

ORIGINAL

**State Bar Court of California
Hearing Department
Los Angeles
REPROVAL**

Counsel For The State Bar

**Patrice Vallier-Glass
Deputy Trial Counsel
845 S. Figueroa St.
Los Angeles, CA 90017
(213) 765-1180**

Bar # 305900

Case Number(s):
16-O-12664-DFM

For Court use only

PUBLIC MATTER

FILED
Me

MAR - 2 2018

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

Counsel For Respondent

**Edward Lear
Century Law Group LLP
5200 W Century Blvd. #345
Los Angeles, CA 90045
(310) 642-6900**

Bar # 132699

Submitted to: **Settlement Judge**

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING

In the Matter of:
BARRY FISCHER

PUBLIC REPROVAL

☐ PREVIOUS STIPULATION REJECTED

Bar # 122412

A Member of the State Bar of California
(Respondent)

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 **January 24, 1986**.
- (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."



T
22-18

(Do not write above this line.)

- (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 are added to membership fee for calendar year following effective date of discipline (public reproof).
 - ☐ Case ineligible for costs (private reproof).
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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.
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **02-O-12715**
 - (b) ☒ Date prior discipline effective **September 11, 2003**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations:
Rules of Professional Conduct, rule 3-110(A)
 - (d) ☒ Degree of prior discipline **Private Reproof**

(Do not write above this line.)

- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☐ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

Prior Record of Discipline, see page 8; see also Exhibit 1 (11 pages).

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(Do not write above this line.)

- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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.
See page 8.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Financial Difficulties, see pages 8-9.

Pretrial Stipulation, see page 9.

D. Discipline:

- (1) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproval for a period of **one year**.
- (2) ☒ During the condition period attached to the reproval, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (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 reproval. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the reproval conditions period, 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 condition period attached to the reproval. 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 the reproval during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of reproval with the probation monitor to establish a manner and schedule of compliance. During the reproval conditions period, Respondent must furnish 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 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 conditions attached to the reproval.
- (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) ☒ 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 within one year of the effective date of the reproval.

(Do not write above this line.)

☐ No MPRE recommended. Reason:

(11) ☐ 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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BARRY FISCHER

CASE NUMBER: 16-O-12664-DFM

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. 16-O-12664 (Complainant: Mario Gutierrez)

FACTS:

1. On September 29, 2011, Mario Gutierrez ("Gutierrez") hired respondent to represent him in a dissolution proceeding. That same day, Gutierrez paid respondent an advanced fee of \$5,000.
2. On March 7, 2014, after Gutierrez and his wife reconciled, Gutierrez terminated respondent's services and requested a refund.
3. On March 25, 2014, respondent emailed Gutierrez an accounting that identified \$1,000 in legal services respondent performed during the course of their relationship. That same day, Gutierrez emailed respondent, acknowledged respondent's accounting, and agreed to a refund of \$4,000.
4. On April 3, 2014, respondent paid Gutierrez \$1,000 towards the \$4,000 respondent owed Gutierrez in unearned fees, which left \$3,000 due to Gutierrez consistent with the parties agreed upon \$4,000 refund.
5. In December 2014, respondent paid Gutierrez an additional \$1,000 towards the \$3,000 respondent still owed Gutierrez in unearned fees, which left \$2,000 due to Gutierrez consistent with the parties agreed upon \$4,000 refund.
6. On January 22, 2016, respondent issued check #5002 for \$1,000 from respondent's Bank of America account. However, on February 4, 2016, Gutierrez received a notice from his bank, Wells Fargo, that there were insufficient funds in respondent's account to cover the \$1,000 check respondent issued. Respondent failed to issue a new check.
7. On April 7, 2016, Gutierrez made a State Bar complaint.
8. On August 23, 2016, a State Bar investigator sent a letter to respondent regarding Gutierrez's State Bar complaint.
9. On August 25, 2016, respondent issued Gutierrez a \$2,000 cashier's check.

WT
2-22-18

10. In October 2017, despite already refunding the \$4,000 unearned fee, respondent refunded Gutierrez an additional \$1,000.

