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In the Matter of:) 10-Q-08405 [State Bar Court case nos.: 08-O-
) 10991; 08-O-13402-LMA]
FRANK M. ENNIX III,)
No. 40459,) STIPULATION AS TO FACTS AND
) CONCLUSIONS OF LAW
A Member of the State Bar.)
) (Rules of Procedure, rule 658)

It is understood and acknowledged by the parties to this Stipulation that:

1 1. This Stipulation relates only to the facts and conclusions of law set forth below and is
2 binding upon the parties;

3 2. The stipulated facts contained in this stipulation constitute admissions of fact and may
4 not be withdrawn by either party, except with Court approval;

5 3. The parties agree that respondent may not withdraw his resignation, except with
6 Court approval and if such Court approval is granted, respondent is nevertheless bound to the
7 facts and conclusions of law contained in this Stipulation, unless the Court specifically and
8 additionally authorizes withdrawal of this Stipulation; (see *Giovanazzi v. State Bar* (1980) 28
9 Cal.3d 465; *Inniss v. State Bar* (1978) 20 Cal.3d 552);

10 4. The parties acknowledge that, within sixty (60) days of the submission of
11 respondent's resignation, the State Bar is required to submit to the State Bar Court Review
12 Department a report in which the State Bar will recommend either acceptance or rejection of
13 respondent's resignation. If respondent has not made full payment of medical bills in the
14 *Rushing* matter (unfiled case number 10-O-05852), the parties specifically acknowledge that the
15 State Bar will recommend in its report that respondent's resignation be rejected. The parties
16 further acknowledge that, in the event full payment of medical bills in the *Rushing* matter is not
17 made, that such failure will constitute a material breach of this Stipulation and will result in the
18 State Bar's seeking respondent's default and will submit its case based on this Stipulation of Facts
19 and Conclusions of Law.

20 5. The parties agree that either party may seek to admit evidence at a future
21 reinstatement proceeding as to facts relating to the above captioned cases that are not contained
22 in this stipulation so long as any such evidence does not contradict these stipulated facts and
23 conclusions of law. The parties agree that any additional facts proven at a reinstatement trial
24 may establish additional conclusions of law not contained herein. Neither party waives the
25 right to submit and present evidence relating to mitigation and/or relating to aggravation at any
26 future reinstatement proceeding; and

27 6. Respondent acknowledges the provisions of Business and Professions Code
28 sections 6086.10 and 6140.7.

1 **C. STATEMENT OF STIPULATED FACTS.**

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

4 **D. JURISDICTION.**

5 1. Frank M. Ennix III ("respondent") was admitted to the practice of law in the
6 State of California on June 13, 1967, was a member at all times pertinent to these charges, and
7 is currently a member of the State Bar of California.

8 **E. FACTS AND CONCLUSIONS OF LAW.**

9 **Facts - Count One.**

10 Case No. 08-O-13402, Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

11 2. On July 2, 2005, Wai Ming Chiu fell in a Fry's Electronics store.

12 3. On July 5, 2005, Chiu employed respondent to represent him regarding the
13 injuries he suffered when he fell.

14 4. On December 21, 2005, respondent's paralegal, Pamela Silas, sent Chubb
15 Services Corporation, the insurer for Fry's Electronics, a demand letter for \$24,000.

16 5. On or about May 5, 2006, Chiu participated in a telephone interview with Chubb
17 and was represented during the interview by respondent's paralegal, Kathleen January. At the
18 conclusion of the telephone call, Ms. January informed Chiu that the interview went well and
19 his case should settle soon.

20 6. Thereafter, respondent failed to personally communicate with Chiu.

21 7. On or about June 19, 2006 and June 22, 2006, respondent spoke with Chubb
22 claims adjuster Alvin Jimerson regarding settlement.

23 8. On or about June 22, 2006, Jimerson offered respondent \$1,500 to settle Chiu's
24 case. Respondent informed Jimerson that respondent would present the offer to Chiu and would
25 call Jimerson back within the next couple of days.

26 9. Respondent would testify that he spoke to Jimerson and that Jimerson pointed
27 out numerous problems with plaintiff's case. Respondent would further testify that at no time
28 did he understand Jimerson had made an offer of any amount to settle the case. Respondent

1 would further testify that if Jimerson had extended an offer of settlement, that respondent erred
2 in failing to recognize that a monetary offer to settle had been extended.

3 10. Respondent would testify that, because he did not understand that an offer to
4 settle had been extended, that he did fail to communicate the settlement offer to Chiu, failed to
5 respond to Chubb's settlement offer and failed to perform any further services for Chiu.

6 11. On or about November 15, 2006, Chubb closed its file because respondent failed
7 to respond to the June 22, 2006 settlement offer.

8 **Conclusion of Law – Count One.**

9 12. By failing to recognize and respond to Chubb's settlement offer and by failing to
10 provide any further services to Chiu after receiving Chubb's settlement offer, respondent
11 violated Rules of Professional Conduct, rule 3-110(A).

