



# PUBLIC MATTER

1 STATE BAR OF CALIFORNIA  
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**FILED**  
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 STATE BAR COURT  
 CLERK'S OFFICE  
 LOS ANGELES

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STATE BAR COURT  
 HEARING DEPARTMENT - LOS ANGELES

In the Matter of:	)	Case No. 08-O-10597,
	)	08-O-11145,
MICHAEL JOHANN SCHUNK,	)	08-O-12656
No. 212138,	)	
	)	NOTICE OF DISCIPLINARY CHARGES
<u>A Member of the State Bar</u>	)	

**NOTICE - FAILURE TO RESPOND!**

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**IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**

**STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.**

**IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR**



1 conference to on or about September 30, 2005, and the court set a second order to show cause  
2 hearing for that same date, directing Respondent to appear on that date or else the Putnam case  
3 would be dismissed.

4 7. On or about September 23, 2005, Respondent appeared for a demurrer and motion to  
5 strike in the Putnam case. At that time, Respondent filed an unsigned declaration stating that he  
6 had requested to make a telephonic appearance at the case management conference on or about  
7 August 5, 2005, but that his calls to the court were not answered.

8 8. On or about September 30, 2005, the court held a case management conference and  
9 order to show cause hearing in the Putnam case. Respondent did not appear for the case  
10 management conference or order to show cause hearing. At that time, the court dismissed the  
11 Putnam case without prejudice. Thereafter, Respondent took no action to request that the  
12 dismissal be set aside.

13 9. By not making court appearances on or about August 5, 2005, September 16, 2005,  
14 and September 30, 2005, and not taking any action to request that the resulting dismissal of the  
15 Putnam case be set aside, Respondent intentionally, recklessly, or repeatedly failed to perform  
16 legal services with competence.

17 COUNT TWO

18 Case No. 08-O-10597  
19 Business and Professions Code, section 6068(m)  
[Failure to Communicate with Client]

20 10. Respondent wilfully violated Business and Professions Code, section 6068(m), by  
21 failing to keep a client reasonably informed of significant developments in a matter in which  
22 Respondent had agreed to provide legal services, as follows:

23 11. The allegations of Count One are incorporated by reference.

24 12. Respondent did not inform Putnam that he had not appeared for the case management  
25 conference and order to show cause hearing in the Putnam case and that the court had dismissed  
26 the Putnam case.

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1 \$2,500 plus costs of \$190, and they signed a fee agreement for Respondent to file an I-130  
2 petition for an alien relative.

3 27. Between in or about May and July 2007, Bautista and his wife, Estefany Aguilar-  
4 Bautista, spoke to Respondent by telephone on several occasions. Each time, Respondent told  
5 them that Bautista should appear for the hearing and that Respondent would know more after the  
6 hearing.

7 28. On or about May 31, 2007, a petition for alien relative was filed on behalf of Bautista.

8 29. On or about July 17, 2007, Respondent appeared with Bautista for a master calendar  
9 hearing on Bautista's removal case. At that time, Respondent informed the court that Bautista  
10 intended to seek relief from removal in the form of cancellation of removal allowed to certain  
11 nonpermanent residents who qualified for such relief. The court ordered that Bautista file an  
12 application for cancellation of removal and adjustment of status by on or about November 29,  
13 2007, and the court set a further hearing for on or about April 30, 2008.

14 30. After the master calendar hearing, Bautista spoke to Respondent and asked what he  
15 should do. Respondent told Bautista that he did not need to do anything and that, after he  
16 received an approval, he would not need to appear again. Thereafter, whenever Bautista or his  
17 wife contacted Respondent by telephone, he told them to wait and do nothing.

18 31. In or about November 2007, Bautista received a notice of approval of the I-130 alien  
19 relative petition.

20 32. At no time did Respondent file a petition for cancellation of removal on behalf of  
21 Bautista or advise Bautista that Respondent would not be filing such a petition on his behalf.

22 33. On or about February 27, 2008, the court issued a written decision noting that  
23 Bautista, despite being represented by counsel, had failed to file an application for cancellation  
24 of removal and concluded that Bautista had abandoned his relief application. Therefore, the  
25 court ordered voluntary removal and vacated the hearing date previously set.

26 34. By not filing a petition for cancellation of removal on behalf of Bautista or otherwise  
27 failing to advise Bautista that Respondent would not be filing such a petition on his behalf,  
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1 Respondent intentionally, recklessly, or repeatedly failed to perform legal services with  
2 competence.

3 COUNT SIX

4 Case No. 08-O-12656  
5 Rules of Professional Conduct, rule 4-100(A)  
6 [Failure to Deposit Client Funds in Trust Account]

7 35. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing  
8 to deposit funds received for the benefit of a client in a bank account labeled "Trust Account,"  
9 "Client's Funds Account" or words of similar import, as follows:

10 36. On or about February 27, 2004, Teresa Moore ("Moore"), acting as Trustee of the  
11 Vivian F. Webber Trust, employed Respondent to manage certain residential rental property  
12 owned by the Webber Trust. Moore knew that Respondent was an attorney who had previously  
13 represented Moore's son in court. At that time, Moore signed a fee agreement agreeing to pay  
14 Respondent a percentage of the rent collected as compensation for his services. The fee  
15 agreement specifically provided that Respondent would deposit all funds received on behalf of  
16 the Webber Trust in an interest-bearing trust account.

