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**State Bar Court of California  
Hearing Department  
Los Angeles**

<p>Counsel For The State Bar</p> <p><b>Larry DeSha</b> Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336</p> <p>Bar # 117910</p>	<p>Case Number (s) 09-J-11153-RAH</p> <p><b>PUBLIC MATTER</b></p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>OCT 07 2009 <i>[Signature]</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>David A. Clare</b> 444 W. Ocean Blvd.; Ste. 800 Long Beach, CA 90802 (562) 624-2837</p>	<p>Submitted to: <b>Settlement Judge</b></p>	
<p>Bar # 44971</p> <p>In the Matter Of:</p> <p><b>MICHAEL THOMAS STOLLER</b></p> <p>Bar # 120241</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 10, 1985**.
- (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".
- (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.
  - 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 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. **See Stipulation Attachment, page 7.**
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Stipulation Attachment, page 7.**
- (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**

**Although the misconduct herein is serious, Respondent has had no prior record of discipline in the nearly 22 years he practiced law prior to the misconduct in this matter. See Stipulation Attachment, page 8.**

## D. Discipline:

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **two (2) years**.

i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii.  and until Respondent does the following:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

## E. Additional Conditions of Probation:

(1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(3)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(4)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(5)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (6)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Other Conditions:**

Attachment language (if any):

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

**IN THE MATTER OF:     MICHAEL T. STOLLER**

**CASE NO.:             09-J-11153-RAH**

**FACTS**

1.     On November 19, 2007, a debtor hired Respondent to file a Chapter 13 bankruptcy. The debtor paid \$3,100 to a staff member in Respondent's office. The debtor never had any personal contact with Respondent.
2.     The bankruptcy petition was filed on January 2, 2008, the same date that the debtor's house was scheduled for a foreclosure sale. Among the documents filed was a Rights and Responsibilities Agreement ("RARA"), which required Respondent to personally meet with the debtor to (1) review assets, liabilities, income, and expenses; (2) counsel the debtor regarding selection of Chapter 13 or Chapter 7; (3) review the completed petition and plan; (4) explain the legal services to be provided; (5) explain how attorney fees and trustee fees are determined and paid; and (6) sign and deliver a copy of the RARA to the debtor.
3.     Respondent failed to perform any of these services personally, but his office staff signed the RARA on his behalf and filed it with the bankruptcy petition. His office staff also signed the debtor's name to the RARA, Statement of Financial Affairs, and Chapter 13 Plan, all three of which are required by the bankruptcy laws and rules to be signed by the debtor personally.
4.     Respondent was hired to file a joint bankruptcy including the debtor's spouse, but he failed to include the spouse as a debtor. The filed schedules were incomplete due to failures to disclose all known assets and income.
5.     The bankruptcy case was eventually dismissed because Respondent failed to attend the hearing for confirmation of the Chapter 13 Plan.
6.     In addition to his failure to perform the RARA services for the client who hired him in November 2007, Respondent failed to provide the RARA services for at least four other clients for whom he filed bankruptcy petitions prior to November 18, 2008.
7.     On March 10, 2009, the Disciplinary Panel of the U.S. Bankruptcy Court for the Central District of California ("USBC"), pursuant to a stipulation between Respondent and the U.S. Trustee, issued an Order on Disciplinary Proceeding which publicly reprovved Respondent for failing to adequately perform legal services, including allowing his staff to sign the debtor's name to bankruptcy documents, and failing to perform the RARA services in five cases.

8. The USBC imposed discipline with the public reproof which included (1) any representation of a debtor before the USBC before November 12, 2013 must be without remuneration, whereby Respondent would charge and collect approved fees, but would donate the entire fee to one of two named charities; and (2) approval of Respondent's prior disgorgement of the entire fee paid by the debtor on November 19, 2007.

### **CONCLUSIONS OF LAW:**

1. By failing to provide the required counseling prior to filing the five bankruptcy petitions, filing an incomplete bankruptcy petition, failing to appear at the hearing for confirmation of the debtor's Chapter 13 Plan, causing the debtor's bankruptcy case to be dismissed, and failing to properly supervise his office staff, Respondent recklessly or repeatedly failed to perform legal services with competence in willful violation of the California Rules of Professional Conduct, rule 3-110(A).