12 **Facts - Count Two.**

13 Case No. 08-O-13402, Business and Professions Code, section 6068(m) [Failure to Respond to
Client Inquiries/Failure to Inform Client of Significant Developments]

14 13. Count One is incorporated by reference as if fully set forth herein.

15 14. Respondent failed to inform Chiu that Chubb offered \$1,500 to settle his matter.
16 The settlement offer was a significant development in Chiu's matter.

17 15. Between September 9, 2007 and August 4, 2008, Chiu telephoned respondent's
18 office repeatedly and left a message each time requesting that respondent provide him with a
19 status update on his matter. Respondent received the messages, but failed to respond to them
20 and failed to provide Chui with a status update on his matter other than to eventually return
21 Chiu's file to Chiu and conclude his representation of Chiu.

22 **Conclusion of Law – Count Two.**

23 16. By failing to inform Chiu that Chubb offered \$1,500 to settle Chiu's claim and to
24 otherwise respond to Chiu's status requests, respondent failed to keep a client reasonably
25 informed of significant developments in a matter in which respondent had agreed to provide
26 legal services, in violation of Business and Professions Code, section 6068(m).

27 **Facts - Count Three**

28 Case No. 08-O-10991, Rules of Professional Conduct, rule 3-310(C)(1) [Potential Conflict -
Representing Multiple clients]

1 17. On August 31, 2007, Tracie Maxwell was driving a vehicle occupied also by
2 passengers Trayaina Hawkins, Quinoshia Williams and London Webb when it was struck by
3 another vehicle.

4 18. On September 25, 2007, Maxwell, Hawkins, Williams and Webb employed
5 respondent to represent them regarding injuries they suffered in the accident.

6 19. At the time that Maxwell, Hawkins, Williams and Webb employed respondent, a
7 potential conflict existed between Maxwell, as the driver and Hawkins, Williams and Webb, as
8 the passengers.

9 20. Respondent failed to obtain the informed written consent of Maxwell, Hawkins,
10 Williams and Webb prior to accepting their representation.

11 **Conclusion of Law – Count Three.**

12 21. By failing to obtain the informed written consent from Maxwell, Hawkins,
13 Williams and Webb, respondent accepted representation of more than one client in a matter in
14 which the interests of the clients potentially conflicted without the informed written consent of
15 each client, in violation of Rules of Professional Conduct, rule 3-310(C)(1).

16 **Facts - Unfiled case number 10-O-05852**

17 [Rules of Professional Conduct rule 3-110(A), [failure to perform competently to insure that
18 medical liens are paid]; Rules of Professional Conduct, rule 4-100(B)(4) [failure to promptly pay
out client funds as requested by the client]

19 22. In February, 2008, Bevelyn Rushing (“Rushing”) was injured in an accident. On
20 or about February 12, 2008, Rushing retained respondent to represent her in an action to recover
21 damages.

22 23. Respondent agreed to pay Rushing’s medical bills on her behalf, presumably out
23 of the settlement proceeds. Rushing’s total medical bill was \$4,515.00.

24 24. In or about May, 2010, respondent settled Rushing’s case.

25 25. Respondent contacted Rushing regarding settlement proceeds. Shortly
26 thereafter, Rushing appeared at respondent's office and collected her share of the settlement
27 proceeds by a separate check written to Rushing. Rushing did not sign or even see the actual
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1 full settlement check representing the entire settlement amount. Respondent again confirmed
2 that he would pay the medical bills for Rushing's treatment(s).

3 26. Rushing believed that respondent would take care of the medical bills, so did not
4 think of it further until in approximately February, 2010, when Rushing received notices from
5 her treating doctor that he had not received any payment for her medical bills and that the
6 account was well past due. Rushing immediately and frequently tried to reach respondent by
7 telephone to discover why her medical bills had not been paid. Rushing was not able to reach
8 respondent directly, but did speak on a few occasions with "Corrine" in respondent's office.
9 Corrine assured Rushing that "everything would be fine." Respondent received Rushing's
10 messages, but failed to respond to her. The treating physician assigned his bill to a collection
11 agency for further processing and collection.

12 27. On May 14, 2010, respondent contacted John Washington ("Washington") of
13 International Recovery Systems ("IRS") and provided Washington with bank account
14 information for respondent's non-trust/Bank of America business account for the purpose of
15 making two check payments (numbers 1376 and 1377) in equal amounts of \$2,250.00, for a
16 total of \$4,500. Washington attempted to process the first check, number 1367, but it was not
17 honored by respondent's bank because there were insufficient funds in respondent's account to
18 cover the amount of the check. Because there was not enough in respondent's account to cover
19 the first check, Washington did not attempt to process the second check.

20 28. On May 28, 2010, respondent sent a cashier's check in the amount of \$1,000 to
21 Washington at IRS.

22 29. Throughout the month of June, 2010, Washington made numerous phone calls to
23 respondent's office in an attempt to collect the remaining amount of the medical bills. On at
24 least one occasion, on June 18, 2010, respondent promised to send another cashier's check, this
25 time in the amount of \$2,000, but respondent failed to send that cashier's check, nor has
26 respondent sent any payment subsequent to the May 28 cashier's check for \$1,000.

