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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Larry DeSha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336 Bar # 117910	Case Number(s): 10-O-05855-DFM	For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED JUN 28 2011 <i>R</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Daniel Joseph Sweeney 290 E. Verdugo Ave.; Ste. 108 Burbank, CA 91502 (818) 841-9300 Bar # 78362	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: DANIEL JOSEPH SWEENEY Bar # 78362 A Member of the State Bar of California (Respondent)	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 December 21, 1977.
- (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 10 pages, not including the order.



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- (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 5.130, Rules of Procedure.
 - ☐ 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 90-O-12361-ERP
 - (b) ☒ Date prior discipline effective October 1, 1992
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules 2-111(A)(1), 2-111(A)(2), 3-700(D)(2), and 6-101A)(2); Business and Professions Code section 6068(m)
 - (d) ☒ Degree of prior discipline Public Reproval
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court case # 93-H-12614-ERP

Date prior discipline effective: October 21, 1993

Rules of Professional Conduct/ State Bar Act violations: Rule 1-110

Degree of prior discipline: The period for compliance with the conditions attached to the Public Reproval in case # 90-O-12361-ERP was extended by six (6) months.

- (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.

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- (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 one (1) 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:
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of two (2) 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 thirty (30) days.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☒ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (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 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☒ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DANIEL JOSEPH SWEENEY
CASE NO.: 10-O-05855-DFM

WAIVER OF VARIANCE:

The parties waive any variance between the Notice of Disciplinary Charges filed on February 1, 2011 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

FACTS:

1. On July 24, 2009, Khachik Sarkissian ("Sarkissian") hired Respondent to handle his "child support arrearage problem," which was an arrearage in child support payments which had accrued over more than five years. Respondent had been Sarkissian's attorney in the dissolution of marriage, for which judgment, including the final child support order, was entered on December 27, 2002. The child support order terminated in September 2008, when the child reached age 18. There was no written fee agreement, but they agreed to an hourly rate of \$350 and a deposit of \$1,500, which Sarkissian paid on July 24, 2009.
2. Sarkissian mistakenly thought that he could get the arrearage greatly reduced by a retroactive modification to the child support order, but such retroactive modifications are forbidden by statute. The only legal service possible was negotiation with the Department of Child Support Services ("DCSS") for a payment plan with a forbearance of enforcement of the judgment. Sarkissian and Respondent spoke to each other of "reduced monthly payments," but Sarkissian meant those payments which had accrued in the past, and Respondent meant future payments to satisfy DCSS.
3. Sarkissian provided Respondent with incomplete financial records, which could not be used to show a financial hardship in the negotiations with DCSS. Sarkissian was self-employed, but he omitted the IRS Form 1040 Schedule C (business income) from the federal tax returns he provided Respondent for 2007 and 2008.
4. During the month of September 2009, Sarkissian made several requests by telephone for a status report. Respondent replied to two of the calls with requests for the missing Schedule C's. Respondent did not return the other four calls. Sarkissian did not provide a Schedule C for either year.
5. On October 12, 2009, Sarkissian sent an e-mail requesting a status report and an accounting, and demanding a "court date soon." By this time it was clear to Respondent that Sarkissian thought the court was going to decrease his child support arrearage. Respondent did not reply, and did not otherwise advise Sarkissian that the court could not modify his arrearage.

6. On November 3, 2009, Sarkissian sent a letter to Respondent in which Sarkissian complained of no accounting and no communication from Respondent since July 24, 2009. Sarkissian requested a refund of his \$1,500 if Respondent was not interested in handling the case. Respondent did not reply.
7. On May 3, 2010, a State Bar complaint analyst sent a written inquiry to Respondent concerning a complaint received from Sarkissian about Respondent's failures to perform and communicate. The inquiry requested a written response by May 14, 2010. Respondent did not reply.
8. On July 1, 2010, a State Bar investigator sent a letter to Respondent requesting his written response to specific allegations made by Sarkissian. The investigator also requested any documents which supported the written response, and requested that the written response be submitted by July 9, 2010. Respondent did not reply.
9. On July 19, 2010, a State Bar investigator sent another letter to Respondent which repeated the requests made in the letter of July 1, 2010. Respondent did not reply.
10. Respondent provided no legal services of any value to Sarkissian.
11. Respondent paid the refund of \$1,500.00 to Sarkissian on June 3, 2011.

