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



Counsel For The State Bar

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Bar # 32582

In the Matter Of:
Gerald Scher

Bar # 141175

A Member of the State Bar of California
(Respondent)

Case Number (s)
08-O-12742;
09-O-11309;
08-O-14144;
10-O-08029;
10-O-08356

(for Court's use)

PUBLIC MATTER

FILED *Per*

JAN 18 2011

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

Submitted to: **Settlement Judge**

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING

ACTUAL SUSPENSION

PREVIOUS STIPULATION REJECTED

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 6, 1989.
- (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 16 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):
- 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:
(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
 - (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.
- (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. In the Azar matter, the client's liens went into collections, and she was therefore unable to negotiate them. In the Mastrioianni matter, the client was deprived of his settlement funds.
- (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. There are three matters that involve trust account violations.

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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. Respondent has been cooperative in reaching a stipulation in this matter.
- (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. Respondent's father passed away in November, 2007.
- (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

Respondent's father passed away in November, 2007. Shortly thereafter, several attorneys left his firm. Respondent's workload increased significantly until he filled the vacant positions at his law firm.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of one 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 two 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 90 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.

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- (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 checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" 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:

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- (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:**

- 3 By failing to respond to Azar's requests and return her file to her, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

2. 08-O-14144 (Mastroianni)

Mastroianni hired respondent in November, 2000, to represent him in a personal injury claim. The parties agreed to a contingency fee. Respondent brought suit on behalf of Mastroianni, *Mastroianni v. Wood*, Case no. CLJ184747, filed in San Mateo Superior Court. In May, 2005, respondent and his client appeared at a mandatory settlement conference and the parties agreed to settle the matter for \$2,500. The settlement, as written into the court docket, indicated that the defense would provide releases and a check and delivery by May 27, 2005 to respondent. At the hearing, respondent advised Mastroianni to contact his office to make arrangements to come sign the release. Thereafter, the defendant sent respondent the release and indicated that it would tender the check when the release was returned with the proper signatures.

Thereafter, respondent took no further action to facilitate the completion of the settlement documents. He did not re-contact Mastroianni to come sign the release and he did not obtain the \$2,500 on behalf of Mastroianni, pursuant to the terms of the settlement agreement.

When the matter settled, Mastroianni and respondent discussed the settlement funds and Mastroianni understood that all the settlement monies would be used to pay off the medical care providers, namely, one Dr. Terrance Stackwood. Mastroianni made several inquiries of respondent regarding Stackwood's bill, and respondent assured Mastroianni that Stackwood would be paid.

On or about June, 2008, Dr. Terrance Stackwood sued Mastroianni for the outstanding bill, in small claims court. Mastroianni sent respondent a certified letter on July 10, 2008 asking respondent about the status of the settlement and requesting documents to respond to the small claims action.

Respondent received Mastroianni's letter and failed to respond. On or about July 30, 2008, James Campbell, another attorney hired by Mastroianni, wrote a letter to respondent on Mastroianni's behalf, asking respondent for a copy of the settlement agreement together with an accounting of the distribution of the settlement in Mastroianni's action.

In response, respondent telephoned Campbell. Respondent did not provide the documents requested; nor did he explain whether or not the documents in fact existed.

Conclusions of Law

1. By failing to complete the settlement on Mastroianni's behalf, respondent failed to perform with competence, in willful, reckless, and repeated violation of the Rules of Professional Conduct, rule 3-110(A).
2. By failing to fully respond to Campbell's request for information and documentation on behalf of Mastroianni, respondent failed to return the file, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

3. 09-O-11309 (Poncini)

On 3/31/04 Shirley Poncini hired respondent to represent her in a personal injury matter. The parties agreed to a 1/3 contingency fee plus costs. On 5/4/04 respondent signed a lien for one of the lien holders, UFCW. Another lien holder, State Farm also sent the client a notice in April, 2005.

In June, 2007, respondent settled the case for \$60K. Respondent received the settlement check issued on 6/25/07, and deposited it into his attorney-client trust account (hereinafter "CTA") on 8/25/07.

