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

<p>Counsel For The State Bar</p> <p>Treva R. Stewart 180 Howard Street San Francisco, CA 94105 (415) 538-2452</p> <p>Bar # 239829</p>	<p>Case Number(s): 11-O-15838; 11-O-15762; 11-O-15839</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED <i>ef</i> JAN 03 2012</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Daniel B. Halpern Halpern Law Offices 111 N Market St Ste 910 San Jose, CA 95113</p> <p>Bar # 189336</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Daniel B. Halpern</p> <p>Bar # 189336</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 6/22/97.
- (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 11 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."

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- (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: three billing cycles following the effective date of the Supreme Court order. (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.
- (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.

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- (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. Respondent has been cooperative with the State Bar's investigation. He has provided requested documentation and demonstrated a willingness to meet and explore opportunities for resolution of the pending matters.
- (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:

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

(2) **Probation:**

Respondent must be placed on probation for a period of one year, 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 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.

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- (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:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions 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**

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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:** See Stipulation Attachment

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DANIEL B. HALPERN
CASE NUMBER(S): ET AL. 11-O-15838; 11-O-15762; 11-O-15839

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

FACTS AND CONCLUSIONS OF LAW.

Lee Mitchell 11-O-15838

FACTS:

1. On March 1, 2011 Respondent was hired by Lee Mitchell (hereinafter "Mitchell") for representation in a family law matter. Mitchell paid Respondent \$2500 by check dated March 4, 2011. Respondent cashed the check on or about March 5, 2011.
2. On March 28, 2011 Mitchell sent an e-mail to Respondent requesting that he perform no further work until further notice.
3. On April 1, 2011, April 8, 2011, and April 16, 2011, Mitchell sent e-mails to Respondent wherein he requested, inter alia, an itemized bill, a refund of remaining fees and completed work.
4. On April 10, 2011 Respondent informed Mitchell by e-mail that he would definitely get him "all closed out shortly." However, Respondent's email did not respond to Mitchell's requests for an itemized bill, refund of remaining fees and/or completed work.
5. Respondent submitted invoices to Mitchell on April 30, 2011 and June 17, 2011 which ultimately reflected unearned fees in the amount of \$1762.50. Mitchell disputed portions of both invoices.
6. On June 17, 2011 Respondent issued a check to Mitchell in the amount of \$1762.50. Said check was drawn on account number XXXXXX2549, Respondent's client trust account. On or before June 17, 2011 Respondent had deposited his own monies into account number XXXXXX2549 to cover the check he wrote to Mitchell.

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CONCLUSION OF LAW:

7. By depositing his own funds into account number XXXXXX2549, Respondent deposited or commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by depositing or commingling funds belonging to his client.

Matthew Neil 11-O-15762

FACTS:

8. In September 2009 Respondent was hired by Matthew Neil (hereinafter "Neil") to represent him in a divorce case.

9. On August 18, 2010 Neil emailed a communication to Respondent which reflected, inter alia, Neil's opinions and thoughts regarding a contested issue in his divorce case. Respondent forwarded Neil's entire communication, unedited, to the opposing counsel in Neil's case. Respondent did not seek nor obtain Neil's authorization to disclose the communication to a third party.

CONCLUSION OF LAW:

10. By forwarding Neil's email to opposing counsel, unedited, and without Neil's permission, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Christine Bettencourt 11-O-15839

FACTS:

11. In December 2008 Respondent was hired by Christine Bettencourt (hereinafter "Bettencourt") to represent her in a divorce proceeding. Respondent was to be paid on an hourly basis for the representation. The matter proceeded uncontested.

12. On February 26, 2009, the court awarded Bettencourt \$1992 in child support and \$446 in spousal support.

13. Between February 26, 2009 and August 11, 2009, Bettencourt contacted Respondent's office on several occasions requesting information regarding enforcement of the order and the status of

her matter. While Bettencourt was able to discuss her concerns with Respondent's administrative staff on some occasions, Respondent did not respond to Bettencourt.

14. Respondent did not file the findings and order for the child and spousal support until August 11, 2009. Respondent's delay in filing the findings and order was unreasonable and unnecessary.

15. To date Bettencourt has paid Respondent \$1,600.

CONCLUSION OF LAW:

16. By failing to respond to Bettencourt's requests for information and delaying unreasonably and unnecessarily in filing the findings and order, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was December 12, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.2(b) imposes a minimum "three month actual suspension from the practice of law, irrespective of mitigating circumstances" for culpability for commingling. Standard 2.4(b) imposes reproof or suspension for the wilfull failure to perform services in an individual matter or matters not demonstrating a pattern of misconduct.

Case law supports the agreed upon discipline: *In the Matter of Whitehead* (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354; *Waysman v. State Bar* (1986) 41 Cal.3d 452; *In the Matter of Sullivan* (Rev. Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 12, 2011, the prosecution costs in this matter are approximately \$5,473. 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.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

RESTRICTIONS WHILE ON ACTUAL SUSPENSION.

During the period of actual suspension, respondent shall not:

Render legal consultation or advice to a client;

Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

Appear as a representative of a client at a deposition or other discovery matter;

Negotiate or transact any matter for or on behalf of a client with third parties;

Receive, disburse, or otherwise handle a client's funds; or

Engage in activities which constitute the practice of law.


Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the Office of Probation, pertaining to periods in which the respondent was actually suspended from the practice of law.

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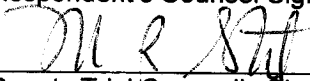
In the Matter of: Daniel B. Halpern (SBN 189336)	Case number(s): 11-O-15838; 11-O-15762; 11-O-15839
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SIGNATURE OF THE PARTIES

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.

<u>12/12/11</u> Date	 Respondent's Signature	<u>Daniel B. Halpern</u> Print Name
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<u>12/12/11</u> Date	<u>n/a</u> Respondent's Counsel Signature	<u>n/a</u> Print Name
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<u>12/12/11</u> Date	 Deputy Trial Counsel's Signature	<u>Treva R. Stewart</u> Print Name
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In the Matter of: Daniel B. Halpern (SBN 189336)	Case Number(s): 11-O-15838; 11-O-15762; 11-O-15839
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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.

1. On page 4 of the stipulation, an "X" is inserted in the box at paragraph D.(1)(b).
2. On page 8 of the stipulation, at paragraph 10, the following language is added after "competence": "in willful violation of rule 3-110(A) of the Rules of Professional Conduct."
3. On page 9 of the stipulation, at paragraph 16, the following language is added after "competence": "in willful violation of rule 3-110(A) of the Rules of Professional Conduct."

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

Jan 3, 2012


Judge of the State Bar Court

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 January 3, 2012, 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:

DANIEL B. HALPERN
HALPERN LAW OFFICES
111 N MARKET ST STE 910
SAN JOSE, CA 95113

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:

Treva Stewart, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 3, 2012.


George Hue
Case Administrator
State Bar Court