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State Bar Court of California
Hearing Department
Los Angeles

<p>Counsel For The State Bar</p> <p>Bitu Shasty Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015-2299</p> <p>Bar # 225177</p>	<p>Case Number (s) 08-C-13357-LMA</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>ADJ</i></p> <p>AUG 26 2009</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Erica Tabachnick 900 Wilshire Blvd., Suite #1000 Los Angeles, California 90017</p> <p>Bar # 94324</p>	<p>Submitted to: Assigned Judge</p>	
<p>In the Matter Of: AMY S. NOVICOFF</p> <p>Bar # 200245</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 12, 1999.
- (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: 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 02-O-12260
 - (b) Date prior discipline effective August 1, 2003
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Misconduct, rule3-110(A)
 - (d) Degree of prior discipline Private Reprimand
 - (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.

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- (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. See Attachment page 2
- (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 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 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)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of 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: January 12, 2009.
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: AMY S. NOVICOFF

CASE NUMBER(S): 08-C-13357-LMA

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On April 22, 2008, Respondent was convicted of violating Arizona Revised Statute section 13-3407, possession of dangerous drugs, methamphetamine.
3. On February 4, 2009, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: hearing and decision as to whether the facts and circumstances surround the violation of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed.

FACTS AND CONCLUSIONS OF LAW.

Respondent Amy S. Novicoff ("Respondent") admits that the following facts are true and that she violated Arizona Revised Statute section 13-3407 as set forth below, and that said conduct involved other misconduct warranting discipline.

FACTS

On August 28, 2007, Sergeant R.D. Moffitt supervised and assisted Detective D. Harper with a conspiracy sales case that he was actively working on in regards to Matthew Nichols providing illegal methamphetamine to Det. Harper for sale in the Verde Valley Area in Arizona.

On August 28, 2007, Mr. Nichols agreed to meet with Detective Harper at a gas station and was arrested upon his arrival. Sergeant Moffitt then made contact with the female occupant inside the vehicle who was identified as Amy S. Novicoff. Sergeant Mottiff advised Respondent of her rights per Miranda. He then advised Respondent that he suspected she was carrying contraband based on telephone conversations with Matthew Nichols and the fact that he was currently on parole. Respondent stated that she was holding some methamphetamine and it was

concealed inside her bra area. Respondent handed Sergeant Moffitt a small sealed baggie of a crystallized substance which was consistent with the appearance of methamphetamine. Respondent was then arrested.

CONCLUSIONS OF LAW:

The parties stipulate that the facts and circumstances surrounding Respondent's violation of Arizona Revised Statute section 13-3407 did not involve moral turpitude, but did involve other misconduct warranting discipline. Respondent acknowledges that by the conduct described above, she failed to support the laws of the State of California in wilful violation of California Business and Professions Code, section 6068(a).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 16, 2009.

COMPLIANCE WITH CONDITIONS OF PROBATION IN UNDERLYING CRIMINAL MATTER.

Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.

FACTORS IN MITIGATION

Respondent entered Providence Place Sober Living Program in October 2007 and completed the program on May 9, 2008. To date, she has nearly twenty-two months of sobriety. Respondent submitted proof establishing her completion of the program.

In addition, Respondent is currently enrolled at the Prescott College graduate school with an expected graduation date of June 2010. Respondent submitted verification of her enrollment.

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."

Standard 3.4 states that "[f]inal conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's

commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.”



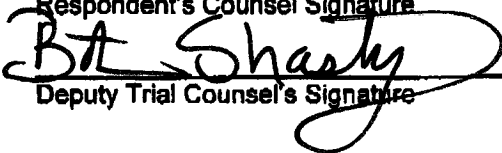
The parties further submit that the intent and goals of Standard 1.3 are met in this matter by the imposition of a thirty day actual suspension with probationary conditions articulated herein, including that Respondent attend Ethics School and take the Multistate Professional Responsibility Examination.

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In the Matter of AMY S. NOVICOFF, Bar No. 200245	Case number(s): 08-C-13357-LMA
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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.

<u>7/24/09</u> Date	 Respondent's Signature	AMY S. NOVICOFF Print Name
<u>7/27/09</u> Date	 Respondent's Counsel Signature	ERICA TABACHNICK Print Name
<u>7/30/09</u> Date	 Deputy Trial Counsel's Signature	BITA SHASTY Print Name

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In the Matter Of AMY S. NOVICOFF, Bar No. 200245	Case Number(s): 08-C-13357-LMA
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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.

1. On page 2 of the stipulation, paragraph B.(1)(b), "August 1, 2003" is deleted, and in its place is inserted "July 23, 2003".

2. On page 2 of the stipulation, paragraph B.(1)(c), "Misconduct" is deleted, and in its place is inserted "Conduct".

3. On page 2 of the stipulation, an "X" is inserted in the box at paragraph B.(1)(e), as respondent has two prior records of discipline, and the following language is inserted:

State Bar Court case # of prior case: 05-H-00537

Date prior discipline effective: May 19, 2006

Rules of Professional Conduct/State Bar Act violations: rule 1-110
of the Rules of Professional Conduct of the State Bar
of California

Degree of prior discipline: private reproof with conditions for
two years

4. On page 4 of the stipulation, an "X" is inserted in the box at paragraph D.(1)(b).

5. On page 8 of the stipulation, under the heading "Conclusions of Law", "Respondent acknowledges that by the conduct described above, she failed to support the laws of the State of California

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in wilful violation of California Business and Professions Code, section 6068(a)" is deleted, as respondent violated an Arizona statute, not a California or federal statute. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 110, fn. 20.)

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.)**

^{with}
3 Aug. 26, 2009
Date

Lucy M. Mendez
Judge of the State Bar Court
Lucy Mendez

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 26, 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:

ERICA ANN TABACHNICK
900 WILSHIRE BLVD #1000
LOS ANGELES, CA 90017

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

BITA SHASTY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 26, 2009.



Laine Silber
Case Administrator
State Bar Court