Of the funds received, respondent attributed \$3,646.55 as advanced costs, and \$42,265.09 as client funds. Respondent issued a check for \$22,265.09 to the client and indicated to her that he was keeping \$14,088.36 for his fee (approximately ¼ of the gross settlement amount) and holding \$20,000 in trust for payments to the two lien holders, State Farm and UFCW. Poncini directed respondent to pay all lien holders promptly.

Thereafter, respondent's CTA dropped below the amounts necessary to hold for the liens in this case. On May 21, 2008, the account dropped to \$16,490.26, less than the \$20k respondent should have been holding for the liens; it dropped again on October 29, 2008, to \$13,023.14.

Respondent made payments on these liens on 2/5/09, \$10,000 to State Farm; and on 1/26/10, \$10,000 to UFCW. This is a delay of eighteen months.

On May 2, 2006 the defense filed a Motion to Dismiss against respondent's client. The matter was set for June 6, 2006. Defense duly served respondent with notice of the hearing and he was aware of its contents. Respondent failed to file responsive pleadings to the motion, and respondent failed to appear on June 6, 2006 for the hearing on the Motion to Dismiss.

On November 7, 2006, in the course of the underlying litigation, respondent was informed that an independent medical exam was scheduled for Poncini for December 11, 2006. Respondent failed to advise Poncini of this exam, and she did not attend.

On September 24, 2007, Poncini sent respondent an email requesting a status update on the payments to the medical lien holders. Respondent received Poncini's email and failed to respond.

In November, 2007, Poncini again emailed respondent and asked for an update on the negotiations with the lien holders. Respondent received Poncini's email and failed to respond until July, 9, 2008, a delay of eight months. On September 9, 2008 Poncini again emailed respondent and asked for the status of the negotiations and/or payments to the lien holders. Respondent received the email and failed to respond. Poncini emailed again on November 11, 2008. Respondent responded on November 21, 2008 and advised her that he had written to the insurance companies.

In January, 2009 respondent and Poncini discussed the UFCW payment. Thereafter, respondent failed to update Poncini until August 8, 2009, a delay of eight months. On November 7, 2006, in the course of the underlying litigation, respondent was informed that an independent medical exam was scheduled for Poncini for December 11, 2006. Respondent failed to advise Poncini of this exam, and she did not attend.

Poncini provided respondent a binder containing documents related to her case at the mediation, which took place on or about September 25, 2006. Poncini provided the binder to respondent so that he could copy and return it to her. In November, 2006, Poncini requested the return of her binder. Respondent was aware of Poncini's request and failed to respond to Poncini's request. Poncini renewed her request to respondent in January, 2007. Respondent returned Poncini's binder to her in May, 2007. Respondent provided Poncini with one additional document, namely a report from one Dr. Hilde Agustin, in May, 2009.

In August, 2007, respondent provided Poncini with an undated Settlement Statement. The Settlement Statement showed that respondent's fee was \$14,088.36 (indicating that respondent reduced his fee to ¼). On October 2, 2008, Poncini met with respondent and inadvertently discovered that respondent had, in his file, a different Settlement Statement. The second settlement statement specified that Harvey Ziff received \$3,522.09 of the \$14,088.36 amount, indicating ¼ of respondent's fees were paid to Harvey Ziff. Poncini originally met with Harvey Ziff and paid him a \$25.00 consultation fee. Ziff referred Poncini to respondent. Ziff did not otherwise work on Poncini's case. Respondent did not advise Poncini that he was paying a portion of his attorney's fee to Ziff. Poncini did not sign a written consent, authorizing respondent to pay Ziff ¼ of his fee.