CONCLUSION OF LAW:

11. By failing to promptly refund to his client \$4,000 in unearned fees until August 25, 2016, despite Gutierrez's termination of respondent's employment on March 7, 2014, respondent failed to promptly refund, upon termination of employment, any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a prior private reproof in case number 02-O-12715, effective September 11, 2003. Respondent stipulated to a violation of rule 3-110(A) of the Rules of Professional Conduct arising out of two cases involving the same client. The misconduct occurred in 2002. Respondent filed a Notice of Ruling in the matter, falsely representing to the court that the judge granted respondent's request. By failing to supervise properly the preparation of the Notice of Ruling, respondent violated Rules of Professional Conduct, rule 3-110(A). Later, in a different matter with the same client, respondent failed to notice the false representations regarding the Notice of Ruling from the first case. As a result, respondent filed a notice of motion and motion for order setting aside a court order of dismissal, along with a declaration, in which respondent again misrepresented that the judge from the previous case granted respondent's request. By failing to properly supervise the preparation of the notice of motion and motion for order setting aside a court order of dismissal, respondent violated Rules of Professional Conduct, rule 3-110(A).

MITIGATING CIRCUMSTANCES.

Good Character (Std. 1.6(f)): Respondent provided 14 character letters attesting to his good character from a range of references, including those in the legal and general communities, who are aware of the full extent of respondent's misconduct. A trauma-release therapist, who has known respondent for 10 years, stated that respondent focuses his attention on his clients and is a man of integrity, with strong ethics, patience, and compassion. A client attested that respondent handled her move-away Request for Order *pro bono*, and showed loyalty, compassion, and integrity. An attorney and friend who has known respondent for 11 years stated that respondent has made charitable contributions to the Los Angeles community and represents clients *pro bono*. Two retired judges attested that whenever respondent appeared before them in mediation, he was professional, courteous, well-prepared, and zealously represented his clients, contributing positively to the settlements and outcomes. Another retired judge attested that she first met respondent 20 years ago and he has appeared before her on many occasions. Eight of respondent's clients attested that despite being aware of respondent's misconduct, each would still recommend his services. They also noted that respondent has performed legal services at reduced rates or *pro bono*.

Financial Difficulties: Respondent provided the State Bar with evidence regarding financial difficulties due to his prior employer not paying him an agreed-upon salary over a two-year period beginning in 2014. The evidence provided shows that the financial difficulties were beyond respondent's control. Respondent stated that these difficulties affected his ability to repay timely the unearned fees to the client, which indicates a nexus between the financial difficulties and his professional misconduct. (See *Grim v. State Bar* (1991) 53 Cal. 3d 21, 31 [financial problems can be a mitigating factor when

circumstances show that the financial pressures are not reasonably foreseeable or beyond the attorney's control[.]

Pretrial Stipulation: By entering into this stipulation, respondent acknowledges his misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.7(c) indicates that suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients. Here, the misconduct involved only one client, and though respondent took over two years to return unearned fees to that client, respondent did ultimately return the unearned fees as well as the \$1,000 that the parties previously agreed that respondent earned.

Since respondent has one prior record of discipline, Standard 1.8(a) also applies. It states, “If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.”

Here, a public reproof is appropriate: respondent has a prior record of discipline that is not remote in time and is serious enough to justify progressive discipline. In two separate litigated matters described in the prior record of discipline, respondent failed to supervise the drafting of pleadings. That failure to supervise contributed to false statements ultimately filed with the court in those pleadings. In light of the current misconduct, the aggravating and mitigating circumstances, a public reproof is appropriate in this matter, and there is no reason to deviate from Standard 1.8(a).

Case law also supports a public reproof. In *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, the court imposed a public reproof using a standards-based analysis following Hanson's failure to refund unearned fees for 15 months, and then only after the State Bar intervened. Hanson also had a prior private reproof, ordered 19 years prior, for failure to perform with competence. (*Id.*)

Like *Hanson*, respondent failed to refund unearned fees promptly. Also like *Hanson*, respondent also has a previous private reproof for a failure to perform with competence. Though respondent took more than 29 months to refund the unearned fees in multiple installments while Hanson returned unearned fees after just 15 months, respondent did refund all fees paid by his client, even those fees that the parties previously agree he earned. After balancing the aggravating and mitigating circumstances against respondent's failure to return unearned fees for more than two years, and his subsequent refund of all fees paid to him, the facts and circumstances of this case warrant a public reproof.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 14, 2018, the discipline costs in this matter are \$5,816. 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.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

WT
2-22-18

(Do not write above this line.)

