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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar R. Kevin Bucher Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1630 Bar # 132003	Case Number(s): 12-N-16487	For Court use only <div style="text-align: center;"> FILED FEB 21 2013 <i>Mc</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent John Herman Feiner Law Offices of John H. Feiner 33 Brookline Aliso Viejo, CA 92656 Bar # 89201	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of: John Herman Feiner Bar # 89201 A Member of the State Bar of California (Respondent)		
Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <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 November 29, 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 (10) 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 07-O-10929 (07-O-11069; 07-O-12497; 07-O-14079; 10-O-03813; 10-O-05646)
- (b) ☒ Date prior discipline effective June 22, 2012
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: See attachment Page 7.
- (d) ☒ Degree of prior discipline Respondent was suspended for two years, stayed, placed on one year of probation with an actual six month suspension and until he makes restitution and provides proof to the court of his rehabilitation, fitness to practice law and present learning and ability in the law.
- (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.
- (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 fell ill in June 2012, affecting his finances and ability to comply with his probation terms.

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: John Herman Feiner

CASE NUMBER(S): 12-N-16487

FACTS AND CONCLUSIONS OF LAW.

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.

Case No. 12-N-16487

1. On May 23, 2012, the California Supreme Court issued Order No. S200328 (hereinafter "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) of that rule within 30 and 40 days, respectively, after the effective date of the 9.20 Order.
2. On May 23, 2012, 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 June 22, 2012, thirty days after the 9.20 Order was filed. Thus Respondent was ordered to comply with subdivision (a) and/or (b) of rule 9.20 of the California Rules of Court no later than on July 22, 2012, and was ordered to comply with subdivision (c) of Rule 9.20 no later than on August 1, 2012.
4. Respondent attempted to file with the clerk of the State Bar Court his Rule 9.20 compliance declaration required by subdivision (c) (hereinafter "declaration") on August 1, 2012. However, the declaration was rejected as Respondent checked both boxes under item 3, indicating he both "refunded fees paid any part of which had not been earned" or, "as of the date of the order to comply with rule 9.20 was filed, [he] had earned all fees paid to [him]." Respondent did not provide proof of certified mailing advising his clients and opposing counsel of his suspension, as Rule 9.20 requires.
5. The State Bar Office of Probation sent a letter to Respondent on August 2, 2012 advising him that the declaration was rejected for noncompliance with the requirements of Rule 9.20. He was further advised in a telephone conversation with a probation officer that he would need to file a corrected declaration.
6. To date, Respondent has not filed a compliant 9.20 declaration.

CONCLUSION OF LAW

1. By not timely filing a declaration of compliance with Rule 9.20 in conformity with the requirements of Rule 9.20(c), Respondent failed to comply with the provisions of Supreme Court Order No. S200333 requiring compliance with Rule 9.20, California Rules of Court. By the foregoing conduct, Respondent willfully violated rule 9.20, California Rules of Court.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline:

Respondent was suspended from practice pursuant to stipulation and order of the Supreme Court dated May 23, 2012. In five criminal actions, Respondent was paid advance fees then failed to return the unearned portion of the fees. In a separate action, the Orange County Superior assumed jurisdiction over respondent's law practice and froze all client trust and law practice bank accounts. He then withdrew or debited money from the frozen accounts in approximately 67 transactions, disobeying the court order. He also misrepresented to a client that the Orange County court order was void, committing an act of moral turpitude, dishonesty, or corruption. For the above he was charged with five violations of 3-700(D)(2), one violation of 6068(d), one violation of 6103, and one violation of 6106. Respondent was suspended for two years, stayed, placed on one year of probation with an actual six month suspension and until he makes restitution and provides proof to the court of his rehabilitation, fitness to practice law and present learning and ability in the law.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

Standard 2.6 provides that culpability of a member of a violation of any of the several enumerated provisions of the Business and Professions Code, including section 6103 (violation of a court order) shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3. Although Respondent is not charged under section 6103 in this matter, his violation of rule 9.20 was also a violation of an order of the Supreme Court.

Standard 1.7(a) states that if a member has a prior discipline, the degree of discipline in the current proceeding shall be greater than the discipline imposed in the prior proceeding unless the prior discipline was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing a greater discipline in the current proceeding would be manifestly unjust.

In *Bercovich v. State Bar* (1990) 50 Cal.3d 116, the Supreme Court was asked to review a case wherein the Review Department of State Bar Court recommended that an attorney be disbarred for having willfully violated an order of Supreme Court that required him to comply with Rule 955 of California Rules of Court (the predecessor to the current Rule 9.20) while on interim suspension during disciplinary proceedings for conviction of grand theft. The Supreme Court held that willful failure to notify clients of suspension and failure to file a declaration with the Supreme Court concerning client notification warrants disbarment. To avoid disbarment, the attorney must generally prove substantial mitigation. *Shapiro v State Bar* (1990) 51 Cal.3d 251.

Given Respondent's prior discipline, including actual suspension, and his willful violation of Rule 9.20, disbarment is the appropriate level of discipline. Also, pursuant to Standard 2.6, Respondent's failure to comply with rule 9.20 invokes Business and Professions Code section 6103, in that Respondent has failed to comply with an order of the Supreme Court, which further subjects him to disbarment. Further, in aggravation Respondent has a prior discipline dating back only to May 2012. Applying Standard 1.7(a), given that the prior discipline was in no way remote, and involved actual suspension for a fairly serious series of infractions, greater discipline in the present case is appropriate. Taking all factors into consideration, disbarment is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 5, 2012, the prosecution costs in this matter are \$2,382.00. 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.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was January 17, 2013.

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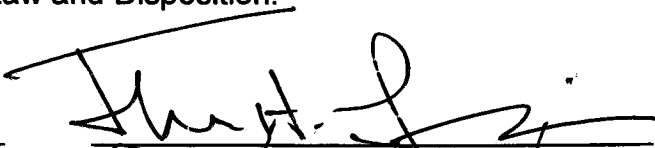
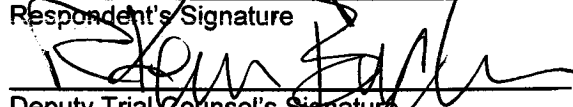
In the Matter of
John Herman Feiner

Case number(s):
12-N-16487

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.

1/22/13
Date
1-30-13
Date


Respondent's Signature

Deputy Trial Counsel's Signature

John Herman Feiner
Print Name
R. Kevin Bucher
Print Name

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In the Matter of: John Herman Feiner	Case Number(s): 12-N-16487
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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.
- Page 2, paragraph B.(1)(d): At the end of the sentence, add "if he is suspended two years or more."
 - Page 7, first paragraph: Replace "S200333" with "S200328".
 - Page 7, at the end of second paragraph: Add "if he is suspended two years or more."

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 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.

Date

2/20/13

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 Los Angeles, on February 21, 2013, 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 - DISBARMENT**

in a sealed envelope for collection and mailing on that date as follows:

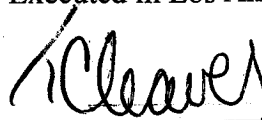
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOHN HERMAN FEINER
LAW OFC JOHN H FEINER
33 BROOKLINE
ALISO VIEJO, CA 92656**

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

R. KEVIN BUCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 21, 2013.



Tammy Cleaver
Case Administrator
State Bar Court