During the course of respondent's litigation of the matter, *Shirley Ponici v. USA*, case no. C-05-00233-HRL, filed in United States District Court, Northern District of California, respondent failed to abide by several court orders, as follows:

On March 28, 2006, the Court ordered respondent to appear on April 11, 2006, to Show Cause why he should not be sanctioned for his failure to appear on March 28, 2006 for the scheduled case management conference. Respondent was duly served with notice of the Court's March 28, 2006 order and was aware of its contents. Respondent failed to appear on April 11, 2006 as ordered by the court; on April 28, 2006, the Court sanctioned respondent \$300.00;

On March 28, 2006, the Court ordered respondent to serve initial disclosures on the defendant's counsel by April 3, 2006. Respondent was duly served with notice of the Court's order and was aware of its contents. Respondent failed to timely serve the initial disclosures as ordered by the Court;

On June 20, 2006, the Court ordered respondent to file a case management statement by July 18, 2006. Respondent was duly served with notice of the Court's order and was aware of its contents. Respondent failed to file a case management statement as ordered by the Court.

Conclusions of Law

1. By failing to notify his client of the independent medical exam, by failing to respond to the motion to dismiss and appear at the hearing on the motion, and by failing to pay the medical lien holders promptly after obtaining the settlement funds, respondent failed to perform with competence, in willful, reckless and repeated violation of the Rules of Professional Conduct, rule 3-110(A).
2. By failing to pay the lien holders for eighteen months, respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).
3. By, in or about May 21, 2008, and again by in or about October 29, 2008, allowing his CTA account to fall below the amount he should have been holding on behalf of Poncini, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).
4. By failing to timely respond to Poncini's numerous emails regarding the progress on the lien holder matters, 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 Professions Code, section 6068(m). By failing to advise Poncini of the independent medical exam, respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).
5. By failing to return to Poncini her documents until May, 2007, with one additional report returned in May, 2009, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).
6. By paying Ziff \$3,522.09 from Poncini's settlement funds, respondent split his fees with another attorney, without advising Poncini or obtaining her consent, in willful violation of Rules of Professional Conduct, rule 2-200.
7. By failing to abide by the aforementioned court orders, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

4. 10-O-8356 (Claridge)

In February, 2009, Sally Claridge (hereinafter, "Claridge") hired respondent to represent her in a personal injury matter. The parties agreed to a contingency fee. Respondent, with his client, attended an interview regarding the case in or about November, 2009. Thereafter, respondent took no further action on the case. In March, 2010, Claridge hired respondent to represent her in a second matter, involving an injury to her jaw. Respondent did not bring suit on Claridge's behalf on either of the two cases. On or about July 10, 2010, Claridge sent respondent a letter via certified mail, requesting the status of the cases and requesting word from respondent as to why no suit had been filed. Respondent failed to respond or otherwise apprise Claridge of the status of her cases. Respondent withdrew from representing Claridge in or about September, 2010.

1. By failing to timely respond to Claridge's certified letter, respondent failed to respond to the reasonable status inquiries of a client in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code, section 6068(m).
2. By failing to withdraw until September, 2010, when respondent's last action on the (first) matter was November, 2009, respondent failed to properly withdraw, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

5. 10-O-8029 (SBI)

On April 14, 2010, respondent issued check, check no. 10365 from his attorney-client trust account, for the sum of \$1,726.75, against insufficient funds.

Conclusions of law

1. By issuing a check against insufficient funds, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was December 7, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Office of the Chief Trial Counsel has informed respondent that as of December 7, 2010, the prosecution costs in this matter are \$6,195.00. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards

The Standards for Attorney Sanctions for Professional Misconduct call for a minimum actual suspension of ninety days for violations of rule 4-100 of the Rules of Professional Conduct. (Standard 2.2(b)).

Here, respondent failed to maintain the lien holder funds of Poncini, as well as failed to promptly pay out the lien holder funds in the Poncini and Azur matters, and he issued an NSF check for over one thousand dollars. Respondent's repeated violation of this rule warrants the suspension.

