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



<p>Counsel For The State Bar</p> <p><b>Susan Chan</b> Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 233229</p>	<p>Case Number (s) 08-C-13873-PEM</p>	<p>(for Court's use)</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>[Signature]</i></p> <p>AUG 25 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p><b>Charles B. Tunnell</b> Law Ofc of Charles B. Tunnell 1101 5<sup>th</sup> Ave., #200 San Rafael, CA 94901</p> <p>Bar # 60118</p>	<p>Submitted to:</p>	
<p>In the Matter Of: <b>Godfrey J. Tencer</b></p> <p>Bar # 56162</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><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></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 **June 28, 1973**.
- (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."

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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: **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 **Marin 77-3-13**
  - (b)  Date prior discipline effective **December 16, 1977**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **(former) Rule 7-103, State Bar Rules of Professional Conduct [renumbered to rule 2-100 Communications with a Represented party]; section 6077 California Business and Professions Code.**
  - (d)  Degree of prior discipline **Private Repeval**
  - (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. **See Stipulation attachment.**
- (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. **See Stipulation attachment.**
- (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. **See Stipulation attachment.**
- (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. **See Stipulation attachment.**
- (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. **See Stipulation attachment.**
- (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**

**D. Discipline:**



(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **one (1) year**.

- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is placed on probation for a period of **two (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 checked="" 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:**
- If respondent's terms of probation change in Marin County Superior Court case number 160823A, respondent shall serve a copy of the written order making said change on the Office of Probation within 5 days of any such change. However, any change in the mental health condition of respondent's criminal probation shall not affect his State Bar probation requirement that he obtain treatment at least once a month unless the State Bar Court grants a motion to modify the State Bar mental health condition based, at least in part, on an affidavit or declaration under penalty of perjury by respondent's treating mental health professional. See "Medical Conditions" at page 9 of this Stipulation.**



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

IN THE MATTER OF:       GODFREY J. TENCER

CASE NUMBER(S):        08-C-13873-PEM

**FACTS AND CONCLUSIONS OF LAW.**

1.     Case No. 08-C-13873

A.     Statement of Facts

On October 13, 2009, Godfrey J. Tencer ("respondent") was convicted by plea of one count, a misdemeanor of violating a protective order (Penal Code §273.6(a)), and one count, a misdemeanor of harassment by electronic communication device (Penal Code §653m(a)) in Marin County Superior Court case number 160823A. On October 13, 2009, respondent was sentenced to 18-months probation on specified conditions.

Respondent engaged in a consensual extramarital relationship with the victim, which respondent terminated in or about March 2007. On or about February 11, 2008, respondent began contacting the victim and her associates through electronic communication as a means to harass and disparage the victim. Respondent sent e-mails and/or chat request(s), and/or placed telephone calls to the victim within a 10-month period. Respondent also contacted the victim's employer and brother through electronic communication as a means to further harass the victim. The victim obtained a restraining order against respondent that became effective on April 30, 2008. The victim also obtained a temporary restraining order after a court hearing that became effective on July 18, 2008. Respondent violated the July 18, 2008 restraining order when he contacted the victim's teenage daughter on August 31, 2008 and November 17, 2008. Respondent violated the July 18, 2008 restraining order when he contacted the victim on September 4, 2008 and September 5, 2008.

B.     Conclusions of law

By violating Penal Code section 273.6(a) violating protective order, one count, a misdemeanor, and Penal Code section 653m(a) harassment by electronic communication device, one count, a misdemeanor, respondent failed to support the laws of this state in violation of subdivision (a) of the Business and Professions Code §6068.

Attachment Page 1



**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was August 10, 2010.

**STATE BAR ETHICS SCHOOL.**

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 10, 2010, the estimated prosecution costs in this matter are approximately \$4,207.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

**AGGRAVATING CIRCUMSTANCES.**

**FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.**

Standard 1.2(b)(ii): The misconduct included multiple acts of wrongdoing, including violating the July 24, 2008 temporary restraining order when he contacted the victim's daughter on August 31, 2008 and November 17, 2008 and when respondent contacted the victim on September 4, 2008 and September 5, 2008. Respondent's misconduct also included unsolicited contact of victim's brother, employer and friends.

Standard 1.2(b)(iii): Respondent's misconduct involved dishonesty. Respondent created multiple e-mail screen names to disguise his identity from the victim and in one instance, respondent impersonated as a potential client to contact the victim and her employer to arrange a business meeting.

Standard 1.2(b)(iv): Respondent's conduct harmed the public by requiring the expenditure of public resources by the San Rafael Police Department and the Marin County District Attorney's Office, which prosecuted the criminal case against him.

**MITIGATING CIRCUMSTANCES.**

**FACTS SUPPORTING MITIGATING CIRCUMSTANCES.**

Standard 1.2(e)(v): Respondent has displayed candor and cooperation to the State Bar during the disciplinary proceedings.

Standard 1.2(e)(vii): Respondent entered into a Stipulation and Agreement for Mutual Stay Away and Restraining Order with the victim in settling a civil action filed by the victim resulting from respondent's conduct in the criminal matter, in Marin County Superior Court case number CIV 090032.

**AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 3.4 of the Standards for Attorney Sanctions for Professional Misconduct provides that "Final 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."





In the Matter of  
Godfrey J. Tencer

Case number(s):  
08-C-13873-PEM

### Medical Conditions

- a.  Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b.  Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of 1 times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for **XXX** days or **XXXX** months or **XXXX** years or, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c.  Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:



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In the Matter of Godfrey J. Tencer	Case number(s): 08-C-13873-PEM
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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.

Aug 11, 2010  
Date

  
Respondent's Signature

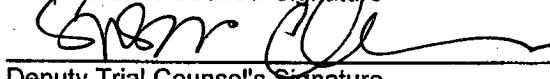
Godfrey J. Tencer  
Print Name

8-11-2010  
Date

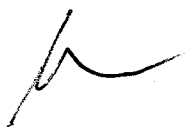
  
Respondent's Counsel Signature

Charles B. Tunnell  
Print Name

8/12/2010  
Date

  
Deputy Trial Counsel's Signature

Susan Chan  
Print Name



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In the Matter Of <b>GODFREY JOHN TENCER</b>	Case Number(s): <b>08-C-13873</b>
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**ORDER**

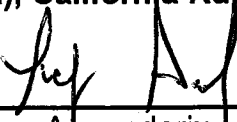
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.

On page 2 of the stipulation in paragraph A.(8), delete "2011; 2012" and insert "2012; 2013" in its stead.

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 25, 2010  
Date

  
\_\_\_\_\_  
Lucy Almendariz  
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 25, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACT, 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:

CHARLES B. TUNNELL  
LAW OFC CHARLES B TUNNELL  
1101 5TH AVE #200  
SAN RAFAEL, CA 94901 - 2903

- 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:

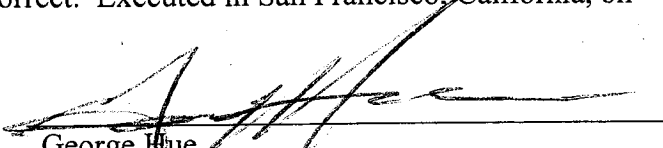
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

Susan Chan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 25, 2010.

  
George Hue  
Case Administrator  
State Bar Court