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**State Bar Court of California
Hearing Department
San Francisco
REPROVAL**

Counsel For The State Bar Mark Hartman Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94115 Telephone: (415) 538-2558 Bar # 114925	Case Number(s): 09-O-19363-PEM	For Court use only PUBLIC MATTER FILED MAY 09 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Kevin Moore O'Casey 1535 E. Shaw Ave., Suite 101 Fresno, CA 93710 Bar # 159858	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: KEVIN MOORE O'CASEY Bar # 159858 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted October 2, 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 9 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 number 04-O-15350 and case number 05-O-00077.
 - (b) Date prior discipline effective May 19, 2005
 - (c) Rules of Professional Conduct/ State Bar Act violations: Business & Professions Code, section 6068(m); Rules of Professional Conduct, rule 3-700 (A)(2)
 - (d) Degree of prior discipline Private Reproof

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- (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of

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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) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of one (1) year.
- (2) During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent

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must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproval.
- (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) Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproval.
 - No MPRE recommended. Reason: Not required for a public reproval..
- (11) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions Financial Conditions

F. Other Conditions Negotiated by the Parties:

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

In the Matter of: **Kevin Moore O'Casey**

Membership No.: **159858**

State Bar Case No.: **09-O-19363-PEM**

WAIVER

The parties waive all variances between the facts and conclusions of law asserted in the Notice of Disciplinary Charges ("NDC") in case number 09-O-19363-PEM ("the current case") and the facts and conclusions of law contained in this Stipulation Re Facts, Conclusions of Law, and Discipline ("Stipulation").

FACTS

Respondent admits that the following facts are true:

1. In August 2008, respondent was hired by Larry Hirabedian ("Hirabedian") to represent Hirabedian in the matter, *Unifund CCR Partners v. Hirabedian*, Fresno County Superior Court Case No. 08CECL01735 ("civil matter").
2. On October 8, 2008, respondent filed an answer to the complaint on behalf of Hirabedian in the civil matter. Thereafter, respondent failed to perform any work on behalf of Hirabedian in the civil matter.
3. On January 20, 2009, the plaintiff in the civil matter filed a motion for summary judgment. Soon thereafter, respondent received a copy of the motion for summary judgment, but failed to file an opposition to it.
4. On January 20, 2009, a hearing on the plaintiff's motion for summary judgment was scheduled to take place on or about May 7, 2009. Soon thereafter, respondent received notice of the May 7, 2009, hearing.
5. On May 7, 2009, a hearing on the plaintiff's motion for summary judgment was held in the civil matter. Respondent failed to appear at the hearing.

6. On May 7, 2009, the court in the civil matter issued an order granting the plaintiff's motion for summary judgment and entered a judgment against Hirabedian in the amount of \$13,580.35. Soon thereafter, respondent received a copy of the court's May 7, 2009, order; but he failed to file a motion to set aside the summary judgment.

7. On August 27, 2008, Hirabedian paid respondent \$1,000.00 as advanced fees in the civil matter. On February 25, 2009, Hirabedian paid respondent \$500.00 as advanced fees in the civil matter.

8. Respondent did not perform any services of value on behalf of Hirabedian in the civil matter and thus did not earn any portion of the advanced fees paid by Hirabedian.

9. On August 3, 2009, Hirabedian sent an e-mail to respondent terminating his services and requesting a refund of unearned fees in the amount of \$1,500.00. Soon thereafter, respondent received Hirabedian's e-mail. On August 6, 2009, respondent sent an e-mail to Hirabedian agreeing to refund \$1,500.00 in unearned fees to Hirabedian.

10. On August 14, 2011, respondent refunded the sum of \$1,868.94 to Hirabedian. This sum included principal of \$1,500.00 and interest of \$368.94.

11. From August 2008 through August 2009, Hirabedian left telephone messages for respondent requesting an update on the status of the civil matter. Respondent received Hirabedian's telephone messages, but failed to respond to them.

12. On November 3, 2009, Hirabedian filed a complaint against respondent with the State Bar ("Hirabedian complaint").

13. A State Bar Investigator sent letters to respondent regarding the Hirabedian complaint on the following dates: (1) February 9, 2010; (2) March 7, 2010; and (3) March 20, 2010. These letters requested that respondent respond in writing to the specified allegations of misconduct being investigated by the State Bar in the Hirabedian complaint. Soon thereafter, respondent received the State Bar Investigator's letters; but he failed to provide a written response to the allegations of misconduct in the Hirabedian complaint.

CONCLUSIONS OF LAW

Respondent admits that the following conclusions of law are true:

1. In violation of rule 3-110(A) of the Rules of Professional Conduct, respondent repeatedly failed to perform legal services with competence (1) by failing to perform any work on behalf of Hirabedian in the civil matter aside from filing an answer to the complaint; (2) by failing to file an opposition to the plaintiff's motion for summary judgment; (3) by failing appear at the summary judgment hearing on May 7, 2009; and (4) by failing to file a motion to set aside the summary judgment.

2. In violation of rule 3-700(D)(2) of the Rules of Professional Conduct, respondent willfully failed, upon termination of employment, to refund promptly part of an unearned advance fee by failing to refund promptly \$1,500.00 in unearned advance fees to Hirabedian.

3. In violation of section 6068, subdivision (m) of the Business and Professions Code, respondent willfully failed to respond promptly to reasonable status inquiries from a client by failing to respond to Hirabedian's telephone calls requesting an update on the status of his civil matter.

AGGRAVATION

Prior Record of Discipline: Respondent received a private reproof case numbers 04-O-15350 and 05-O-00077.

Harm: Respondent significantly harmed Hirabedian by failing to refund \$1,500.00 in unearned advance fees until April 14, 2011.

Multiple Acts: Respondent's misconduct included multiple acts of wrongdoing.

MITIGATION

Candor/Cooperation: Respondent has displayed candor to, and cooperation with, the State Bar in resolving the current case by entering into this Stipulation.

SUPPORTING AUTHORITY

Standards 1.7(a), 2.4(b), and 2.6 apply to the current case and call for reproof or suspension. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201 suggests that a public reproof might be appropriate in the current case.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING


On April 14, 2011, the State Bar sent a disclosure letter by e-mail and fax to respondent. In this letter, the State Bar advised respondent of any pending investigations or proceedings against respondent other than the current cases.

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In the Matter of: KEVIN MOORE O'CASEY No. 159858 A Member of the State Bar.	Case number(s): 09-O-19363-PEM
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SIGNATURE OF THE PARTIES

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

4-14-11  KEVIN MOORE O'CASEY
 Date Respondent's Signature Print Name

4/15/11 Mark Hartman MARK HARTMAN
 Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: KEVIN MOORE O'CASEY, No. 159858 A Member of the State Bar.	Case Number(s): 09-O-19363-PEM
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

May 9, 2011

Judge of the State Bar Court

Pat McElroy

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 May 9, 2011, 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:

KEVIN M. O'CASEY
LAW OFFICE OF KEVINE O'CASEY
1535 E SHAW AVE STE 101
FRESNO, CA 93710

- 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:

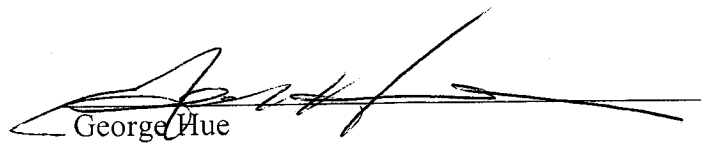
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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 May 9, 2011.


George Hue
Case Administrator
State Bar Court