Case law

In *In the Matter of Sampson* (R.D. 1994) 3 Cal. State Bar. Ct. Rptr, the attorney failed to pay the medical liens of 14 clients, all to one Dr. Byrne. Respondent used the funds himself. The total funds owed amounted to \$29,453, and respondent's CTA dropped to about a thousand dollars. Respondent claimed he had authority from Byrne to borrow the funds, but Byrne denied this purported loan. The court found moral turpitude due to respondent's reckless disregard of his CTA obligations. The court also found violations of RPC 3-110(A) and 4-100(A) & (B)(4), and 6068(m). While respondent herein did not have fourteen clients, the aggregate sum of monies for the Azar and Poncini matters is significant, amounting to over three thousand dollars in the Azar matter and over twenty thousand in the Poncinin matter. The amount misappropriated is about one-third of that in *Sampson*. *Sampson* was charged with four client matters (although the first one affected fourteen clients) in this case, respondent also has four client matters five matters before this court, and an additional State Bar matter for the NSF check. *Sampson* had thirteen years of discipline free practice. The Court imposed an eighteen month actual suspension, three years of stayed suspension.

In *In the Matter of Riley* (R.D. 1994) 3 Cal. State Bar Ct. Rptr. 91, the attorney received a ninety day actual suspension, three years probation, for consolidated matters involving numerous charges, mostly failure to honor medical liens. In three of the matters, respondent disbursed the funds without paying a medi-cal lien; there was more misconduct in four more cases involving contractual liens. The attorney was admitted in 1977 and had no prior discipline; yet the court stated that there was no reason to go below the standards, which mandate a three month actual suspension.

In *In Matter of Silver* (R.D.1998) 3 Cal. State Bar Ct. Rptr. 902, the attorney misappropriated \$4,800 in client funds in a single client matter, failing to properly pay out the medical provider. He received ninety days of actual suspension, with three years of suspension, stayed, and three years of probation. While the trial court originally imposed six months of actual suspension, this was reduced by the Review Department to the ninety days. *Silver*, unlike respondent herein, involved only one client matter, and a small sum. Respondent has committed misconduct in five matters, two of them involving liens.

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.

Respondent admits that the aforementioned facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

In the Matter of
Gerald Scher

A Member of the State Bar

Case number(s):
08-O-12742;09-O-11309;08-O-14144;10-O-08029;
10-O-08356

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of revocation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

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A Member of the State Bar

Law Office Management Conditions



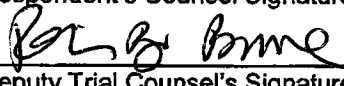
- a. Within 90 days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

(Do not write above this line.)

In the Matter of GERALD SCHER	Case number(s): 08-O-12742;09-O-11309;08-O-14144;10-O-08029; 10-O-08356
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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>12/17/10</u> Date	<u></u> Respondent's Signature	<u>Gerald Scher</u> Print Name
<u>12/20/10</u> Date	<u></u> Respondent's Counsel Signature	<u>Ephriam Margolin and Vicki Young</u> Print Name
<u>12/28/2010</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Robin Brune</u> Print Name

(Do not write above this line.)

In the Matter Of GERALD H. SCHER	Case Number(s): 08-O-12742; 08-O-14144; 09-O-11309; 10-O-08029; 10-O-08356
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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.


The conditional Std. 1.4(c)(ii) requirement needs to be deleted. Based on the discipline set forth in the stipulation, it is not possible for respondent to be suspended for two years or more, since the discipline imposed requires that he be suspended from the practice of law for only the first 90 days of probation.

Therefore, on page 4, paragraph E.(1), DELETE the "x" from the box preceding the words, "If Respondent is actually suspended for two years or more. . ." On page 4, paragraph D.(1)(a) should be checked.

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.)**

January 18, 2011

Date


Lucy Armendariz
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 January 18, 2011, 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:

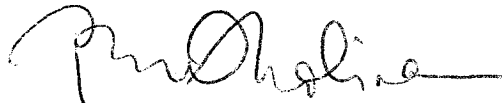
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

EPHRAIM MARGOLIN
LAW OFFICE OF EPHRAIM MARGOLIN
240 STOCKTON STREET, 4TH FL.
SAN FRANCISCO, CA 94108 - 5318

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 18, 2011.



Bernadette C.O. Molina
Case Administrator
State Bar Court