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State Bar Court of California
Hearing Department
San Francisco



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| <p>Counsel For The State Bar</p> <p>Susan Chan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 233229</p> | <p>Case Number (s) 09-O-11619; 09-O-17391</p> | <p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>pm</i></p> <p>SEP 23 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> |
| <p>In Pro Per Respondent</p> <p>Marc A. Fisher Law Office of Marc A. Fisher PO Box 129 Alameda, CA 94501</p> | <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>Bar # 47794</p> <p>In the Matter Of: Marc A. Fisher</p> <p>Bar # 47794</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 January 7, 1971.
- (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 12 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):
- 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.
- (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. See Stipulation attachment.
- (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 Stipulation attachment.
- (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. See Stipulation attachment.
- (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 Stipulation attachment.
- (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 (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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be 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)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of sixty (60) 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.
- (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:
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| <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.

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- (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 DISPOSITION

IN THE MATTER OF: MARC A. FISHER

CASE NUMBER(S): 09-O-11619; 09-O-17391

FACTS AND CONCLUSIONS OF LAW.

Facts: Case No. 09-O-11619 ("Gebhard"): Count One:

1. On or about April 12, 2008, John and Elana Gebhard employed respondent to represent them in obtaining mortgage refinancing and/or deeds in lieu of foreclosure as to seven real properties owned by the Gebhards. They entered into a written fee agreement wherein the Gebhards agreed to pay total flat attorney fee of \$7,000 (\$1,000 for each house). The Gebhards agreed to pay respondent \$2,100 to hire a lender liability expert. In exchange, respondent agreed to take care of all negotiations with all lenders and pursue any necessary lawsuits.
2. In accordance with the agreement, the Gebhards paid respondent a \$300.00 consultation fee on or about April 12, 2008, an additional \$2,100.00 on or about April 16, 2008, and an additional \$7,000.00 on or about May 5, 2008.
3. Thereafter, respondent performed no work on behalf of the Gebhards. Specifically, respondent filed no lawsuits and engaged in no negotiations with lenders or collection agencies.
4. On or about December 31, 2008, the Gebhards terminated respondent's employment.

Conclusions of Law: Case No. 09-O-11619 ("Gebhard"): Count One:

By failing to pursue lawsuits and negotiations for which he was employed, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

Facts: Case No. 09-O-11619 ("Gebhard"): Count Two:

5. The allegations of Count One are hereby incorporated by this reference.

Attachment Page 1

6. On or about December 31, 2008, the Gebhards terminated respondent's employment and asked respondent for a refund of the funds that he had received. Respondent was aware of the termination of his employment and the request for return of funds at all pertinent times thereafter.
7. As of on or about December 31, 2008, respondent had not earned any substantial portion of the funds he had received for advanced attorney fees.
8. Respondent failed to promptly return the funds he received from the Gebhards. Respondent failed to make any repayment until on or about May 22, 2009, and failed to complete repayment until on or about November 2009.

Conclusions of Law: Case No. 09-O-11619 ("Gebhard"): Count Two:

By failing to make prompt repayment of the unearned attorney fees and by failing to promptly complete repayment of attorney fees upon his termination of employment, respondent failed to refund promptly any part of a fee paid in advance that had not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Facts: Case No. 09-O-11619 ("Gebhard"): Count Three:

9. The allegations contained in Counts One and Two are hereby incorporated by this reference.
10. Respondent failed to deposit the \$2,100.00 designated for employment of a lender liability expert into a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import. Instead, respondent deposited the funds in his personal account or operating account.

Conclusions of Law: Case No. 09-O-11619 ("Gebhard"): Count Three:

By depositing the \$2,100.00 into his personal or operating account, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in violation of Rules of Professional Conduct, rule 4-100(A).

Facts: Case No. 09-O-17391 ("Daly"): Count Four:

11. In or about April 2008, Mr. and Mrs. John and Carmencita Daly paid attorney Duane Tucker \$10,000 to assist them in a legal matter wherein they were in danger of losing their real property to foreclosure.

