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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>Mark Hartman Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2558</p> <p>Bar # 114925</p>	<p>Case Number (s)</p> <p>09-O-11622</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>[Signature]</i></p> <p>JUN 15 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Jeffrey Alan Berger P.O. Box 611388 San Jose, California 95161 Telephone: (408) 254-4429</p> <p>Bar # 104227</p>	<p>Submitted to: Assigned 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>In the Matter Of:</p> <p>JEFFREY ALAN BERGER</p> <p>Bar # 159116</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 December 3, 1982.
- (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 15 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."

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- (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: 2011, 2012, and 2013
(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 00-O-14753, 01-O-04502, 01-O-05182, and 02-O-11561 ("the prior cases").
 - (b) Date prior discipline effective February 24, 2007.
 - (c) Rules of Professional Conduct/ State Bar Act violations: three violations of rule 3-110(A), two violations of rule 3-700(D)(1), one violation of rule 4-100(A), one violation of rule 4-100(B)(3), one violation of section 6068(i), two violations of section 6068(m), and one violation of section 6106.
 - (d) Degree of prior discipline (1) stayed suspension for two years and until respondent shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law and (2) probation for three years.
 - (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 did not engage in acts of bad faith, dishonesty, concealment, or overreaching. He did violate section 6103 by failing to comply with several probation conditions imposed by his discipline in the prior cases. See page 11.
- (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.

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- (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. Respondent demonstrated indifference toward rectification of, or atonement for, the consequences of his misconduct insofar as (1) he still has not returned a client's file to the client, upon the client's request after the termination of his employment, and (2) he did not provide a belated written response to the letters from the State Bar investigator. See page 11.
- (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. Respondent's ethical violations in the current case constitute multiple acts of wrongdoing. See pages 11 to 12.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

In the current case, respondent committed the same ethical violations which he had committed in the prior cases. See page 11.

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. Since the filing of the Notice of Disciplinary Charges, respondent has displayed candor to, and cooperation with, the State Bar in resolving the current case. See page 12.
- (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

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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

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 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.

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- (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: **Jeffrey Alan Berger**

Membership No.: **104227**

State Bar Case No.: **09-O-11622**

WAIVERS

The parties waive all variances between (1) the facts and conclusions of law asserted in the Notice of Disciplinary Charges (“NDC”) for State Bar case number 09-O-11622 (“the current case”) and (2) the facts and conclusions of law contained in this Stipulation.

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following are true:

COUNT ONE

Case No. 09-O-11622
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

1. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:
2. On March 17, 2007, Marilyn Galbis (“Galbis”) hired respondent to represent her in the marital dissolution matter, *Galbis v. Galbis*, Alameda County Superior Court Case No. HF04171350 (“dissolution matter”).
3. On September 17, 2007, respondent filed a motion for a temporary restraining order to block community financial accounts. The court granted this motion.

4. On April 7, 2008, respondent filed a petition for temporary spousal support on behalf of Galbis in the dissolution matter. On August 13, 2008, the court issued an order granting the petition. The court also issued an earnings assignment order and awarded \$5,000 to respondent in attorney fees. Soon thereafter, respondent received the court's order, but failed to take any steps to enforce the court's spousal support order on behalf of Galbis.

5. On December 23, 2008, opposing counsel in the dissolution matter filed a request to enter default against Galbis. Soon thereafter, respondent received the request, but failed to file a response and failed to perform any further work on behalf of Galbis in the dissolution matter.

6. By failing to enforce the court's order of August 13, 2008; by failing to file a response to the request to enter default; and by failing to perform any work on behalf of Galbis after December 23, 2008, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

COUNT TWO

Case No. 09-O-11622
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

7. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, as follows:

8. The allegations contained in Count One are hereby incorporated by reference as if fully set forth herein.

9. From July 2008 through January 21, 2009, Galbis repeatedly called the telephone number provided to her by respondent and left respondent numerous messages inquiring about the status of her matter. Respondent received the messages, but failed to respond to them.

10. On July 8, 2008, and on December 8, 2008, Galbis sent respondent e-mails inquiring about the status of her matter. Soon thereafter, respondent received the e-mails, but failed to respond to them.

11. By failing to respond to Galbis's numerous telephone messages from July 2008 to January 21, 2009, and by failing to respond to Galbis's e-mails of July and December 2008, respondent failed to

respond promptly to reasonable status inquiries of a client, in wilful violation of section 6068(m) of the Business and Professions Code.

