

4. On September 28, 2007, the Office of Probation sent a letter to respondent which included pertinent portions of the State Bar Court's decision as well as the Supreme Court Order. Respondent was reminded that his affidavit of compliance with rule 9.20 had to be filed no later than October 19, 2007.

5. Respondent did not file the affidavit as required by the Order.

6. On December 31, 2007, the Office of Probation referred respondent to the State Bar for his failure to file the affidavit by October 19, 2007.

7. In a Notice of Disciplinary Charges ("NDC") filed and served on respondent at his

membership records address on February 13, 2008, the State Bar alleged that respondent violated Business and Professions Code 6103 and rule 9.20(c) by failing to file the compliance affidavit by October 19, 2007.

8. The response to the NDC was due by March 10, 2008. Respondent did not file a timely response.

9. Pursuant to an extension granted by the State Bar Court, respondent filed a late response on April 9, 2008. A 9.20 affidavit was included with the response.

Conclusions of Law

Respondent admits that the herein facts are true and the evidence clearly and convincingly shows that respondent was culpable of violating B&P 6103 and rule 9.20 of the California Rules of Court by failing to file the required affidavit by October 19, 2007.

**DISCIPLINE**

Standards

The following standards are applicable in the current case:

Standard 2.6 provides that a member found culpable of violating B&P 6103 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.

Standard 1.6(b) provides that a greater degree of discipline than the appropriate sanction shall be imposed if aggravating circumstances are found to surround the particular act of misconduct found

Case Law

The standards are supported by the case law:

Disbarment is generally the appropriate sanction for a wilful violation of rule 9.20. *Powers v. State Bar* (1988) 44 Cal.3d 337, 342; *Lydon v. State Bar* (1988) 45 Cal. 3d 1181; *Bercovich, supra,* 50 Cal 3d at 131; *In the Matter of Babero* (Rev Dept 1993) 2 Cal State Bar Ct. Rptr. 322 .

In the few cases where disbarment was not imposed, i.e. *Durbin v. State Bar* (1979) 23 Cal. 3d 461, *In the Matter of Friedman* (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, *In the Matter of Rose* (Rev. Dept. 1995) 3 Cal. State Bar Ct. Rptr. 192, "the attorneys had complied with the notification requirement, ... participated in the disciplinary process, and presented substantial mitigating evidence regarding the noncompliance and their present good character." *Babero, supra,* 2 Cal. State Bar Ct. Rptr. at 334.

Although respondent did not file his affidavit until almost six months after the compliance due date, sufficient mitigating factors exist to warrant not imposing disbarment.

**AGGRAVATING CIRCUMSTANCES.**

**PRIOR DISCIPLINE.**

Respondent has a prior record of discipline as described in standard 1.2(b)(i). In his most recent discipline, respondent was suspended for one year, stayed, and six months actual "and until" he complies with 1.4(c)(ii). Respondent remains suspended.

**MITIGATING FACTORS**

Due to several hospitalizations and other circumstances, respondent was not aware of the imposition of discipline in the consolidated cases.

Since receiving notice of the NDC, respondent has demonstrated candor and cooperation with the State Bar. He has also acknowledged his wrongdoing.

Respondent is currently ineligible to practice and has declared that he has no clients. Based on this declaration, respondent does not have any clients who were harmed by his failure to timely file the 9.20 affidavit.

(Do not write above this line.)

| In the Matter of<br>**MATTHEW UNGER** | Case number(s):<br>**07-N-15059** |
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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.

| | | |
|---|---|---|
| 7/17/08<br>Date | Matthew S. Unger<br>Respondent's Signature | MATTHEW S. UNGER<br>Print Name |
| as amended on 7/21/08<br>Date | Matthew S. Unger<br>Respondent's ~~Counsel~~ Signature | Matthew S. Unger<br>Print Name |
| 7/22/08<br>Date | TRS<br>Deputy Trial Counsel's Signature | TREVA R. STEWART<br>Print Name |

(Do not write above this line.)

| In the Matter Of<br>**Matthew Unger** | Case Number(s):<br>**07-N-15059** |
|---|---|

## 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.

On page 2, section B(1)(b) –Respondent's prior discipline was effective September 9, 2007.

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.)**

August 6, 2008
Date

Pat E. McElroy
Pat E. McElroy
Judge of the State Bar Court

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension Order

# 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 6, 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:

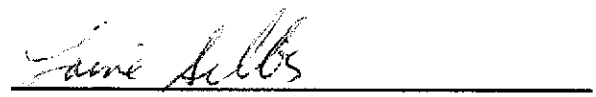
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**MATTHEW S. UNGER**
**2814 GRASSLANDS DR #612**
**SACRAMENTO, CA 95833 - 3519**

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

**TREVA STEWART, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 6, 2008**.



**Laine Silber**
Case Administrator
State Bar Court