



ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM

<p>Counsel For The State Bar</p> <p>Charles A. Murray Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1236</p> <p>Bar # 146069</p>	<p>Case Number (s) 08-O-12914</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED</p> <p>FEB - 4 2010 <i>[Signature]</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Stanley H. Rozanski 12400 Wilshire Blvd., Suite 650 Los Angeles, CA 90025 (310) 442-8200</p> <p>Bar # 81362</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: BARRY J. POST</p> <p>Bar # 72286</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 October 27, 1978.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **8** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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 95-O-12548, et al. (29 cases captioned)
 - (b) Date prior discipline effective October 22, 1999
 - (c) Rules of Professional Conduct/ State Bar Act violations: SBA section 6068(m); RPC rule 3-110(A) & rule 3-700(D)(2)
 - (d) Degree of prior discipline 5 years & until rehabilitation suspension, stayed; 5 years probation on conditions that included 18 months actual suspension
 - (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. For several years, Respondent has failed to pay a significant sum in restitution to several client/victims and he has failed to engage in fee arbitration with several client/victims.

- (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.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

In April 2007, Respondent began to feel ill. In May 2007, diagnostic testing revealed a cancerous tumor on his neck. Thereafter, Respondent underwent a program of radiation and chemotherapy. Due to the radiation, Respondent does not produce sufficient saliva and occasionally chokes on his saliva and mucus, as well as aspirating on food and drink. Respondent currently receives dilation of his esophagus every four to six weeks which is improving his ability to swallow. He is now working full time as an attorney for a law office.

A portion of Respondent's misconduct – failure to pay restitution as ordered - is mitigated by severe financial stress resulting from Respondent's inability to work due to his mental & physical illnesses.

ATTACHMENT TO

ADP STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **BARRY J. POST** MEMBER # **72286**

CASE NUMBER(s): **08-O-12914**

PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A.(6), is September 1, 2009.

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct, or that he has otherwise committed acts of misconduct warranting discipline, as follows:

Facts for Case No. 08-O-12914

1. On June 4, 1999, Respondent entered into a stipulation of facts, conclusions of law and disposition in State Bar Court case nos. 95-O-12548 et al. The State Bar Court filed an order approving the stipulation on June 9, 1999 and an order of modification on June 18, 1999. On September 22, 1999, the Supreme Court filed its order imposing discipline, order no. S080580 ("discipline order"), effective October 22, 1999.

2. The discipline order placed Respondent on five years of probation with certain terms and conditions including 18-months actual suspension. Other terms and conditions of probation required Respondent to do the following:

- Report his compliance with the State Bar Act and Rules of Professional Conduct to the Office of Probation ("OP") each January 10, April 10, July 10 and October 10 of the probation period ("quarterly reports");
- File a final report of compliance to the OP no earlier than 20 days before the last day of the period of probation and no later than the last day of the period of probation;
- Obtain psychological treatment at least twice per month and provide a therapist's statement to the OP with each quarterly report;

- Submit eight identified client matters to binding fee arbitration within 18 months of the effective date of discipline and provide satisfactory proof of compliance to the OP;
- Pay restitution to seven identified individuals, or to the Client Security Fund (“CSF”) if it had paid, commencing one year after the effective date of discipline and on a quarterly basis. Specifically, Respondent had to pay the following amounts to the following individuals and provide satisfactory proof of payments to the OP with each applicable quarterly report:
 - \$500.00 to Nina Wells (“Wells”) or CSF, plus 10% interest per annum from January 1, 1997;
 - \$1,240.00, to Joyce Cross (“Cross”) or CSF, plus 10% interest per annum from January 1, 1997;
 - \$5,183.00, to Charles Butler (“Butler”) or CSF, plus 10% interest per annum from July 1, 1996;
 - \$500.00 to Lisa Beilin (“Beilin”) or CSF, plus 10% interest per annum from January 1, 1998;
 - \$4,000.00 to Gene Basey (“Basey”) or CSF, plus 10% interest per annum from January 6, 1996;
 - \$900.00 to Margie Gutierrez (“Gutierrez”) or CSF, plus 10% interest per annum from January 1, 1997; and
 - \$5,000.00 to Jacqueline L. Whitted-Herring (“White-Herring”) or CSF, plus 10% interest per annum from January 1, 1996.

3. On March 30 2004, the State Bar Court filed an order extending the period of probation to October 22, 2007 and modifying restitution conditions. Pursuant to the modification, Respondent was ordered to make minimum monthly restitution payments of \$150.00 commencing on April 15, 2004, to increase his minimum monthly restitution payments to \$200.00 commencing on April 15, 2005, to increase his minimum monthly restitution payments to \$250.00 on April 15, 2007, and to complete his restitution obligations in full within 30 days prior to the expiration of probation. Respondent was required to make his restitution payments to individual payees first and then to CSF. All other terms and conditions of probation were to remain in full force and effect.

