

State Bar Court of California
Hearing Department
San Francisco

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In the Matter Of:

BRIAN DONNELLY

Bar # 162987

A Member of the State Bar of California
(Respondent)

Case Number (s)

09-O-10693-PEM

09-O-14967-PEM

(for Court's use)

PUBLIC MATTER

FILED

NOV 02 2010

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

Submitted to: **Assigned 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 on December 29, 1992.
- (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 22 pages, not including the order.

(Do not write above this line.)

- (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):
 - ☒ 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 04-O-14889
 - (b) ☒ Date prior discipline effective October 27, 2005
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules 3-110(A), 3-700(A)(2), and 3-700(D)(1) of the Rules of Professional Conduct and sections 6068(m) and 6103 of the Business and Professions Code
 - (d) ☒ Degree of prior discipline Public reproof
 - (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. Respondent's misconduct was NOT surrounded by dishonesty, concealment, or overreaching. But it was surrounded by uncharged violations of sections 6068(i) and 6103. See page 18.
- (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 page 18.

- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See page 19.
- (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 page 19.
- (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. See page 19.
- (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. See page 19.
- (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) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of two 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:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of three 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 6 months.

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.
- (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 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 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:

- (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:**

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

In the Matter of: **Brian Donnelly**
Membership No.: **162987**
State Bar Court Case Nos.: **09-O-10693 and 09-O-14967**

WAIVERS

The parties waive all variances between the facts and conclusions of law asserted in the Notice of Disciplinary Charges ("NDC") and the facts and conclusions of law contained in this Stipulation.

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts and conclusions of law are true:

COUNT ONE

Case No. 09-O-14967
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

1. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:
2. In April, 2006, Patricia Moore (hereinafter, "Moore") hired respondent on behalf of her start-up company, Rhaphis Medical (hereinafter, "Rhaphis") to act as corporate counsel and assist in all legal matters related to the corporate formation and funding of Rhaphis. On April 10, 2001, Rhaphis paid respondent the sum of \$2,000 as a retainer fee. Rhaphis continued to pay respondent periodically in response to respondent's invoices.

3. Between September 12, 2006, and May 26, 2009, Rhaphis paid respondent an additional \$65,077.18 pursuant to respondent's periodic invoices for legal services. Rhaphis was up-to-date in payment of all invoices.

4. In July 2009, Rhaphis was in the midst of attempting to obtain Series B financing. Respondent was aware of the financing endeavor, and was providing legal services for the financing endeavor. After July 2009, respondent stopped all actions on behalf of Rhaphis and stopped communicating with Rhaphis.

5. Moore left emails to respondent on July 17, 2009; July 21, 2009; August 17, 2009; and August 25, 2009, requesting that he contact and communicate with her regarding various corporate matters. At the time, respondent was assisting Rhaphis with several outstanding legal matters including, but not limited to, the following: (1) Rhaphis's annual Statement of Information that should have been filed with the Secretary of State and; (2) the proper preparation of issuing stock and filing with the Secretary of State regarding the stock certificates.

6. Respondent received all of Moore's emails and failed to respond or otherwise contact Moore.

7. Respondent took no further action on behalf of Rhaphis. Respondent did not take action to complete the Series B financing. Respondent did not complete the annual Statement of Information to file with the Secretary of State. Respondent did not appropriately prepare and complete the issuing of stock and filing with the Secretary of State regarding the stock certificates.

8. By intentionally, recklessly, and repeatedly failing to take further action on behalf of Rhaphis after July 2009, respondent willfully violated the Rules of Professional Conduct, rule 3-110(A).

COUNT TWO

Case No. 09-O-14967

Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

9. Respondent willfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, in a matter in which respondent had agreed to provide legal services, as follows:

10. The allegations of Count One are hereby incorporated by reference.

11. Moore's email of July 17, 2009, stated, "We are in need of immediate legal counsel. Please call asap."

12. Moore's email of July 21, 2009 stated, "Any chance we are going to hear from you? We are at a very critical stage and are in need of corporate counsel."

