

ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT

<p>Counsel For The State Bar</p> <p>Kevin B. Taylor Supervising Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 213 765-1630</p> <p>Bar # 151715</p>	<p>Case Number(s): 11-N-16709-RAH</p> <p>PUBLIC MATTER</p>	<p>For Court use only</p> <p>FILED DEC 16 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Frank Barilla 2861 Pullman St. Santa Ana, CA 92705 714 875-2029</p> <p>Bar # 103282</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Dennis Michael Sacks</p> <p>Bar # 86377</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 May 31, 1979.
- (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 are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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 5.111(D)(1).

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 94-O-18585
 - (b) Date prior discipline effective May 31, 1996
 - (c) Rules of Professional Conduct/ State Bar Act violations: RPC 3-700(D)(2)
 - (d) Degree of prior discipline Private Reprimand
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
 - a. 07-O-14729
 - b. July 6, 2011
 - c. RPC 3-110(A) (three counts), 3-300 (two counts), 3-310(B)(4), 3-310(C)(1) (two counts), 3-310(C)(2), 3-310(E), 3-400(B), 3-700(D)(2), 4-100(B)(3); B&P 6068(d), 6068(m) (two counts), 6106, and 6013 (two counts)
 - d. One year actual suspension with probationary conditions
- (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.

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- (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.

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- (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:

Respondent cooperated with the State Bar by entering into this stipulation.

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) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DENNIS MICHAEL SACKS, State Bar No. 86377

STATE BAR COURT CASE NUMBER: 11-N-16709-RAH

FACTS AND CONCLUSIONS OF LAW

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

Facts

1. On June 6, 2011, the California Supreme Court filed Order No. S191687. (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 30 and 40 days, respectively, after the effective date of the 9.20 Order
2. On or about June 6, 2011, 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.
3. The Supreme Court Order became effective on July 6, 2011, 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 August 5, 2011. Pursuant to subdivision (c) of rule 9.20, Respondent was ordered to file a declaration with the State Bar Court attesting to his compliance with Rule 9.20 no later than August 15, 2011.
4. Respondent did not file a declaration of compliance with Rule 9.20 with the State Bar Court.

Legal Conclusions

5. By failing to file a declaration with the State Bar Court in compliance with Rule 9.20(c), Respondent failed to timely comply with the Supreme Court's June 6, 2011 order in willful violation of Rule 9.20 of the California Rules of Court.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges filed on October 13, 2011, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the

issuance of a further amended Notice of Disciplinary Charges. Finally, the parties waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

DISCUSSION RE DISCIPLINE

Rule 9.20(d) of the California Rules of Court provides that a member's willful failure to comply with the provisions of Rule 9.20 is a cause for disbarment or suspension.

The Standards For Attorney Sanctions For Professional Misconduct also support disbarment in this matter.

Standard 1.3 provides that the primary purpose of discipline is the protection of the public, the courts and the legal profession.

Standard 1.7(b) provides that disbarment shall be imposed upon a member who is found culpable of misconduct and has a record of two prior disciplines unless the most compelling mitigating circumstances clearly predominate.

Here, Respondent has a record of two prior disciplines, the most recent of which was imposed on July 6, 2011. Mitigating circumstances do not clearly predominate in this matter. Therefore, disbarment is the appropriate discipline in this matter.

Also see *Bercovich v. State Bar* (1990) 50 Cal.3d 116 re "Disbarment is generally the appropriate sanction for a willful violation of rule 955" (now renumbered as rule 9.20). *Bercovich* was cited with approval in *In the Matter of Lynch* (Rev. Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.

PENDING PROCEEDINGS

The disclosure date referred to, on page two, paragraph A.(7), was October 31, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS

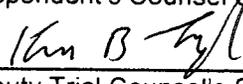
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of, October 31, 2011, the prosecution costs in this matter are approximately \$3,269. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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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.

<u>11-7-11</u> Date	 Respondent's Signature	<u>Dennis Michael Sacks</u> Print Name
<u>11-11-11</u> Date	 Respondent's Counsel Signature	<u>Frank Barilla</u> Print Name
<u>11/22/11</u> Date	 Deputy Trial Counsel's Signature	<u>Kevin B. Taylor</u> Print Name

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In the Matter of: Dennis Michael Sacks	Case Number(s): 11-N-16709-RAH
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DISBARMENT ORDER

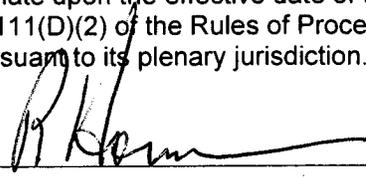
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.)**

Respondent Dennis Michael Sacks 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 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

12-8-11
Date


Judge of the State Bar Court
RICHARD A. HORN

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 December 16, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW 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:

FRANK FRANCIS BARILLA
2107 N BROADWAY #101
SANTA ANA, CA 92706
- 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 fax transmission, at fax number . No error was reported by the fax machine that I used.
- 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:

Kevin B. Taylor, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 16, 2011.



Cristina Potter
Case Administrator
State Bar Court