In the Matter of: BARRY FISCHER	Case number(s): 16-O-12664-DFM
-------------------------------------------	------------------------------------------

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>2/20/18</u>	<u>[Signature]</u>	<u>Barry Fischer</u>
Date	Respondent's Signature	Print Name
<u>2/21/18</u>	<u>[Signature]</u>	<u>Edward Lear</u>
Date	Respondent's Counsel Signature	Print Name
<u>2/22/18</u>	<u>[Signature]</u>	<u>Patrice Vallier-Glass</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: BARRY FISCHER	Case Number(s): 16-O-12664-DFM
------------------------------------	-----------------------------------

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☒ All court dates in the Hearing Department 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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

March 2, 2018


LUCY ARMENDARIZ
Judge of the State Bar Court

Reproof Order

ORIGINAL

Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ERIN JOYCE, No. 149966 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1000	Case number(s) 02-0-12715	(for Court's use) FILED AUG 27 2003 STATE BAR COURT CLERKS OFFICE LOS ANGELES
Counsel for Respondent R. Gerald Markle Pansky & Markle 1114 Fremont Avenue South Pasadena, CA 91030-3227	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input checked="" type="checkbox"/> PRIVATE <input type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of Barry Fischer Bar # 122412 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 24, 1986 (date).
- (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 and order consist of 9 pages.
- (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) 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.
- (7) **Payment of Disciplinary Costs**—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☐ costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - ☒ case ineligible for costs (private reproof)
 - ☐ costs to be paid in equal amounts for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth under "Partial Waiver of Costs"
 - ☐ costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

(8) The parties understand that

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 or under "Prior Discipline".

(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 to 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.

(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) ☒ Private reproof (check applicable conditions, if any, below)

(a) ☒ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).

(b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

(2) ☐ Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

(1) ☒ Respondent shall comply with the conditions attached to the reproof for a period of one (1) year.

(2) ☒ During the condition period attached to the reproof, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office and to the Probation Unit, 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) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (5) ☐ Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the monitor.
- (6) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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 conditions attached to the reprobation.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- ☐ No Ethics School ordered.
- (8) ☐ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.
- (9) ☒ Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the reprobation.
- ☐ No MPRE ordered.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|-----------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (11) ☒ Other conditions negotiated by the parties: See Stipulation Attachment

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BARRY FISCHER

CASE NUMBER: 02-O-12715

FACTS AND CONCLUSIONS OF LAW

Case No. 02-O-12715 – Violation of Rule of Professional Conduct 3-110(A)

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

On January 1, 2002, Steven J. Stanwyck (“Stanwyck”) retained Respondent to assist Stanwyck in several pending actions. At the time, Stanwyck was suffering from an array of illnesses.

Shortly thereafter, Respondent hired additional staff to assist in the preparation of the all the paperwork with regard to the pending actions.

The Stanwyck v. Felder Case

On March 15, 2002, Respondent appeared on behalf of Stanwyck in the matter of Stanwyck v. Felder (“the Felder case”), Los Angeles County Superior Court Case No. BC 254633, before Judge Alan G. Buckner (“ Judge Buckner”). At this hearing, Respodent filed a request for accommodations for person with disabilities, base on claimed disabilities of Stanwyck. Judge Buckner deferred ruling on that request and stated that the court would consider whether the court would order independent medical examinations to ascertain the truth regarding Stanwyck’s alleged disabilities.

In or about March 2002, Respondent requested his office staff to prepare a Notice of Ruling.

Subsequently, on March 25, 2002, Respondent filed a Notice of Ruling in the Stanwyck matter, in which Respondent falsely represented to the court that the Judge Buckner had granted Respondent’s request for accommodations for person with disabilities.