COUNT THREE

Case No. 09-O-11622
Rules of Professional Conduct, rule 3-700(D)(1)
[Failure to Release File]

12. Respondent wilfully 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's papers and property, as follows:

13. The allegations contained in Count One are hereby incorporated by reference as if fully set forth herein.

14. On January 22, 2009, Galbis sent a letter to respondent terminating his services. Soon thereafter, respondent received the letter.

15. Subsequently, Galbis requested her client file from respondent. Soon thereafter, respondent received the request, but failed to release the client file to Galbis.

16. To date, respondent has failed to release the client file to Galbis.

17. By failing to release the client file to Galbis after she terminated his services and asked for her file, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client's papers and property in wilful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

COUNT FOUR

Case No. 09-O-11622
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

18. 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:

19. The allegations contained in Count One are hereby incorporated by reference as if fully set forth herein.

20. On March 2, 2009, Galbis filed a complaint against respondent with the State Bar (“Galbis complaint”).

21. On May 7, 2009, a State Bar Investigator (“Investigator”) sent a letter to respondent regarding the Galbis complaint. The Investigator’s letter requested that respondent reply in writing by May 21, 2009, to the specified allegations of misconduct being investigated by the State Bar in the Galbis complaint. Soon thereafter, respondent received the Investigator’s letter.

22. On May 21, 2009, respondent sent the Investigator a letter requesting an extension of time until June 4, 2009, to reply to the Investigator’s inquiries. Respondent, however, did not reply to the inquiries.

23. On July 1, 2009, the Investigator sent respondent a letter requesting that he reply in writing by July 10, 2009, to the specified allegations of misconduct being investigated by the State Bar in the Galbis complaint. Soon thereafter, respondent received the Investigator’s letter.

24. On July 14, 2009, respondent sent the Investigator a letter stating that respondent would send documentation to the Investigator. Respondent, however, did not send documentation and did not provide a written reply to the specified allegations of misconduct in the Galbis complaint.

25. By not providing a written reply to the Investigator’s inquiries about the specified allegations of misconduct being investigated by the State Bar in the Galbis complaint, respondent failed to cooperate in a disciplinary investigation in wilful violation of section 6068(i) of the Business and Professions Code.

AGGRAVATION

Prior Record of Discipline: Respondent has a record of discipline in case numbers 00-O-14753, 01-O-04502, 01-O-05182, and 02-O-11561 (“the prior cases”). His misconduct included three violations of rule 3-110(A) of the Rules of Professional Conduct, two violations of rule 3-700(D)(1) of the Rules of Professional Conduct, one violation of rule 4-100(A) of the Rules of Professional Conduct,

one violation of rule 4-100(B)(3) of the Rules of Professional Conduct, one violation of section 6068(i) of the Business and Professions Code, two violations of section 6068(m) of the Business and Professions Code, and one violation of section 6106 of the Business and Professions Code. Based on very strong mitigating factors, the discipline was only (1) stayed suspension for two years and until respondent shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law and (2) probation for three years.

Uncharged Violations of the State Bar Act: In the current case, respondent committed uncharged misconduct. He violated section 6103 of the Business and Professions Code insofar as he did not comply with the provisions of the State Bar Act and the Rules of Professional Conduct when the conditions of his probation required him to obey all such provisions for three years after the effective date of his discipline. He also violated section 6103 by failing to comply with probation conditions requiring him to provide proof of having attended Ethics School within one year after the effective date of his prior discipline and to submit timely quarterly reports for three years after the effective date of his discipline. On May 15, 2008, he belatedly filed an Ethics School verification form which had been due by February 24, 2008. On October 13, 2009, he belatedly filed a quarterly report due by July 10, 2009. On February 24, 2010, he belatedly filed a quarterly report due by January 10, 2010.

Indifference: Respondent displayed indifference toward rectification of, or atonement for, the consequences of his misconduct in the current case insofar as (1) he still has not returned Galbis's to her, upon her request after the termination of his employment, and (2) he did not provide a belated written response to the letters from the State Bar investigator.

Multiple Acts of Misconduct: Respondent's four ethical violations in the current case constitute multiple acts of misconduct.

Repetition of Prior Misconduct: Respondent's prior misconduct included three failures to comply with rule 3-110(A) of the Rules of Professional Conduct, two failures to comply with rule 3-700(D)(1) of the Rules of Professional Conduct, and three failures to comply with section 6068(m) of the Business and Professions Code. Like his prior misconduct, his current misconduct includes failures to comply with rule 3-110(A) of the Rules of Professional Conduct, rule 3-700(D)(1) of the Rules of

Professional Conduct, and section 6068(m) of the Business and Professions Code. His repetition of similar ethical violations reveals an inability or unwillingness to learn from his prior misconduct.

