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**State Bar Court of California  
Hearing Department  
San Francisco  
STAYED SUSPENSION**

<p>Counsel For The State Bar</p> <p>Donald R. Steedman 180 Howard St. San Francisco, CA 94105 (415/538-2345)</p> <p>Bar # <b>104927</b></p>	<p>Case Number(s): 10-O-00366; 10-O-03134</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>R</i></p> <p>JUL 11 2011</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Jonathan I. Arons 221 Main Street, Suite 740 San Francisco, CA 94105 (415/957-1818)</p> <p>Bar # 111257</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> <p>kwiktag<sup>®</sup> 018 043 449</p> 	
<p>In the Matter of: David S. Silber</p> <p>Bar # 176377</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 June 5, 1995.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 12 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Costs are added to membership fee for calendar year following effective date of discipline.
  - 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.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
  - (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below 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.

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- (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. Respondent was admitted to practice 16 years ago.
- (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 cooperative in this matter, including his agreement to settle this case at an early stage.
- (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. Respondent underwent psychological stress as a result of his divorce.
- (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.

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(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 one year.
- 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:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

#### E. Additional Conditions of Probation:

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  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.
- (4)  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.

- (5)  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.

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- (6)  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.
- (7)  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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  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.
- (9)  The following conditions are attached hereto and incorporated:
- |  |  |
|--|--|
| <input type="checkbox"/> Substance Abuse Conditions    | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input checked="" 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 within one year. **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 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Other Conditions:**

Attachment language (if any):

## FACTS AND CONCLUSIONS OF LAW

### COUNT ONE

Case No. 10-O-00366

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, and repeatedly failing to perform legal services with competence, as follows:
2. On or about October 2, 2008, Steven Perkins employed respondent to file and prosecute a lawsuit asserting Perkin's interest as a beneficiary of his deceased parents' testimonial trust. Respondent agreed to pursue Perkins' claim that the current trustee (Perkin's sister) and other family members had mishandled the trust and agreed to assist Perkins in recovering the portion of the trust estate to which he was entitled.
3. At the time of employment, Perkins paid respondent an advance fee of \$2,500 and delivered him papers and files related to the trust issues.
4. Thereafter, and continuing until the termination of his employment on or about October 28, 2009, respondent failed to file the lawsuit and failed to pursue Perkin's claim in any other way. At some point, respondent prepared a draft complaint, but he did not serve the complaint and did not provide his client with a copy of the draft until long after respondent's employment terminated.
5. By failing to file the lawsuit and failing to otherwise pursue Perkin's claim, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence.

### COUNT TWO

Case No. 10-O-00366

Business and Professions Code, section 6068(m)

[Failure to Respond to Client Inquiries]

6. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, as follows:
7. The allegations contained in Count One are hereby incorporated by this reference.
8. Between October 2, 2008, and October 2009, Perkins and his wife made repeated telephone calls to respondent, sent repeated emails to respondent, and transmitted many messages to respondent via the attorney who had originally referred Perkins to respondent. During the first approximately nine to ten months of employment, Perkins and his wife left such messages approximately every two weeks. During August and September 2009, Perkins and his wife left such messages much more frequently, sometimes leaving multiple messages each day. Each of these calls, emails, and messages were reasonable client inquiries concerning the status of Perkins' matter. Respondent received all of these messages, but only responded on a few occasions. On these occasions, respondent promised to work on the case. On one occasion, respondent admitted that he was dodging the calls, which in fact he was doing.
9. By failing to respond to most of the client status inquiries, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services.

### COUNT THREE

Case No. 10-O-00366

Rules of Professional Conduct, rule 3-700(D)(2)

[Failure to Refund Unearned Fees]

10. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:
11. The allegations contained in Counts One and Two are hereby incorporated by this reference.
12. In or about late October, 2009, Perkins employed new counsel, John W. D'Ewart. On or about October 28, 2009, D'Ewart sent respondent a letter notifying respondent that his employment had terminated, requesting that respondent deliver all client files and papers, and requesting that respondent return the unearned portion of the \$2,500.00 attorney fee, and requesting an accounting. Respondent received this letter shortly thereafter but did not immediately respond.
13. At the time his employment was terminated, respondent had not earned any substantial portion of the attorney fee he had received.
14. On or about November 12, 2009, D'Ewart sent respondent a second letter repeating the requests for the file materials, an accounting and a refund. Respondent received this letter shortly thereafter.
15. In or about late November 2009, respondent received notice that the State Bar was investigating Perkins' discipline complaint against respondent.
16. On or about December 17, 2009, respondent sent D'Ewart some file materials, including the complaint respondent had drafted. No refund was included. The documents were not accompanied by a cover letter.
17. On or about December 23, 2009, D'Ewart sent respondent a letter again requesting the refund and requesting some additional documents believed to be in Silber's possession. Respondent received this letter shortly after it was sent. Respondent also received telephone messages left by D'Ewart at about this time but did not return the calls.
18. By letter dated February 6, 2010, respondent sent a refund check to D'Ewart for \$2,500. Respondent stated in his letter that he did not have further documents.
19. By failing to return the unearned attorney fee until on or about February 6, 2010, respondent failed to refund promptly any part of a fee paid in advance that has not been earned.

### COUNT FOUR

Case No. 10-O-00366

Rules of Professional Conduct, rule 3-700(D)(1)

[Failure to Release File]

20. 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 papers and property, as follows:
21. The allegations contained in Counts One through Three are hereby incorporated by this reference.
22. By failing to release any of Perkin's files and records until December 17, 2009, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property.



## COUNT FIVE

Case No. 10-O-03134

Rules of Professional Conduct, rule 3-700(D)(2)

[Failure to Refund Unearned Fees]

27. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

28. On or about December 15, 2009, Susan Schlueter employed respondent to file a motion for an order allowing Schlueter visitation with her minor child. At that time, Schlueter paid respondent \$1,850 in advance as attorney fees.

29. On or about December 21, 2009, Schlueter notified respondent that his employment had been terminated. Respondent received this notification.

30. As of the termination of employment, respondent had not earned any substantial portion of the advance fee and owed Schlueter a substantial refund.

31. Respondent failed to make any refund to Schlueter until at least December, 2010, and, thus, failed to promptly return the unearned portion of the advanced attorney fee.

32. By failing to make any refund, respondent failed to refund promptly any part of a fee paid in advance that has not been earned.

## DISCLOSURE OF PENDING INVESTIGATIONS

The disclosure mentioned in paragraph A(7) of this stipulation was June 8, 2011.

## SUPPORTING AUTHORITY

The parties agree that a period of stayed suspension is appropriate given respondent's lack of prior discipline (Standard 1.2(e)(i)) and respondent's cooperation and willingness to settle this matter at an early stage (Standard 1.2(e)(v)).

(Do not write above this line.)

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### Medical Conditions

- a.  Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b.  Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of four times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for ~~\_\_\_\_\_ days or \_\_\_\_\_ months or \_\_\_\_\_ years or~~ the period of probation or until a motion to modify this condition is granted and that ruling becomes final. DMS  
JWA

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c.  Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

(Do not write above this line.)

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**Law Office Management Conditions**

- a.  Within 30 days/three months/ 1 years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b.  Within \_\_\_\_\_ days/ \_\_\_\_\_ months/ \_\_\_\_\_ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than \_\_\_\_\_ hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.




Other:

(Do not write above this line.)

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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.

6/28/2011		David S. Silber
Date	Respondent's Signature	Print Name
June 28, 2011		Jonathan I. Arons
Date	Respondent's Counsel Signature	Print Name
June 29, 2011		Donald R. Steedman
Date	Deputy Trial Counsel's Signature	Print Name

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### STAYED SUSPENSION 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 5.58(E) & (F), 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.)**

Date

7.11.11

  
Judge of the State Bar Court

**LUCY ARMENDARIZ**

## 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 July 11, 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:

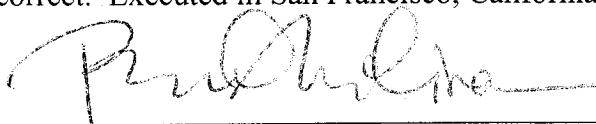
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JONATHAN IRWIN ARONS  
LAW OFC JONATHAN I ARONS  
221 MAIN ST STE 740  
SAN FRANCISCO, CA 94105

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

DONALD STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 11, 2011.



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Bernadette C.O. Molina  
Case Administrator  
State Bar Court