On March 27, 2002, several defendants in the Stanwyck matter objected to the false Notice of Ruling and the counsel for defendants, William J. Kramer (“Kramer”), alerted the court to the error in Respondent’s Notice of Ruling filed on March 25, 2002.

On March 29, 2002, Judge Buckner sustained those objections and admonished Respondent for having made false misrepresentations to the court.

By failing to properly supervise the preparation of the Notice of Ruling in the Stanwyck v. Felder case, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

The Howery & Simon Action

In April 2002, Respondent also represented Stanwyck in another pending lawsuit entitled North America, Timeshare, Inc. and Stanwyck v. Howrey & Simon, Los Angeles County Superior Court Case No. SC 0568465 (the "Howrey & Simon action").

On April 20, 2002, Respondent took a personal vacation cruise for a week. Respondent asked his staff to prepare a file in his absence, a motion to set aside orders in the Howrey & Simon action.

Although the staff sent Respondent a draft of his declaration via e-mail, Respondent and office staff failed to note the false representations regarding the March 15, 2002 hearing in the Felder case.

In April 2002, Respondent filed a notice of motion and motion for order setting aside a court order of dismissal, along with a declaration, in which he again misrepresented that Judge Buckner had granted Respondent's request for accommodations on March 15, 2002, in the Stanwyck v. Felder case.

By failing to properly supervise the preparation of the notice of motion and motion in the Howery & Simon action, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

AUTHORITIES SUPPORTING DISCIPLINE

STANDARDS FOR ATTORNEY SANCTIONS

Pursuant to Standard 1.3 of the Standards of Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the protection of public confidence in the legal profession.

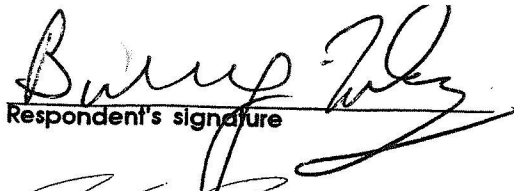
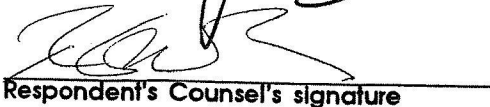
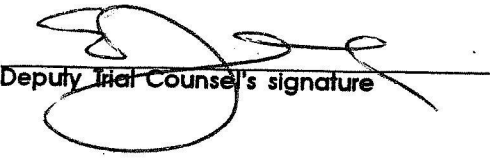
Pursuant to standard 2.4(b), culpability of a member of wilfully failing to perform services in a client matter shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES

Respondent shall successfully complete six (6) hours of participatory continuing legal education courses in attorney/client relations above those required for his license and provide proof of completion within one (1) year of the effective date of the order approving this stipulation re facts, conclusions of law and disposition to the Probation Unit of the State Bar of California.

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A.(6), was July 24, 2003.

Date 8-14-03 Respondent's signature  BARRY FISCHER
print name
Date 8-18-03 Respondent's Counsel's signature  R. GERALD Markle
print name
Date 8-18-03 Deputy Trial Counsel's signature  ERIN MCKEOWN JOYCE
print name

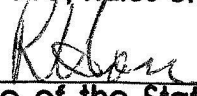
ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

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 135(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date 8/26/03 Judge of the State Bar Court 
RICHARD A. HONN

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 August 27, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed August 27, 2003**

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

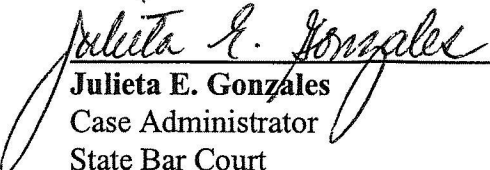
☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**R GERALD MARKLE ESQ
PANSKY & MARKLE
1114 FREMONT AVE
SOUTH PASADENA, CA 91030**

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

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 27, 2003**.


Julieta E. Gonzales
Case Administrator
State Bar Court

07-000010



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST January 12, 2018

State Bar Court, State Bar of California,
Los Angeles

By Elizabeth Alley
Clerk

07-000011

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 March 2, 2018, 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 Los Angeles, California, addressed as follows:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

PATRICE N. VALLIER-GLASS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 2, 2018.


Marc Krause
Court Specialist
State Bar Court