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

<p>Counsel For The State Bar</p> <p><b>Esther Rogers Deputy Trial Counsel State Bar of California 180 Howard Street San Francisco, CA 94105 415/538-2258</b></p> <p>Bar # <b>148246</b></p>	<p>Case Number (s) <b>08-O-11654</b></p>	<p>(for Court's use)</p> <p align="center"><b>PUBLIC MATTER</b></p> <p align="center"><b>FILED</b> <i>RZ</i></p> <p align="center">APR 28 2009</p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Stephen A. Holmes P.O. Box 311 Clements, CA 95227 (209)759-3676</b></p> <p>Bar # <b>53768</b></p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>PUBLIC REPROVAL</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p><b>Stephen A. Holmes</b></p> <p>Bar # <b>53768</b></p> <p>A Member of the State Bar of California (Respondent)</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 **December 14, 1972**.
- (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 **9** 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".

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- (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):
- costs added to membership fee for calendar year following effective date of discipline (public reproof)
  - case ineligible for costs (private reproof)
  - costs to be paid in equal amounts for the following membership years:  
(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
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**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
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (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. **Respondent has been admitted since 1972 and has no prior record of discipline.**
- (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. **Respondent agreed to the imposition of discipline without requiring a hearing.**
- (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.

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- (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)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  **Public reproof (Check applicable conditions, if any, below)**

**E. Conditions Attached to Reproof:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of **One Year**.
- (2)  During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reprobation.
- (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)  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 of the effective date of the reprobation.

No MPRE recommended. Reason: **The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case.**

- (11)  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:**

Attachment language (if any):

Count One

Statement of Facts

In or about 2000, respondent completed a dissolution matter for Theresa Garcia in the matter *Garcia v. Garcia*, San Joaquin County Superior Court, case number 308340. At the time the dissolution was completed, Mr. Garcia was required to pay Ms. Garcia \$1,000 per month in spousal support. On or about November 12, 2002, Mr. Garcia and Ms. Garcia entered into a stipulation that lowered Mr. Garcia's spousal support payments to \$750 per month. The stipulation included a provision that if Mr. Garcia was delinquent with a spousal support payment, then Mr. Garcia was required to increase the amount of his spousal support payments to \$1,000, as previously ordered.

In or about June 2007, Ms. Garcia received no spousal support payment from Mr. Garcia. On or about July 1, 2007, Ms. Garcia employed respondent to enforce Mr. Garcia's obligation to pay spousal support and to enforce Mr. Garcia's obligation to increase the spousal support payments to \$1,000 as a result of his delinquent June 2007 payment. At the time that Ms. Garcia employed respondent, Ms. Garcia paid respondent in \$1,000 advance fees to represent Ms. Garcia regarding the collection of increased spousal support.

On or about July 12, 2007, respondent filed and served a notice of non compliance and election to reimpose the spousal support payments of \$1,000 ("Notice of Non Compliance.") On or about August 8, 2007, Mr. Garcia filed a response to the Notice of Non Compliance.

On or about August 8, August 28 and September 19, 2007, Ms. Garcia telephoned respondent and left a message on respondent's voicemail requesting that respondent provide Ms. Garcia with a status update on her matter. On or about August 8, August 28 and September 19, 2007, respondent received Ms. Garcia's messages requesting a status update on her matter, but respondent failed to respond to the telephone messages and failed to provide Ms. Garcia with a status update on her matter.

On or about September 27, 2007, Ms. Garcia left respondent a voicemail message requesting a status update on her matter. On or about September 28, 2007, respondent returned Ms. Garcia's September 27, 2007 and indicated that he would request original documentation from Mr. Garcia regarding proof of the timely payment of spousal support. Respondent informed Ms. Garcia that he would contact her after he received the proof from Mr. Garcia. Thereafter, respondent failed to provide Ms. Garcia with a status update on her matter, failed to communicate with Ms. Garcia and failed to perform any further services for Ms. Garcia.

On or about September 28, 2007, respondent ceased performing services for Ms. Garcia and effectively withdrew from employment. At the time that respondent withdrew from employment, respondent owed Ms. Garcia a refund of unearned fees.