13. Moore's email of August 25, 2009 stated, "I am writing to request your immediate attention to the Certificates that were promised and due Ross Mangano over a year ago."

14. Respondent failed to respond to any of Moore's emails of July 17, 2009; July 21, 2009; August 17, 2009; and August 25, 2009.

15. In July and August 2009, Moore left several telephone messages for respondent in addition to the emails of July and August 2009.

16. Respondent received Moore's telephone messages.

17. Respondent failed to respond to any of Moore's telephone messages.

18. By failing to respond to Moore's emails and telephone messages, 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).

COUNT THREE

Case No. 09-O-14967
Rules of Professional Conduct, rule 3-700(D)(1)
[Failure to Release File]

19. Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1), by failing to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, as follows:

20. The allegations of Counts One and Two are hereby incorporated by reference.

21. Moore terminated respondent in August 2009 and hired the law offices of Wilson, Sonsini, Goodrich & Rosati. On August 25, 2009, attorney Todd Carpenter (hereinafter, "Carpenter") faxed a letter request to respondent, signed by William Moore, Chief Executive Officer of Rhaphis, in

which William Moore advised respondent that he was terminated and that he should forward all original records and documents to Wilson Sonsini.

22. Respondent received Carpenter's fax of August 25, 2009, and failed to respond. Respondent failed to return Moore's file to her.

23. Commencing on September 24, 2009, Carpenter left several voice mail messages and several e-mails messages for respondent, again requesting the return of Moore's files. Respondent received Carpenter's voice mail and email messages.

24. Respondent failed to respond or otherwise deliver the file to Carpenter or Moore.

25. Moore was able to retrieve some documents from respondent's associate, Healy, but has yet to receive her complete file.

26. By failing to respond to Moore's request for the return of the file, and by failing to respond to Carpenter's requests on behalf of Moore, 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).

COUNT FOUR

Case No. 09-O-14967

Rules of Professional Conduct, rule 3-700(A)(2)

[Improper Withdrawal From Employment]

27. Respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2), by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, as follows:

28. The allegations of Counts One through Three are incorporated by reference.

29. By failing to take further action on the Series B financing, by failing to respond to Moore's numerous phone calls and messages, and by failing to return the client file to her, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

COUNT FIVE

Case No. 09-O-14967
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

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

31. The allegations of Counts One through Four are hereby incorporated by reference.

32. On August 10, 2009, Moore made a complaint to the State Bar regarding respondent. The State Bar opened an investigation based upon Moore's complaint.

33. On November 3 and 20, 2009, State Bar Investigator F. Jacobs (hereinafter, "Jacobs") wrote and mailed a letter to respondent at his official membership records address maintained by the State Bar pursuant to Business and Professions Code, section 6002.1.

34. In each of her letters, Jacobs advised respondent of Moore's complaint and requested that he respond in writing to the allegations of her complaint.

35. Respondent received Jacob's letters of November 3 and 20, 2009, and failed to respond to the State Bar investigation of the Moore complaint.

36. By failing to respond to Jacob's letters of November 3 and 20, 2009, and by failing to otherwise respond to the State Bar investigation of the Moore complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code, section 6068(i).

COUNT SIX

Case No. 09-O-10693
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

37. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

38. In July 2008, Sean Simon (hereinafter "Simon") hired the Cornerstone Law Group to represent him regarding an outstanding debt. According to a series of emails between Terrence Smith,

an attorney associated with Cornerstone, and Simon, Cornerstone agreed to the representation for the rate of \$100 an hour and a contingency fee of 20%. The case was assigned to respondent.

39. On October 6, 2008, respondent and Smith filed suit on behalf of Simon, entitled *GV Valley Ridge LLC vs. Jeff Helm, Ridge Village, LLC et al.*, case no. 74069, filed in Superior Court, County of Nevada. Simon sought recovery of a \$50,000 payment he made towards a real estate investment.

40. Respondent was the attorney in charge of the litigation, and the named recipient of all the pleadings from the defendant.