12. In or about April 2008, Tucker shared this fee with respondent by paying respondent \$2,000. In exchange, respondent agreed to perform loan modification services.
13. At all times pertinent hereto, respondent and Tucker were not partners, were not associates (at that term is defined in Rule of Professional Conduct 1-100(B)(4)), and were not shareholders with each other (as that term is defined in Rule of Professional Conduct 1-100(B)(5)).
14. Mr. and Mrs. Daly did not consent in writing to the division of fees.
15. No one provided Mr. and Mrs. Daly with full disclosure in writing containing notice that the division of fees would be made.
16. No one provided Mr. and Mrs. Daly with full disclosure in writing of the terms of the division of fees.

Conclusions of Law: Case No. 09-O-17391 ("Daly"): Count Four:

By dividing a fee for legal services with a lawyer who is not a partner of, associate of, or shareholding with the member, without obtaining the client's written consent to the fee division after a full written disclosure, respondent wilfully violated Rules of Professional Conduct, rule 2-200(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 20, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 20, 2010, the estimated prosecution costs in this matter are approximately \$2,308.80. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

Standard 2.2(b) specifies that culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of

Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Standard 2.4(b): specifies culpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459 (respondent received two years stayed suspension, two years probation conditioned on six months actual suspension and until restitution completed, compliance with rule 955 of the California Rules of Court, Multistate Professional Responsibility Examination, and other probation conditions for misconduct involving one client matter: failure to perform legal services [rule 3-110(A)]; failure to respond to client's status inquiries [section 6068(m)]; failure to refund \$7,000 in advanced legal fees [rule 3-700(D)(2)]; failure to cooperate [section 6068(i)]; failure to return client papers [rule 3-700(D)(1)].

In the Matter of Sullivan, II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608 (respondent received one year suspension stayed, three years probation including 60 days actual suspension, Multistate Professional Responsibility Examination, and other probation conditions for misconduct involving four client matters: failure to perform legal services, failure to respond to client inquiries and to keep clients informed of significant development in their cases).

AGGRAVATING CIRCUMSTANCES.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

None applicable.

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Standard 1.2(e)(i): Respondent was admitted in 1971 and has no prior discipline.

Standard 1.2(e)(iv): Respondent was diagnosed with prostate cancer and underwent radiation treatment in addition to combating other medical conditions during the period of misconduct.

Standard 1.2(e)(v): Respondent has cooperated with the State Bar during the disciplinary proceedings.

Standard 1.2(e)(vii): Respondent took objective steps to atone for any consequences of his misconduct by repaying unearned fees owed to former clients John and Elena Gebhard.

STATE BAR ETHICS SCHOOL.

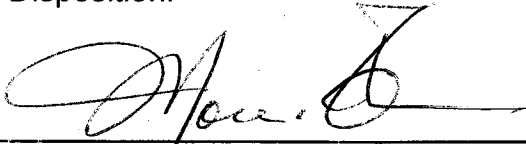
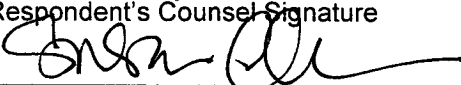
Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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| In the Matter of Marc A. Fisher | Case number(s): 09-O-11619; 09-O-17391 |
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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.

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|--------------------------|---|-------------------------------------|
| <u>8/24/10</u> Date |  Respondent's Signature | <u>Marc A. Fisher</u> Print Name |
| <u>8/27/2010</u> Date | <u>D/A</u> Respondent's Counsel Signature | <u>Susan Chan</u> Print Name |
| <u>8/27/2010</u> Date |  Deputy Trial Counsel's Signature | <u>Susan Chan</u> Print Name |

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| In the Matter Of Marc A. Fisher | Case Number(s): 09-O-11619; 09-O-17391 |
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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.)**

September 23, 2010 _____
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 San Francisco, on September 23, 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:

**MARC ALAN FISHER
LAW OFFICE OF MARC A FISHER
PO BOX 129
ALAMEDA, CA 94501**

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

SUSAN CHAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 23, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court