### **WAIVER OF VARIANCE:**

The parties waive any variance between the Notice of Disciplinary Charges filed on May 6, 2009 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

### **AGGRAVATING CIRCUMSTANCES:**

Respondent's misconduct caused significant harm to his client by causing his bankruptcy case to be dismissed. Respondent also caused significant harm to the administration of justice because the U.S. Trustee had to investigate his performance and file appropriate motions to dismiss the bankruptcy case and refer Respondent for disciplinary action, the case judge had to conduct a hearing and make appropriate findings of fact and a referral to the USBC Disciplinary Panel, and the Disciplinary Panel of three USBC judges had to review the evidence and issue the Order on Disciplinary Proceeding.

Respondent's current misconduct evidences multiple acts of wrongdoing because the bankruptcy petition filed by Respondent on January 2, 2008 was incomplete, it had been signed by a member of Respondent's staff on three lines required to be signed by the debtor personally, Respondent had failed to perform the six tasks required in the Rights and Responsibilities Agreement ("RARA"), and the bankruptcy case was dismissed after Respondent failed to appear at the hearing to confirm the Chapter 13 Plan. His misconduct also evidenced a pattern of misconduct because Respondent failed to perform any of his RARA duties in four other bankruptcy cases.

**MITIGATION:**

Respondent has no prior record of discipline since his admission to the California State Bar on December 10, 1985.

**SUPPORTING AUTHORITY:**

Standard 2.4(b) requires "reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client" for willfully failing to perform legal services.

In *Colangelo v. State Bar* (1991) 53 Cal.3d 1255, attorney Colangelo was found culpable of failure to provide competent legal services to four clients, by combinations of poor services sometimes mixed with complete failures to perform at other times. The California Supreme Court did not note any factors to be aggravating or mitigating, and recommended discipline of a stayed suspension for one year and probation for 18 months. In deviating from its usual imposition of an actual suspension for at least 30 days in similar cases, the Supreme Court noted that the protection of the public did not require that degree of discipline because Respondent had left private practice for employment in the more structured environment of a Public Defender's office. *Id.*, at 1267.

**PENDING PROCEEDINGS:**

The disclosure date referred to on page 2, paragraph A.(7), was September 9, 2009.

**COSTS:**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 9, 2009, the estimated prosecution costs in this matter are approximately \$4,920.00. Respondent acknowledges that this figure is an estimate only.

If Respondent fails to pay any installment within the time provided in paragraph A.(8) above or as modified by the State Bar Court pursuant to section 6068.10 (c), the remaining balance of costs will be due and payable immediately and enforceable as a money judgment unless relief is granted under rule 286 of the Rules of Procedure of the State Bar of California.

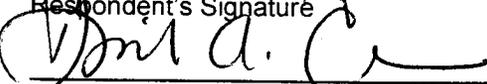
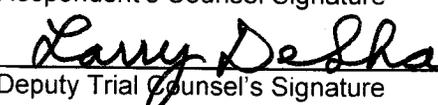
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In the Matter of <b>MICHAEL THOMAS STOLLER</b>	Case number(s): <b>09-J-11153-RAH</b>
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**SIGNATURE OF THE PARTIES**

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.

September <u>10</u> , 2009 Date	 Respondent's Signature	Michael Thomas Stoller Print Name
September <u>14</u> , 2009 Date	 Respondent's Counsel Signature	David A. Clare Print Name
September <u>15</u> , 2009 Date	 Deputy Trial Counsel's Signature	Larry DeSha Print Name

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In the Matter Of  <b>MICHAEL THOMAS STOLLER</b>	Case Number(s):  <b>09-J-11153-RAH</b>
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**ORDER**

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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.)**

09-16-09  
Date

  
Judge of the State Bar Court

**RICHARD A. PLATEL**

**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 October 7, 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 Los Angeles, California, addressed as follows:

DAVID ALAN CLARE  
DAVID A CLARE, ATTORNEY AT LAW  
444 W OCEAN BLVD STE 800  
LONG BEACH, CA 90802

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:

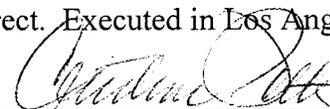
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Ernest Larry DeSha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 7, 2009.



Cristina Potter  
Case Administrator  
State Bar Court