MITIGATION

Candor to, and Cooperation With, the State Bar: Since the filing of the Notice of Disciplinary Charges, respondent has displayed candor to, and cooperation with, the State Bar in resolving the current case, especially by entering into this Stipulation.

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.) Standard 1.3 provides: “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.”

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.)

Standard 1.7(a) provides that if an attorney has a prior record of discipline and is found culpable in a second disciplinary matter, the discipline in the new matter shall be greater than the prior discipline, unless the prior discipline was so remote in time and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust. In the current case, respondent has a prior record of discipline which was neither remote in time

nor minimal in severity. Pursuant to standard 1.7(a), the current case requires greater discipline than the prior discipline, which was (1) stayed suspension for two years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law and (2) probation for three years.

Standard 2.4(b) provides that an attorney's willful failure to perform services in an individual matter or matters or willful failure to communicate with a client shall result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client. Pursuant to standard 2.4, respondent's violations of rule 3-110(A) of the Rules of Professional Conduct and section 6068(m) of the Business and Professions Code warrant suspension.

Standard 2.10 provides that willfully violating any Rule of Professional Conduct not specified in the standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3. In the current case, respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct. Pursuant to standard 2.10, this violation requires reproof or suspension.

In deciding the proper discipline, the State Bar Court also considers decisional law. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) *Stuart v. State Bar* (1985) 40 Cal.3d 838 ("*Stuart*") is instructive for the current case.

In *Stuart*, the attorney, the Supreme Court concluded that the attorney had violated the predecessors of current rules 3-110(A) and 3-700(A)(2) of the Rules of professional Conduct. *Stuart* "consistently demonstrated a lack of diligence and concern for his client's interests, and was extremely careless in managing his office." (*Stuart, supra*, 40 Cal.3d at p. 846.) He failed to communicate with his client and lost his client's file. (*Ibid.*) In aggravation, he failed to admit responsibility for his negligence; and the client lost the opportunity to pursue the client's case. (*Ibid.*) The Court added: "it is particularly disturbing that these events occurred shortly after [Stuart] had been privately reproofed in a separate disciplinary matter." (*Ibid.*) The Court imposed a one-year stayed suspension and a one-year probation, conditioned on a thirty-day actual suspension. (*Id.* at p. 847.)

The misconduct in the current case is roughly similar to the misconduct in *Stuart*. Unlike *Stuart*, respondent cooperated with the State Bar. Yet the current case has much more aggravation than *Stuart* had. In the current case, the appropriate discipline is (1) stayed suspension for two years and until respondent shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law and (2) probation for three years, conditioned on actual suspension for sixty days.

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 \$3,654.00. 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.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

On May 10, 2010, the State Bar sent a disclosure letter by e-mail and by fax to respondent. In this letter, the State Bar advised him of any pending investigations or proceedings against him other than the current case.

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In the Matter Of JEFFREY ALAN BERGER	Case Number(s): 09-O-11622
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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:

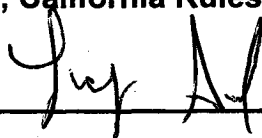
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

Respondent's State Bar number is incorrect in the caption. It should be 104227.

The "and until" compliance with standard 1.4(c)(ii) condition from the stayed suspension at page 4, item D.(1)(a)(i) should be removed as unnecessary. (See, *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.)

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.)**

June 14, 2010
Date



Judge of the State Bar Court
LUCY ARMENDARIZ

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

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 June 15, 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:

JEFFREY ALAN BERGER
LAW OFC JEFFREY A BERGER
PO BOX 611388
SAN JOSE, CA 95161

- 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:

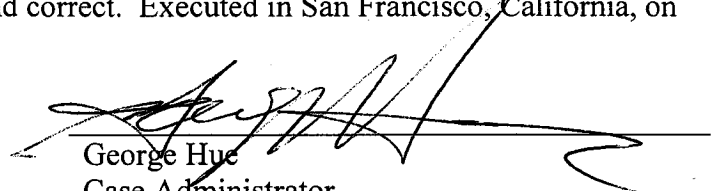
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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 June 15, 2010.


George Hue
Case Administrator
State Bar Court