On or about December 9, 2007, Ms. Garcia sent respondent a letter requesting that respondent provide her with a status update, or refund her \$1,000. Respondent received the December 9, 2007 letter soon after it was sent, but failed to respond to it and failed to provide Ms. Garcia with a status update on her matter, or with a refund of the unearned fees. On or about January 13, 2008, Ms. Garcia sent respondent a

letter requesting that respondent provide her with a status update, or refund her \$1,000 she paid in advanced fees. Respondent received the January 13, 2008 letter soon after it was sent, but failed to respond to it and failed to provide Ms. Garcia with a status update on her matter, or with a refund of the unearned fees. On or about June 3, 2008, Ms. Garcia sent respondent a letter terminating respondent's services and requesting that respondent refund the \$1,000 she paid in advanced fees. Respondent received the June 3, 2008 letter soon after it was sent, but failed to respond to it and failed to provide Ms. Garcia with any refund.

### Conclusions of Law

By failing to respond to Ms. Garcia's request for a status updates August 8, August 28 and September 19, 2007, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Profession Code section 6068(m).

### Count Two

#### Statement of Facts

Count One is incorporated by reference.

On or about September 28, 2007, respondent withdrew from employment. On or about June 3, 2008, Ms. Garcia terminated respondent's services. At the time that respondent withdrew from employment and at the time that Ms. Garcia terminated respondent, respondent owed Ms. Garcia a refund of unearned fees. On or about December 9, 2007, January 13, 2008 and June 3, 2008, Ms. Garcia requested that respondent return her unearned fees. Respondent received Ms. Garcia's request for a refund of her unearned fees, but respondent failed to respond to the requests and failed to refund any of the fees to Ms. Garcia after receiving the requests. On or about March 11, 2009, respondent spoke with deputy trial counsel Esther Rogers regarding this disciplinary matter and agreed to provide Ms. Garcia with a refund of unearned fees. On or about March 12, 2009, respondent refunded Ms. Garcia \$1,100.

### Conclusions of Law

By waiting until March 2009 to refund the unearned fees, respondent failed to promptly refund any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

### Count Three

#### Statement of Facts

Count One and Count Two are incorporated by reference.

On or about March 28, 2008, the State Bar opened an investigation in this matter. On or about July 14, 2008, State Bar Investigator Dolores Ziegler wrote to respondent regarding respondent's conduct in the Garcia matter. The July 14, 2008 letter requested that respondent respond in writing to specified allegations

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of misconduct being investigated by the State Bar in this matter on or before July 28, 2008. Respondent received the July 14, 2008 letter, but did not respond to the letter.

On or about July 28, 2008, Ziegler wrote another letter to respondent regarding respondent's conduct in this matter. The July 28, 2008 letter enclosed a copy of the July 14, 2008 letter and requested that respondent respond in writing by August 7, 2008. Respondent received the July 28, 2008 letter, but did not respond to the letter

#### Conclusions of Law

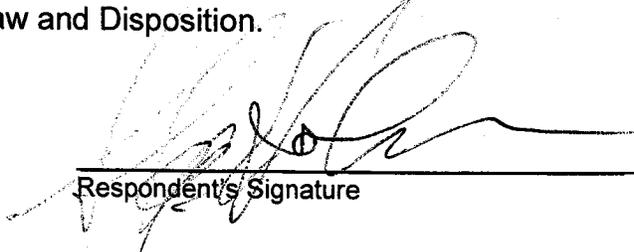
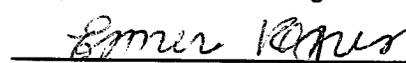
By failing to provide a response to the allegations regarding respondent's conduct in this matter, respondent failed to cooperate in a disciplinary investigation, in willful violation of Business and Profession Code section 6068(i).

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In the Matter of Stephen A. Holmes	Case number(s): 08-O-11654
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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>4/6/09</u> Date	 Respondent's Signature	<u>Stephen A. Holmes</u> Print Name
<u>4/15/09</u> Date	 Deputy Trial Counsel's Signature	<u>Esther Rogers</u> Print Name

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In the Matter Of <b>Stephen A. Holmes</b>	Case Number(s): <b>08-O-11654</b>
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**ORDER**

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department 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 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

Date April 27, 2009 Judge of the State Bar Court  
Lucy Armandaris

**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 April 28, 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:

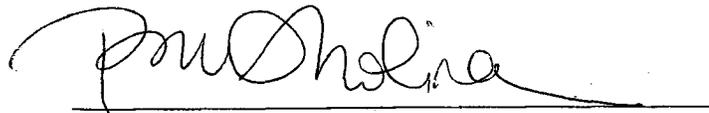
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**STEPHEN ALLEN HOLMES  
P O BOX 311  
CLEMENTS, CA 95227**

- 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:

**ESTHER J. ROGERS**, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 28, 2009.



Bernadette C.O. Molina  
Case Administrator  
State Bar Court