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STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

14 In the Matter of:) Case No. 11-O-12291
 15)
 16 JOSEPH BARRERA,) NOTICE OF DISCIPLINARY CHARGES
 17 No. 219583,)
 18 A Member of the State Bar)

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

- 21 (1) YOUR DEFAULT WILL BE ENTERED;
 22 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
 23 WILL NOT BE PERMITTED TO PRACTICE LAW;
 24 (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
 25 THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
 26 AND THE DEFAULT IS SET ASIDE, AND;
 27 (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
 28 SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
 OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
 ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
 FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
 RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

1 The State Bar of California alleges:

2 JURISDICTION

3 1. JOSPEH BARRERA ("Respondent") was admitted to the practice of law in the State
4 of California on June 1, 2002, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.
6

7 COUNT ONE

8 Case No. 11-O-12291
9 Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

10 2. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
11 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
12 follows:

13 3. Between on or about February 19, 2010 and on or about March 2, 2010, Respondent
14 agreed to personally represent Allison Marie Schuman ("Schuman") in criminal proceedings in
15 the matter of *People v. Allison Marie Schuman*, Santa Cruz County Superior Court case M51803
16 ("case M51803"). Schuman had been released on her own recognizance ("O.R.") on February
17 19, 2010.

18 4. There was no written client agreement and Respondent did not charge Schuman a fee
19 for his services.

20 5. Respondent initially appeared in case M51803 on March 2, 2010 for Schuman's
21 arraignment. He also appeared on March 15, 2010 at which time the court scheduled a pretrial
22 conference for April 14, 2010, a trial readiness conference for April 20, 2010, and jury trial for
23 April 26, 2010.

24 6. Respondent appeared for the pretrial conference on April 14, 2010, however
25 Respondent failed to appear for the trial readiness conference on April 20, 2010. A bench
26 warrant was issued for Schuman and stayed, pending a further hearing on April 22, 2010.
27
28

1 7. Respondent did not appear on April 22, 2010. Schuman's O.R. status was revoked
2 and the stay on the bench warrant was lifted. Schuman was additionally charged with a failure to
3 appear and a bench warrant was ordered therewith. The jury trial calendared for April 26, 2010
4 was vacated.

5 8. On or about May 26, 2010 attorney Gabriel Castillo ("Mr. Castillo")¹ requested, and
6 the court ordered, the bench warrant to be recalled. The matter was calendared for hearing on
7 June 9, 2010.

8 9. On or about June 9, 2010, at Respondent's request, Mr. Castillo appeared for
9 Respondent in case M51803. Schuman was not informed about the hearing and did not appear.

10 10. Respondent gave Mr. Castillo a document titled Entry of Plea (Attorney Without
11 Defendant Present and Imposition of Sentence), also known as a "Mills Waiver," for presentation
12 to the court at the hearing. The Mills Waiver reflected that Schuman pled nolo contendere to the
13 charges against her, waived her rights and agreed to be sentenced. Attached to the Mills Waiver
14 is a signed declaration by Respondent that he "personally read, discussed and explained the
15 contents" of Schuman's declaration to her. Respondent told Mr. Castillo that Schuman had
16 initialed and signed the document.

17 11. The court accepted the Mills Waiver and imposed conditional sentencing which
18 required Schuman to, inter alia, pay various fines and complete 30 hours of community service
19 by August 4, 2010. A hearing date to return the signed sentencing document was scheduled for
20 August 4, 2010.

21 12. Respondent did not provide Schuman with a copy of the Mills Waiver following the
22 hearing and did not provide Schuman with the sentencing document until after August 4, 2010.

23 13. Schuman paid the fine on June 22, 2010.

24 14. A bench warrant was issued for Schuman on August 5, 2010 for failure to return the
25 signed sentencing document and complete community service.

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28 ¹ At the time, Mr. Castillo was employed by the same employer as Respondent, The Law Offices of Earl Carter.

1 15. Schuman surrendered on the bench warrant and appeared in court on August 23,
2 2010. Schuman testified that Respondent did not discuss plea options with her, that she did not
3 sign the Mills Waiver or the sentencing document, that she had only received the sentencing
4 document in August 2010 and she did not give Respondent permission to sign either document
5 on her behalf.² The court found Schuman's testimony credible and determined that Schuman had
6 been misrepresented by Respondent. On its own motion, the court vacated the plea and sentence.

7 16. By failing to appear in case M51803 on April 20, 2010 and April 22, 2010; by failing
8 to inform Schuman of hearing dates and court orders; by failing to discuss and explain the Mills
9 Waiver to Schuman, and by entering pleas, waiving rights and accepting sentencing on behalf of
10 Schuman without her authority, Respondent intentionally, recklessly, or repeatedly failed to
11 perform legal services with competence.