41. On November 3, 2006, Jeff Helm/Ridge Village, LLC, represented by Glenn Peterson (hereinafter, "Peterson") wrote and mailed a letter to respondent, requesting that respondent stipulate to the transfer of the action to Sutter County.

42. On November 18, 2008, Peterson filed and properly served a Motion to Change Venue, with supporting documents and pleadings. Peterson served respondent by fax and by mail.

43. Respondent received the Motion to Change Venue, supporting documents and pleadings, and was aware of its contents.

44. Respondent failed to file a response to the Motion to Change Venue. His response was due on December 8, 2008.

45. On December 18, 2008, the Court issued a tentative ruling, granting the Motion to Change Venue, and ordering respondent (plaintiff's attorney) to pay attorney's fees and costs and all transfer fees to Sutter County. Fees and costs to be paid ten days from the date of service of notice of the order. The Court faxed the tentative ruling to respondent on December 18, 2008.

46. Respondent received the Court's tentative ruling of December 18, 2008, granting the Motion to Change Venue.

47. On December 19, 2008, the Court adopted the tentative ruling.

48. On December 31, 2008, Peterson submitted a proposed Order Transferring Venue to Sutter County to the Court. The Court adopted the proposed order and made it final on January 6, 2009.

49. On January 13, 2009, Peterson served respondent with a Notice of Entry of Order Transferring Venue to Sutter County, with the Order enclosed.

50. Respondent received the Notice of Entry of Order Transferring Venue to Sutter County, and was aware of its contents.

51. The Order Transferring Venue to Sutter County specified that respondent (plaintiff's counsel) was to pay attorney's fees and costs to defendant's counsel in the sum of \$1,500 pursuant to CCP section 396(b) within ten days of the date of service of the notice of the order. Pursuant to the Order, respondent was to pay the \$1,500 no later than January 23, 2009. Respondent's client, the plaintiff, was also ordered to pay the required filing and transfer fees for the change of venue.

52. Respondent failed to pay the \$1,500 in attorney's fees and costs to defendant's counsel by January 23, 2009.

53. On July 22, 2009, Peterson filed a Notice of Motion and Motion to Dismiss with supporting documentation. Peterson sought dismissal due to plaintiff's failure to pay the required filing and transfer fees as ordered by the Court in the Order Transferring Venue to Sutter County. Peterson duly served respondent, by mail, with a copy of the Notice of Motion and Motion to Dismiss and supporting documents.

54. Respondent received the Notice of Motion and Motion to Dismiss and failed to respond.

55. On August 20, 2009, the Court tentatively granted the Motion to Dismiss. The Court faxed a copy of the tentative ruling to respondent. Respondent received the tentative ruling from the Court. The Court later adopted the tentative ruling.

56. On September 30, 2009, Peterson duly served respondent by mail with a Notice of Entry of Order and Judgment of Dismissal.

57. Respondent received the Notice of Entry of Order and Judgment of Dismissal.

58. By failing to respond to the Motion to Change Venue, by failing to pay the costs assessed against him, by failing to pay the transfer fees to transfer the matter to Sutter County, and by failing to respond to the Motion to Dismiss, all resulting in the dismissal of the case, respondent intentionally, recklessly, and repeatedly failed to perform with competence, in willful violation of the Rules of Professional Conduct, rule 3-110(A).

COUNT SEVEN

Case No. 09-O-10693

Business and Professions Code, section 6068(m)

[1] [Failure to Respond to Client Inquiries]

[2] [Failure to Inform Client of Significant Development]

59. Respondent willfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, and by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

60. The allegations of Count Six are hereby incorporated by reference.

61. On November 4, 2008, Simon spoke to respondent. Respondent advised Simon of the request to change venue to Yuba City, California. Respondent and Simon agreed that changing venue was not in Simon's best interest; and respondent told Simon that he, respondent, would handle the matter.

62. On December 2, 2008, Simon sent an email to respondent, requesting information about the status of the litigation and asking what happened with the change of venue.