4. During the probation period, Respondent failed to comply with the terms and conditions of his disciplinary order as follows:

- Respondent did not make restitution as ordered;
- Respondent did not provide the OP with any proof of payments to Wells, Cross, Butler, Beilin, Basey, Gutierrez or Whitted-Herring;
- Respondent did not provide the OP with any proof of payments made to CSF;¹
- Respondent did not file quarterly reports for July 10 2007 and October 10, 2007;
- Respondent did not file a final report;
- Respondent did not file therapist statements for April 10, 2004, October 10, 2004, January 10, 2005, April 10, 2005, October 10, 2005, October 10, 2006, January 10, 2007, April 10, 2007, July 10, 2007, October 10, 2007;
- Respondent did not submit satisfactory proof of compliance with fee arbitration conditions in at least one client matter;

Conclusions of Law for Case No. 08-O-12914

5. By not completing restitution, not filing quarterly reports or a final report, not submitting therapist statements, and not providing proof of compliance with fee arbitration requirements, Respondent willfully failed comply with all conditions attached to his disciplinary probation, in willful violation of Business and Professions Code, section 6068(k).

¹ CSF has confirmed the following payments by Respondent during the probation period:

- (1) \$500.00 on August 30, 1999, relating to Wells;
- (2) \$900.00 on August 30, 1999, relating to Gutierrez;
- (3) \$4000.00 on April 18, 2001 through January 10, 2002, relating to Basey; and,
- (4) \$1,350.00 on January 11, 2002, relating to Whitted-Herring.

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RESTITUTION:

As restitution in this matter, Respondent shall pay to the individual parties and/or CSF as set forth in the original stipulation in the underlying matter for which the violated the terms of the Supreme Court order and his conditions of probation.

As noted in footnote 1 on the previous page, Respondent has only paid a total of \$6,750 in restitution.

As of September 4, 2009 Respondent owes restitution to CSF, in the sum of \$81,413.50, consisting of unpaid principal of \$50,533; unpaid interest of \$35,726 [interest]; and unpaid processing costs of \$1,904; with credit for the \$6,750 paid as noted above.

As of September 30, 2009, the amounts Respondent will owe restitution to the following individuals – Nina Wells, interest of \$133.01; Joyce Cross principal of \$1,240 and interest of \$1,581.42; Charles Butler, interest of \$1,654.30; Lisa Beilen, principal of \$500 and interest of \$587.67; Gene Basey, interest of \$1,459.73; Margie Guttierrez, interest of \$239.42; and Jacqueline Whitted, interest of \$1,845.21 – totaling \$9,240.76.

Due to accruing interest, the above are not final figures but will continue to change until paid in full.

The above calculations are subject to verification by CSF and the Office of Probation, respectively, whose figures and calculations shall be the final determination of restitution remaining to be paid.

Additionally, any money determined to be paid as a result of fee arbitration or in lieu of fee arbitration shall also be paid as restitution and proof satisfactory provided to the Office of Probation, according to its instruction.

RESPONDENT:

(Printed: 09/08/09)

Page 7

(PROGRAM)

Attachment Page 7

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In the Matter of BARRY J. POST	Case number(s): 08-O-12914
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SIGNATURE OF THE PARTIES

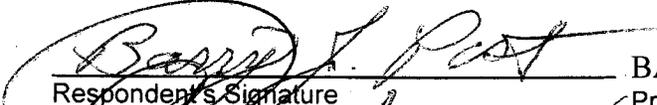
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

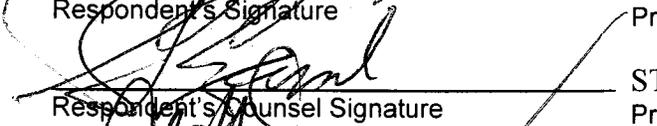
If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

9-8-09
Date


Respondent's Signature

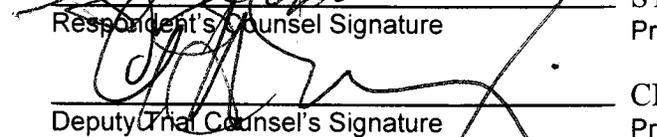
BARRY J. POST Barry J. Post
Print Name

9-8-09
Date


Respondent's Counsel Signature

STANLEY H. ROZANSKI Stanley Rozanski
Print Name

9/8/09
Date


Deputy Trial Counsel's Signature

CHARLES A. MURRAY
Print Name

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In the Matter Of BARRY J. POST	Case Number(s): 08-O-12914
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

2-4-10
Date


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 Los Angeles, on February 5, 2010, 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 Los Angeles, California, addressed as follows:

STANLEY HOWARD ROZANSKI
ROZANSKI & ASSOCIATES
11601 WILSHIRE BLVD STE 500
LOS ANGELES, CA 90025

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:

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 5, 2010.

Cristina Potter
Case Administrator
State Bar Court