

State Bar Court of California
Hearing Department
San Francisco

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Counsel For The State Bar Treva R. Stewart 180 Howard Street San Francisco, CA 94105 Bar # 239829	Case Number (s) 10-N-2924	(for Court's use) PUBLIC MATTER FILED <i>[Signature]</i> NOV 01 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Gregory A. Brubaker 345 Grove Street San Francisco, CA 94102 Bar # 163916	Submitted to: Assigned Judge	
In the Matter Of: Gregory Brubaker Bar # 163916 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> 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 March 29, 1993.
- (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 11 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 04-O-10121; 04-O-14891
 - (b) ☒ Date prior discipline effective February 3, 2006
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: rule 3-110(A); B&P 6068(m); rule 3-700(D)(2); B&P 6106; rule 4-100(B)(3)
 - (d) ☒ Degree of prior discipline Suspended for 18 months actual and until payment of restitution in the amount of \$2,500 plus 10% interest and three years probation.
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.
 - (a) State Bar Court case # 08-O-14139
 - (b) Date prior discipline effective January 14, 2010
 - (c) Rules of Professional Conduct/State Bar Act violations: B&P 6068(k); B&P 6106
 - (d) Degree of prior discipline Suspended for three years stayed and two years actual and until motion to terminate pursuant to rule 205 and proof of rehabilitation, and compliance with Standard 1.4(c)(ii).
- (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. Respondent has been forthright and cooperative in these 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. Respondent relocated to the People's Republic of China in August 2006 to teach English and International Business Culture. Receiving and sending mail is a challenge due to his location. Since becoming aware of his dereliction in filing the rule 9.20 affidavit, he endeavored to promptly comply with that probation condition as well as the others.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of five 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 five 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 four 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: pays restitution as ordered by Supreme Court case number filed January .

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.

(Do not write above this line.)

- (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: Respondent took and passed the MPRE in August 2010.

- (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:** See Stipulation Attachment

(Do not write above this line.)

Attachment language begins here (if any):

See Stipulation Attachment

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Gregory A. Brubaker

CASE NUMBER(S): ET AL. 10-N-2924

FACTS AND CONCLUSIONS OF LAW.

1. On December 15, 2009, the California Supreme Court filed a disciplinary order ("Order") in case number S177001 (State Bar Court case number 08-O-14139).
2. The Order required respondent to comply with California Rule of Court rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Order. The Order was effective as of January 14, 2010.
3. Respondent was required to comply with rule 9.20, paragraphs (a) and (c) by February 13, 2010 and February 23, 2010, respectively.
4. On January 12, 2010, the Office of Probation sent a letter to respondent via U.S. mail and email as provided in his membership records information) which included pertinent portions of the State Bar Court's decision as well as the Supreme Court Order. Respondent was reminded that his affidavit of compliance with rule 9.20 had to be filed no later than February 23, 2010.
5. Respondent did not file the affidavit as required by the Order. He did not file the affidavit until April 13, 2010.

Conclusions of Law

By failing to file the required California Rules of Court rule 9.20 affidavit until April 13, 2010, respondent is culpable of violating Business & Professions Code section 6103.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was October 1, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 1, 2010, the prosecution costs in this matter are approximately \$4,054. 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

The following standard is applicable in the current case:

Standard 2.6 provides that a member found culpable of violating B&P 6103 shall result in disbarment or suspension depending on 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.

Case Law

The standards are supported by the case law:

Disbarment is generally the appropriate sanction for a wilful violation of rule 9.20.

Powers v. State Bar (1988) 44 Cal.3d 337, 342; *Lydon v. State Bar* (1988) 45 Cal. 3d 1181; *Bercovich, supra*, 50 Cal 3d at 131; *In the Matter of Babero* (Rev Dept 1993) 2 Cal State Bar Ct. Rptr. 322 .

In the few cases where disbarment was not imposed, i.e. *Durbin v. State Bar* (1979) 23 Cal. 3d 461, *In the Matter of Friedman* (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, *In the Matter of Rose* (Rev. Dept. 1995) 3 Cal. State Bar Ct. Rptr. 192, "the attorneys had complied with the notification requirement, ... participated in the disciplinary process, and presented substantial mitigating evidence regarding the noncompliance and their present good character." *Babero, supra*, 2 Cal. State Bar Ct. Rptr. at 334.

Although respondent did not file his affidavit until almost two months after the compliance due date, sufficient mitigating factors exist to warrant not imposing disbarment.

AGGRAVATING CIRCUMSTANCES.

Respondent has prior records of discipline. See Stipulation form.

Standard 1.6(b) provides that a greater degree of discipline than the appropriate sanction shall be imposed if aggravating circumstances are found to surround the particular act of misconduct found

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

See Stipulation form

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.

RESTRICTIONS WHILE ON ACTUAL SUSPENSION.

During the period of actual suspension, respondent shall not:

Render legal consultation or advice to a client;

Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

Appear as a representative of a client at a deposition or other discovery matter;

Negotiate or transact any matter for or on behalf of a client with third parties;

Receive, disburse, or otherwise handle a client's funds; or

Engage in activities which constitute the practice of law.

Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the Office of Probation, pertaining to periods in which the respondent was actually suspended from the practice of law.

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION EXCLUSION.

It is recommended that respondent not be required to take the Multistate Professional Responsibility Examination because he was ordered to take and pass the examination by the Supreme Court order filed on December 15, 2009 in connection with case number S138437 (04-O-10121; 04-O-14891). He took and passed the MPRE on August 6, 2010.

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In the Matter of
Gregory A. Brubaker

Case number(s):
10-N-2924

SIGNATURE OF THE PARTIES

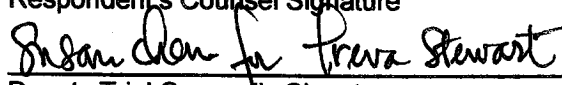
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

Oct. 3, 2010
Date


Respondent's Signature

Gregory A. Brubaker
Print Name

Date
10/15/2010
Date

Respondent's Counsel Signature

Deputy Trial Counsel's Signature

Print Name
Treva R. Stewart
Print Name

(Do not write above this line.)

In the Matter Of Gregory A. Brubaker	Case Number(s): 10-N-02924
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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.

1. On p. 4, item D.(3)(a)(i) --the recommendation that respondent be actually suspended and until he complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, and until he makes restitution as set forth in S138437 is deleted as respondent is already subject to both requirements pursuant to the Supreme Court's order in S138437, filed January 4, 2006. Membership records shows respondent as still not being entitled to practice based on S138437.

2. On p. 4, item E.(1) -- the conditional standard 1.4(c)(ii) recommendation is deleted as unnecessary.

3. On page 9, under State Bar Ethics school the additional language must state that respondent lives in China and may be unable to attend State Bar Ethic School. Therefore, the parties agree that respondent may instead complete the following courses: six (6) hours of State Bar approved MCLE courses in legal ethics. All courses must be participatory. Within one year of the effective dated of discipline, herein, respondent must provide the Office of Probation with satisfactory proof of participation in the MCLE courses.

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.)**

Nov 1, 2010
Date


Pat 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 1, 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:

**GREGORY A. BRUBAKER
C/O RUSSELL ROBINSON, ESQ.
345 GROVE ST 1ST FL
SAN FRANCISCO, CA 94102**

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

TREVA R. STEWART, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 1, 2010.


Bernadette C.O. Molina
Case Administrator
State Bar Court