

State Bar Court of California Hearing Department Los Angeles		ORIGINAL
Counsel For The State Bar Margaret P. Warren 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1342	Case Number (s) 10-N-03345-RAH	(for Court's use)
Bar # 108774	PUBLIC MATTER	FILED AUG 17 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent ERIC W. SCHOLZ, in Pro. Per. P.O. Box 477 Spruce Pine, NC 28777 (828) 333-4610		
Bar # 142357	Submitted to: Assigned Judge	
In the Matter of: ERIC W. SCHOLZ	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT	
Bar # 142357	DISBARMENT	
A Member of the State Bar of California (Respondent)	<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 **DECEMBER 11, 1989**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (8) 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):
- ☒ Costs to be awarded to the State Bar
 - ☐ Costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ Costs entirely waived
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 220(c).

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**
- (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:
- Please see page 6, 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.
- (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 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:
Please see page 7, below .

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.
- (2) ☐ **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Client Security Fund Reimbursement:** Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment obligation is enforceable as provided under Business and Professions Code section 6140.5.
- (4) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ERIC W. SCHOLZ, Bar No. 142357

CASE NUMBER(S): 10-N-03345-RAH

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct:

FACTS:

1. On December 7, 2009, the California Supreme Court filed Order No. S138288 (hereinafter "9.20 Order"). The 9.20 Order included a requirement that Respondent comply with Rule 9.20, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within thirty (30) and forty (40) days, respectively, after the effective date of the 9.20 Order. On December 7, 2009, the Clerk of the Supreme Court of the State of California properly served upon Respondent a copy of the 9.20 Order. Respondent received the 9.20 Order.

2. The 9.20 Order became effective on January 6, 2010, thirty days after the 9.20 Order was filed. Thus Respondent was ordered to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than February 5, 2010, and was ordered to comply with subdivision (c) of Rule 9.20 no later than February 15, 2010.

3. On April 22, 2010, Respondent filed his declaration of compliance with Rule 9.20 (a), as required by subdivision (c) of Rule 9.20.

4. Respondent failed to timely file with the clerk of the State Bar Court a declaration of compliance with Rule 9.20 (a), California Rules of Court, as required by Rule 9.20 (c).

CONCLUSIONS OF LAW:

5. By not timely filing a declaration of compliance with Rule 9.20 in conformity with the requirements of Rule 9.20 (c), Respondent failed to comply with the provisions of the 9.20 Order

requiring compliance with Rule 9.20, California Rules of Court, in willful violation of rule 9.20, California Rules of Court.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was July 26, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 15, 2010, the prosecution costs in this matter are approximately \$2,296.00. 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.

AGGRAVATING CIRCUMSTANCES.

PRIOR RECORD OF DISCIPLINE:

1. **Case Nos. 94-C-17595 (consol. with 94-O-10641) (S055491)**

Effective date: November 21, 1996

Rule/Act Violations:

- (A) 94-C-17595: conviction of misdemeanor violation of Penal Code section 496(A) [receiving stolen property], an act of moral turpitude [in violation of Bus. & Prof. Code section 6106];
- (B) 94-O-10641: Rules of Professional Conduct, rules 3-110(A), 3-700(A)(2), 3-700(D)(2), 4-100(B)(2), 4-100(B)(3), and 4-200(A); Bus. & Prof. Code section 6068(m)

Degree of discipline: 3 years and until rehabilitation pursuant to Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, and restitution, stayed; 4 years probation with conditions; 2 years actual, with credit for interim suspension from May 6, 1995 and until rehabilitation and restitution; MPRE within period of actual suspension.

2. **Case No. 01-O-02864 (S106209)**

Effective date: August 1, 2002

Rule/Act Violations: Bus. & Prof. Code sections 6103 and 6068(k)

Degree of discipline: 3 years and until rehabilitation pursuant to Std. 1.4(c)(ii) and restitution, stayed; 4 years probation with conditions; 2 years actual and until rehabilitation and restitution; MPRE within period of suspension if not taken as previously ordered in S055491.

3. **Case No. 03-O-01638 (S138288)**

Effective date: January 27, 2006

Rule/Act violations: Bus. & Prof. Code sections 6103 and 6068(k)

Degree of discipline: 3 years and until rehabilitation pursuant to Std. 1.4(c)(ii), stayed; 5 years probation with conditions; 2 years actual suspension and until rehabilitation; credit for involuntary inactive enrollment as of November 20, 2004.

4. Case No. 09-PM-10731 (S138288)

Effective date: January 6, 2010

Rule/Act violations: Bus. & prof. Code section 6093(b) [violation of probation condition(s) constitutes cause for revocation of any probation then pending]

Degree of discipline: Probation revoked; 3 years suspension and until rehabilitation pursuant to Std. 1.4(c)(ii); credit for inactive enrollment from 4/23/09; MPRE within period of actual suspension; compliance with rule 9.20

MITIGATING CIRCUMSTANCES.

Respondent has been candid and cooperative throughout the instant proceedings, candidly discussing with Deputy Trial Counsel his past disciplinary history, his years-long battle with alcoholism, his current sobriety, and his current participation in substance abuse recovery programs.

No clients, opposing counsel, or courts were harmed by Respondent's failure to timely file his Declaration of Compliance with rule 9.20, as he has been precluded from practicing law, and has had no clients, for many years.

AUTHORITIES SUPPORTING DISCIPLINE.

Disbarment is the usual discipline ordered by the Supreme Court for rule 9.20 [formerly, rule 955] violations. See, e.g., *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593; and see *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439.

Respondent has four (4) prior impositions of discipline, as listed above, making the instant matter the fifth (5th) disciplinary proceeding against Respondent. **Standard 1.7 (b)** of the Standards for Attorney Sanctions for Professional Misconduct provides:

If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2 (f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

(Do not write above this line.)

In the Matter of
ERIC W. SCHOLZ, #142357

Case number(s):
10-N-03345-RAH

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.

7/30/10

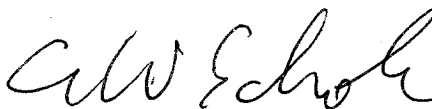
Date

~~8/4/10~~

Date

8/4/10

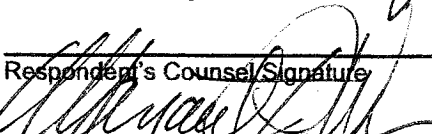
Date



Respondent's Signature

Eric W. Scholz

Print Name



Respondent's Counsel Signature

Print Name

Margaret P. Warren

Print Name

Deputy Trial Counsel's Signature

(Do not write above this line.)

In the Matter of
ERIC W. SCHOLZ, #142357

Case Number(s):
10-N-03345-RAH

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.)**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 490(b) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

8-12-10

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 Los Angeles, on August 17, 2010, I deposited a true copy of the following document(s):

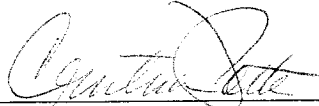
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY
INACTIVE ENROLLMENT

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 Los Angeles, California, addressed as follows:
- ERIC W. SCHOLZ
PO BOX 477
SPRUCE PINE, NC 28777
- ☐ 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 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:

Margaret P. Warren, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 17, 2010.



Cristina Potter
Case Administrator
State Bar Court