27 30. Rushing has made numerous attempts to contact respondent to demand that he
28 pay the medical bills as he had promised to do. Respondent is aware of Rushing's attempts to

1 contact him, but has failed to respond to those contacts or to otherwise inform Rushing of the
2 status of the payments to IRS.

3 31. International Recovery Systems is currently threatening Rushing with direct
4 collection action against Rushing because respondent has failed to pay the remaining balance of
5 Rushing's bills, despite his promise to do so. As of approximately May, 2010, IRS had reduced
6 the medical bill amount for settlement purposes to \$2,709. IRS has since and most recently
7 notified Rushing that the total amount now due is \$3,590.00 and that if the amount is not paid,
8 they will file suit against her personally.

9 **Conclusions of Law – Unfiled case number 10-0-05852**

10 32. By the conduct described above, specifically by failing to pay Rushing's medical
11 bills as he had promised to do, respondent wilfully violated Rules of Professional Conduct, rule
12 3-110(A) (failure to perform competently to insure that medical liens are paid) and Rules of
13 Professional Conduct, rule 4-100(B)(4), (failure to promptly pay out client funds as requested
14 by the client).

15 **Facts - Unfiled case number 10-N-08504**

16 Business and Professions Code, section 6103; Rule 9.20(c), California Rules of Court [Violation
of Court Order Requiring Compliance with Rule 9.20]

17 33. On June 25, 2010, the California Supreme Court filed a disciplinary order in
18 State Bar Court 06-O-12235 and 06-O-14292 (Supreme Court Case Number S182595).

19 34. The Supreme Court's disciplinary order required respondent to comply with
20 California Rule of Court 9.20 and to perform the acts specified in subdivisions (a) and (c) of
21 that rule within 30 and 40 days, respectively, after the effective date of the order. The order also
22 suspended respondent from the practice of law.

23 35. The disciplinary order became effective thirty days after it was filed (California
24 Rules of Court, rule 9.18(a)), and at all times subsequent has remained in full force and effect.

25 36. Notice of the disciplinary order was properly served upon respondent in the
26 manner prescribed by California Rule of Court 9.18(b) at the address respondent maintained
27 with the State Bar in accordance with Business and Professions Code section 6002.1,
28 subdivision (a).

1 37. The deadlines for complying with rule 9.20(a) and rule 9.20(c) expired on or
2 about August 24, 2010 and September 3, 2010, respectively.

3 38. Respondent wilfully violated the rule 9.20 order by failing to file proof of
4 compliance as required by rule 9.20(c) prior to the deadline.

5 39. Respondent did not comply with rule 9.20(c) until September 20, 2010, on
6 which date he sent his compliance form to the State Bar via facsimile, with his promise to mail
7 the originally executed compliance form promptly thereafter.

8 **Conclusion of Law.**

9 40. By failing to submit his 9.20 compliance declaration until September 20, 2010,
10 respondent violated Business and Professions Code section 6103 by wilfully disobeying or
11 violating an order of the court requiring respondent to do or forbear an act connected with or in
12 the course of respondent's profession which respondent ought in good faith to do or forbear,
13 specifically, an order requiring respondent to comply with Rule 9.20 of the California Rules of
14 Court, and further violated rule 9.20(c), California Rules of Court.

15 **F. AGGRAVATING CIRCUMSTANCES.**

- 16 • Prior records of discipline (Standard 1.2(b)(i)): Respondent has three prior records of
17 discipline as follows: 1) State Bar Case number 06-O-12235 [S182595], effective July
18 25, 2010, including eighteen (18) months' actual suspension; 2) State Bar case number
19 88-O-13283 [S019460], effective August 16, 1991, including three (3) years' actual
20 suspension; 3) State Bar Case number 76-6-00101 [BM 4095], effective May 18, 1979,
21 including sixty (60) days' actual suspension;
- 22 • Multiple Acts of Misconduct (Standard 1.2(b)(ii)): Respondent's current misconduct
23 evidences multiple acts of wrongdoing; and
- 24 • Harm (Standard 1.2(b)(iv)): Respondent's failure to pay Rushing's medical bills as

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1 promised have resulted in collection proceedings being brought against Rushing which
2 have caused her tremendous stress and anxiety.

3 **G. MITIGATING CIRCUMSTANCES.**


4 Cooperation (Standard 1.2(e)(vii)): Respondent freely and voluntarily resigned
5 membership from the State Bar, thus relieving the State Bar and State Bar Court of expending
6 additional costs to prosecute him.

7 Respectfully submitted,

8 THE STATE BAR OF CALIFORNIA
9 OFFICE OF THE CHIEF TRIAL COUNSEL


10 Dated: September 21, 2010

11 By:


12 Tammy M. Albertsen-Murray
13 Deputy Trial Counsel

14 Dated: September 20, 2010

15 By:


16 Frank M. Ennix
17 Respondent
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