17 37. Thereafter, Moore paid \$1,300 to Respondent as advanced fees and costs for repairs  
18 and other expenses which may be incurred by Respondent in managing the property.  
19 Respondent did not deposit those funds in a trust account.

20 38. On or about May 15, 2004, tenants moved into the property owned by the Webber  
21 Trust. During the period from May through July 2004, Respondent collected funds from the  
22 tenants including \$1,650 as a security deposit, \$300 as a "pet deposit," and a total of \$4,125 as  
23 rent for three and one-half months. Respondent did not deposit in a trust account the funds  
24 collected from the tenants in the total sum of \$6,075.

25 39. By not depositing in a trust account the \$1,300 received on behalf of the Webber  
26 Trust from Moore and the \$6,075 received from the tenants of the property owned by the  
27 Webber Trust, Respondent failed to deposit funds received for the benefit of a client in a bank  
28 account labeled "Trust Account," "Client's Funds Account" or words of similar import.

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1 rent, Respondent was entitled to a fee of \$528. At no time did Respondent disburse to Moore on  
2 behalf of the Webber Trust the remaining \$3,597 collected in rent or the \$1,950 collected as  
3 security and "pet" deposits on behalf of the Webber Trust. At no time did Respondent refund  
4 any of the \$1,300 advanced by Moore to the Webber Trust.

5 49. Respondent dishonestly or with gross negligence misappropriated \$6,847 of the funds  
6 which he should have been maintaining in trust on behalf of the Webber Trust.

7 50. On or about February 28, 2006, Moore, as Trustee of the Webber Trust, obtained a  
8 judgment against Respondent for the sum of \$23,995.96 which included punitive damages. In or  
9 about August 2006, Respondent agreed to pay \$15,000 to satisfy the judgment against him with  
10 monthly payments of \$1,500 beginning in September 2006. Thereafter, Respondent did not  
11 make any payments as agreed.

12 51. By misappropriating \$6,847 which he should have been maintaining in trust on behalf  
13 of the Webber Trust. Respondent committed an act involving moral turpitude, dishonesty or  
14 corruption.

15 COUNT NINE

16 Case No. 08-O-12656  
17 Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

18 52. Respondent willfully violated Business and Professions Code, section 6068(i), by  
19 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
20 follows:

21 53. The allegations of Counts Six through Eight are incorporated by reference.

22 54. On or about June 24, 2008, Moore made a complaint to the State Bar about  
23 Respondent's conduct.

24 55. On or about July 18, 2008, and September 16, 2008, a State Bar Investigator mailed a  
25 letter to Respondent at his address of record with the State Bar regarding Moore's complaint.  
26 The letters requested that Respondent respond in writing to specified allegations of misconduct  
27 under investigation by the State Bar raised by the complaint. Respondent received the letters.  
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1 56. In or about March 2010, Respondent provided a response through counsel to the  
2 allegations raised in Moore's complaint. In his response, Respondent claimed that he had no  
3 recollection of Moore, any judgment against him, or having agreed to settlement judgment with a  
4 partial payment. When he made the response to the State Bar, Respondent knew that his  
5 response contained false statements and made the response to evade giving any explanation for  
6 his conduct.

7 57. By providing the State Bar with a written response to Moore's complaint which  
8 contained false statements, Respondent failed to cooperate and participate in a disciplinary  
9 investigation pending against Respondent.

10 **NOTICE - INACTIVE ENROLLMENT!**

11 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR  
12 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE  
13 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL  
14 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO  
15 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN  
16 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE  
17 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE  
18 RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF  
19 PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

16 **NOTICE - COST ASSESSMENT!**

17 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC  
18 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS  
19 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING  
20 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND  
21 PROFESSIONS CODE SECTION 6086.10. SEE RULE 280, RULES OF  
22 PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

21 Respectfully submitted.

22 THE STATE BAR OF CALIFORNIA  
23 OFFICE OF THE CHIEF TRIAL COUNSEL

24 DATED: November 9, 2010 By: Dane C. Dauphine  
25 Dane C. Dauphine  
26 Supervising Trial Counsel  
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**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 08-O-10597; 08-O-11145; 08-O-12656**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

**NOTICE OF DISCIPLINARY CHARGES**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7160 3901 9848 5951 7463, at Los Angeles, on the date shown below, addressed to:

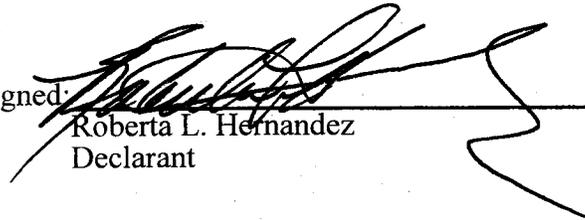
**Michael J. Schunk  
Law Office of Michael J. Schunk  
420 K Street #210  
San Diego, CA 92101-6930**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**N/A**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: November 10, 2010

Signed:   
Roberta L. Hernandez  
Declarant

SB1-#155062-v1-Michael\_J\_Schunk.DOC