63. Respondent received Simon's December 2, 2008, email and failed to respond.

64. Thereafter, respondent failed to communicate further with Simon. Respondent failed to advise Simon of the results of the Motion to Change Venue.

65. Respondent failed to advise Simon that the Court had ordered Simon to pay the costs to transfer the matter to Sutter County.

66. Respondent failed to advise Simon that the Court had sanctioned respondent \$1,500.

67. Respondent failed to advise Simon that Peterson had filed a Motion to Dismiss. Respondent failed to advise Simon of the Court's order granting the Motion to Dismiss.

68. By failing to advise Simon of the outcome of the Motion to Change Venue, the Motion to Dismiss, and the Court's order dismissing Simon's suit, respondent failed to keep his client reasonably informed in a matter in which he agreed to provide legal representation, in willful violation of Business and Professions Code, section 6068(m).

69. By failing to respond to Simon's email of December 2, 2008, asking respondent the results of the venue matter, respondent failed to respond to the reasonable status inquiries of a client in a matter in which he agreed to provide legal representation, in willful violation of Business and Professions Code, section 6068(m).

COUNT EIGHT

Case No. 09-O-10693
Rules of Professional Conduct, rule 3-700(A)(2)
[Improper Withdrawal From Employment]

70. Respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2), by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, as follows:

71. The allegations of Counts Six and Seven are hereby incorporated by reference.

72. By failing to respond to the Motion to Change Venue and to the Motion to Dismiss, respondent, in effect, withdrew from representing Simon and abandoned Simon's case.

73. When respondent abandoned Simon's case, he failed to notify Simon that he was no longer representing Simon; he failed to notify the opposing counsel; and he failed to notify the Court. Respondent also failed to return Simon's file to Simon.

74. By failing to notify the client, the Court, and the opposing counsel of his withdrawal, and by failing to return Simon's file to him, respondent failed, upon termination of his services, to take steps to avoid reasonably foreseeable prejudice to his client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

COUNT NINE

Case No. 09-O-10693
Business and Professions Code, section 6103
[Failure to Obey a Court Order]

75. Respondent willfully violated Business and Professions Code, section 6103, by willfully disobeying or violating 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, as follows:

76. The allegations of Counts Six through Eight are hereby incorporated by reference.

77. By failing to obey the Court's January 6, 2009, order against him to pay attorneys fees and costs of \$1,500 to opposing counsel regarding the change of venue, respondent disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

COUNT TEN

Case No. 09-O-10693
Rules of Professional Conduct, rule 3-510
[Failure to Communicate a Settlement Offer]

78. Respondent willfully violated Rules of Professional Conduct, rule 3-510, by failing to communicate promptly to a client all amounts, terms, and conditions of a written offer of settlement made to the client in a non-criminal matters, as follows:

79. The allegations of Counts Six through Nine are hereby incorporated by reference.

80. On May 21, 2009, Peterson wrote and mailed a letter to respondent. In his letter, Peterson set forth a written offer in settlement. Peterson advised that respondent had failed to pay the sanctions, had failed to respond to several letters, and probably had abandoned the client. Peterson offered that respondent should dismiss the action and Peterson's clients would waive fees and costs incurred to date. Respondent's client was also supposed to give certain instructions to an escrow agent.

81. Respondent received Peterson's written offer of May 21, 2009.

82. Respondent failed to convey the written offer to his client, Simon.

83. By failing to convey the terms of Peterson's May 21, 2009, offer to Simon, respondent failed to communicate promptly to a client all amounts, terms, and conditions of any written offer of settlement made to the client in a non-criminal matter, in willful violation of Rules of Professional Conduct, rule 3-510.

COUNT ELEVEN

Case No. 09-O-10693

Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

84. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against respondent, as follows:

85. The allegations of Count Six through Ten are hereby incorporated by reference.

86. On or about December 31, 2008, Simon made a complaint to the State Bar regarding the respondent. The State Bar opened an investigation based upon Simon's complaint.