CONCLUSIONS OF LAW:

12. Respondent's failure to reply to Sarkissian's letter of November 3, 2009, or to work on the case at anytime thereafter, made November 3, 2009 the effective date of the termination of Respondent's services.
13. Respondent failed to correct Sarkissian's mistaken impression of a pending court date after Sarkissian's mistake became apparent to Respondent by October 12, 2009, and failed to notify Sarkissian in writing that no services would be performed without full disclosure of Sarkissian's income. Respondent thereby repeatedly or recklessly failed to perform legal services with competence, and willfully violated rule 3-110(A) of the California Rules of Professional Conduct.
14. Respondent failed to render an appropriate accounting of Sarkissian's funds after Sarkissian requested an accounting on October 12, 2009, and Respondent thereby willfully violated rule 4-100(B)(3) of the California Rules of Professional Conduct.
15. After termination of his services on November 3, 2009, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned, and Respondent thereby willfully violated rule 3-700(D)(2) of the California Rules of Professional Conduct.
16. Respondent failed to cooperate and participate in a disciplinary investigation when he failed to respond to the State Bar's letters of May 3, 2010, July 1, 2010, and July 19, 2010. He thereby willfully violated Business and Professions Code section 6068(i).

DISMISSALS:

The State Bar respectfully requests the Court to dismiss Count Two, which alleges violations of section 6068(m) of the Business and Professions Code, and further requests dismissal of Count Three, which alleges a violation of rule 3-700(A)(2) of the Rules of Professional Conduct. These dismissals are requested in the interests of justice.

SUPPORTING AUTHORITY:**Standards**

Standard 2.2(b) requires an actual suspension of at least three months for a violation of rule 4-100(A), irrespective of mitigating circumstances.

The standards are not binding upon the court and should not be followed in a talismanic fashion. See discussion in *In re Silvertown* (2005) 36 Cal.4th 81, 91-92.

Case Law

In *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, attorney Sternlieb misappropriated \$2,997 from her CTA by collecting her fees before she was authorized to use those CTA funds, which she was holding pending a division of community property in a divorce case. She was found culpable of violating the predecessors of Rule 4-100(A) by failing to maintain client funds in her CTA, Rule 4-100(B)(3) by failing to render an accounting, and Rule 4-100(B)(4) by failure to pay the funds as requested by the client. The decision does not mention Standard 2.2(b) nor any aggravating circumstances. The Supreme Court found mitigating factors of no prior discipline in more than eight years of practice, evidence of good character, and remorse. An actual suspension of 30 days was considered adequate for protection of the public.

Respondent here does not have the misappropriation violation, but also does not have Ms. Sternlieb's mitigating factors of no prior discipline, evidence of good character, and remorse.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, paragraph A.(7), was June 2, 2011.

COSTS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 6, 2011, the costs in this matter are \$3,269.00. 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.

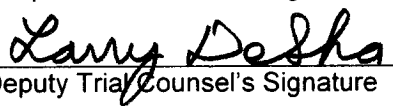
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In the Matter of: DANIEL JOSEPH SWEENEY	Case number(s): 10-O-05855-DFM
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SIGNATURE OF THE PARTIES

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.

June 7, 2011		Daniel Joseph Sweeney
Date	Respondent's Signature	Print Name

Date	Respondent's Counsel Signature	Print Name
June 7, 2011		Larry DeSha
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of: DANIEL JOSEPH SWEENEY	Case Number(s): 10-O-05855-DFM
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ACTUAL 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 6/27/11


Judge of the State Bar Court

DONALD F. MILES

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 Los Angeles, on June 28, 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:

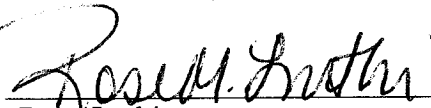
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DANIEL JOSEPH SWEENEY
290 E VERDUGO AVE #108
BURBANK, CA 91502

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

LARRY DESHA, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 28, 2011.



Rose Luthi
Case Administrator
State Bar Court