12 COUNT TWO

13 Case No. 11-O-12291
14 Business and Professions Code, section 6068(m)
15 [Failure to Respond to Client Inquiries]

16 17. Respondent wilfully violated Business and Professions Code, section 6068(m), by
17 failing to respond promptly to reasonable status inquiries of a client in a matter in which
18 Respondent had agreed to provide legal services, as follows:

19 18. The allegations of Count One are hereby incorporated by reference.

20 19. Between in or about May 2010 and in or about August 2010 Schuman left voices
21 messages for, and sent emails to, Respondent to ascertain the status of her case. Other than a
22 telephone conversation in or about May 2010, Respondent did not respond to Schuman's voice
23 messages or emails.

24 20. By failing to return Schuman voice messages and respond to her emails, Respondent
25 failed to respond promptly to reasonable status inquiries of a client in a matter in which
26 Respondent had agreed to provide legal services.

27 _____
28 ² The court opined that the signature on the sentencing document is "similar in appearance to attorney Barrera's signature." Also, Respondent's address was indicated as Schuman's on the sentencing document.

COUNT THREE

Case No. 11-O-12291
Business and Professions Code, section 6106
[Moral Turpitude]

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4 21. Respondent wilfully violated Business and Professions Code, section 6106, by
5 committing an act involving moral turpitude, dishonesty or corruption, as follows:

6 22. The allegations of Counts One and Two are hereby incorporated by reference.

7 23. In or about May 2010, Respondent advised Schuman that her case was closed,
8 everything was taken care and she only needed to pay the fine.

9 24. On or about June 8, 2010, Schuman's initials and name were signed on the Mills
10 Waiver by Respondent (or his designee).

11 25. On or about June 8, 2010, Respondent (or his designee) signed a name in the space
12 designated for Schuman's signature on the sentencing document. The signature resembled
13 Respondent's signature.

14 26. Schuman did not sign the Mills Waiver or the sentencing document. Schuman did not
15 give authorization for her name to be signed by Respondent (or his designee) on the Mills
16 Waiver or the sentencing document.

17 27. At the time of submission, the court was not informed that the initials and signature
18 on the Mills Waiver or the signature on the sentencing document were not those of Schuman.

19 28. By misrepresenting the status of Shuman's case to her; by signing Schuman's name
20 on the Mills Waiver and signing a name in the space designated for Shuman's signature on the
21 sentencing document, without Schuman's authorization; by misrepresenting to the court
22 Schuman's agreement to waive her rights, to enter a plea and to sentencing; and by
23 misrepresenting to the court his authority to act on behalf of Shuman to submit the Mills Waiver,
24 Respondent committed an act involving moral turpitude, dishonesty or corruption.

25
26 **NOTICE - INACTIVE ENROLLMENT!**

27 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
28 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL

1 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
2 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
3 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
4 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
5 RECOMMENDED BY THE COURT.

6 **NOTICE - COST ASSESSMENT!**

7 IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC
8 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS
9 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
10 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
11 PROFESSIONS CODE SECTION 6086.10.

12 Respectfully submitted,

13 THE STATE BAR OF CALIFORNIA
14 OFFICE OF THE CHIEF TRIAL COUNSEL

15 DATED: October 12, 2011

16 By: 

17 TREVA R. STEWART
18 Deputy Trial Counsel

19 Assigned Deputy Trial Counsel:

20 Mark Hartman
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1 **DECLARATION OF SERVICE BY CERTIFIED MAIL AND REGULAR U.S. MAIL**

2 **CASE NUMBER: 11-O-12291**

3 I, the undersigned, over the age of eighteen (18) years, whose business address and place
4 of employment is the State Bar of California, 180 Howard Street, San Francisco, California
5 94105, declare that I am not a party to the within action; that I am readily familiar with the State
6 Bar of California's practice for collection and processing of correspondence for mailing with the
7 United States Postal Service; that in the ordinary course of the State Bar of California's practice,
8 correspondence collected and processed by the State Bar of California would be deposited with
9 the United States Postal Service that same day; that I am aware that on motion of party served,
service is presumed invalid if postal cancellation date or postage meter date on the envelope or
package is more than one day after date of deposit for mailing contained in the affidavit; and that
in accordance with the practice of the State Bar of California for collection and processing of
mail, I deposited or placed for collection and mailing in the City and County of San Francisco,
on the date shown below, a true copy of the within

10 **NOTICE OF DISCIPLINARY CHARGES**

11 in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
12 Article No.: 7160 3901 9849 1845 8010, at San Francisco, on the date shown below, addressed
to:

13 **Joseph Barrera**
14 **Law Offices of Joseph C. Barrera**
15 **511 Chestnut St**
16 **Santa Cruz, CA 95060**

17 in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

18 N/A

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

21 DATED: October 12, 2011

22 Signed: 
23 Meagan McGowan
24 Declarant