87. On or about February 5, 2009, State Bar Complaint Analyst Lisa Stowe (hereinafter "Stowe") wrote and mailed a letter to respondent at his official membership records address maintained by the State Bar pursuant to Business and Professions Code, section 6002.1.

88. In her letter, Stowe advised respondent of Simon's complaint and requested that he respond in writing to the allegations of her complaint.

89. Respondent received Stowe's letter of February 5, 2009, and failed to respond in writing or otherwise respond to the State Bar investigation of the Moore complaint.

90. On May 14, 2009, State Bar Investigator Robin Littlefield (hereinafter, "Littlefield") called and spoke to respondent regarding the Simon matter. At that time, respondent claimed to not have received the February 5, 2009, letter. Littlefield faxed respondent the letter. Respondent agreed to respond immediately to the fax.

91. Respondent received the fax of the February 5, 2009, letter which Littlefield faxed to him on May 14, 2009. Respondent failed to respond to the faxed letter.

92. On September 1, 2009, Littlefield telephoned respondent and left a message for respondent, advising him that his response was due. Littlefield called again on September 10, 2009, and again left a message.

93. On October 9, 2009, Littlefield wrote and mailed another letter to respondent, again requesting his response to the Simon investigation. Respondent received Littlefield's October 9, 2009, letter and failed to respond.

94. By failing to respond to Stowe's letter of February 5, 2009, and Littlefield's phone calls and letter, and by failing to otherwise respond to the State Bar investigation of the Simon complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code, section 6068(i).

AGGRAVATION

Prior Record of Discipline: In October 2005, respondent was publicly reprovved for willful violations of rules 3-110(A), 3-700(A)(2), and 3-700(D)(1) of the Rules of Professional Conduct and sections 6068(m) and 6103 of the Business and professions Code.

Uncharged Ethical Violations: Respondent willfully violated section 6068(i) of the Business and Professions Code by failing to file an Answer ("Answer") to the NDC by May 24, 2010, pursuant to rule 103 of the Rules of Procedure of the State Bar of California. Also, he willfully violated section 6103 of the Business and Professions Code by failing to comply with the State Bar Court's order of June 21, 2010, requiring him to file his Answer by June 28, 2010.

Harm: Respondent significantly harmed Moore because she lost an investor, her financing was substantially delayed, and she had to pay her new counsel to do the work which respondent should have completed. Respondent significantly harmed Simon because his case was dismissed. Respondent significantly harmed the opposing counsel in the Simon matter because he failed to timely pay the opposing counsel's fees and costs of \$1,500.

Indifference: Respondent demonstrated indifference to rectification of, or atonement for, the consequence of his misconduct because he did not return Moore's file to her until October 2009 and because he did not pay the \$1,500 in attorney fees and costs in the Simon matter until October 2010.

Multiple Acts of Misconduct: Respondent's misconduct in the current cases involved many acts of wrongdoing.

MITIGATION

Candor and Cooperation: Respondent has been candid and cooperative with the State Bar by agreeing to this stipulation to settle the current cases.

Illness: In 2006, as respondent was getting out of his car, a motor vehicle struck him. This accident caused severe leg and ankle injuries, which required extensive orthopedic surgery. As a result of the accident, respondent suffered serious physical and psychological problems, including chronic pain and difficulty in concentrating and completing tasks. These problems were directly responsible for his misconduct in the current cases, and he has been receiving treatment for them.

SUPPORTING AUTHORITY

The determination of discipline begins "by looking to the purpose of sanctions for attorney misconduct." (*In re Morse* (1995) 11 Cal.4th 184, 205.) "The primary purposes of disciplinary proceedings . . . are the protection of the public, the courts[,] and the legal profession; the maintenance of high professional standards by attorneys[,] and the preservation of public confidence in the legal profession." (Std. 1.3.)

The standards provide guidance and deserve "great weight." (*In re Naney* (1990) 51 Cal.3d 186, 190; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 933, fn. 5.) "[A]dherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar misconduct." (*In re Naney*, *supra*, 51 Cal.3d at p. 190; see also *In re Brown* (1995) 12 Cal.4th 205, 220.) The California Supreme Court accepts a disciplinary recommendation resulting from application of the standards unless it has

“grave doubts” about the recommendation’s propriety. (*In re Morse, supra*, 11 Cal.4th at p. 206; *In re Lamb* (1989) 49 Cal.3d 239, 245.)

Standards 1.6, 1.7(a), 2.4(b), and 2.6 of the Standards for Attorney Sanctions for Professional Misconduct apply to the current cases and warrant actual suspension.

Similar cases can indicate appropriate discipline. (*In re Morse, supra*, 11 Cal.4th at pp. 207-208; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) *Lister v. State Bar* (1990) 51 Cal.3d 1117 (“*Lister*”) is instructive. In one client matter, Lister willfully violated rules 3-110(A), 3-700(A)(2), and 3-700(D)(1) of the Rules of Professional Conduct and sections 6068(i) and 6068(m) of the Business and Professions Code. In a second client matter, he willfully violated rule 3-110(A) of the Rules of Professional Conduct. In aggravation, Lister significantly harmed a client. Although Lister had a prior public reproof, it was remote in time. The discipline was a three-year stayed suspension and three-year probation, conditioned on a nine-month actual suspension.

The current cases involve more ethical violations and aggravating factors than *Lister*. Yet unlike *Lister*, there are strong mitigating factors. The standards and *Lister* indicate that the following discipline would be fair and reasonable in the current cases: stayed suspension for two years and probation for three years, based on actual suspension for six months.

ETHICS SCHOOL REQUIREMENT

Within one year of the effective date of the discipline for the current cases, respondent must attend Ethics School, must pass the examination at the end of the Ethics School session which he attends, and must provide proof of such passage to the Office of Probation.

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION REQUIREMENT

Within one year of the effective date of the discipline for the current cases, respondent must pass the Multistate Professional Responsibility Examination and provide proof of such passage to the Office of Probation.

ESTIMATED PROSECUTION COST

The estimated prosecution cost of the current cases is \$ 5,637.00. This sum is only an estimate and the final cost may differ from the estimated cost. If this Stipulation is rejected or if relief from this Stipulation is granted, the prosecution cost of the current cases may increase because of the cost of further proceedings.

DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

In October 2010, the State Bar sent a disclosure letter by email to respondent's counsel, Samuel C. Bellicini, Fishkin & Slatter LLP. In this letter, the State Bar advised Mr. Bellicini of any pending investigations or proceedings against respondent other than the current cases.

(Do not write above this line.)

In the Matter of
BRIAN DONNELLY
No. 162987

Case number(s):
09-O-10693-PEM; 09-O-14967-PEM

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.

10/19/10

Date

10/19/10

Date

10/28/10

Date



Respondent's Signature

BRIAN DONNELLY
Print Name



Respondent's Counsel Signature

SAMUEL BELLICINI
Print Name

Mark Hartman

Deputy Trial Counsel's Signature

MARK HARTMAN
Print Name

(Do not write above this line.)

In the Matter Of
BRIAN DONNELLY
Bar no. 162987

Case Number(s):
09-O-10693-PEM; 09-O-14967-PEM

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.)

Date

November 2, 2010

Jat McElroy
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 San Francisco, on November 2, 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 San Francisco, California, addressed as follows:

SAMUEL C. BELLICINI
FISHKIN & SLATTER, LLP
1111 CIVIC DR STE 215
WALNUT CREEK, CA 94596

- ☐ 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:

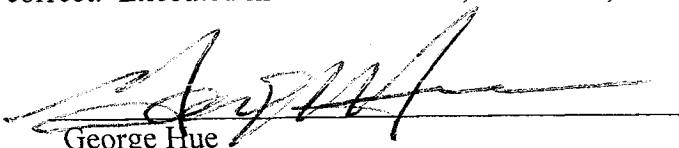
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ 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:

Mark Hartman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 2, 2010.


George Hue
Case Administrator
State Bar Court