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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar	Case Number (s)	(for Court's use)
Eli D. Morgenstern **Deputy Trial Counsel** **1149 South Hill Street** **Los Angeles, CA 90015-2299** **(213) 765-1334** Bar # **190560**	**05-O-03346-DFM**	PUBLIC MATTER FILED FEB 28 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent **Arthur Margolis** **2000 Riverside Drive** **Los Angeles, CA 90039** **(323) 953-8996** Bar # **57703**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **REPROVAL** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter Of: **Scott M. Shields** Bar # **165787** 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 **September 23, 1993**.

(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 **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 added to membership fee for calendar year following effective date of discipline (public reproval)
- ☐ case ineligible for costs (private reproval)
- ☐ 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 in a separate attachment entitled "Partial Waiver of Costs"
- ☐ costs entirely waived

(9) The parties understand that:

(a) ☐ A private reproval 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 officials 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 reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidents of a prior record of discipline under the Rules of Procedure of the State Bar.

(b) ☐ A private reproval 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 reproval 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 a separate attachment entitled "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. **Please see page nine.**

(2) ☒ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct. **Please see page nine.**

(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 $ o n i n 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:

Please see page nine.

D. Discipline:

(1) ☐ **Private reproval (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 reproval (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 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 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 probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, 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.

☐ 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: SCOTT M. SHIELDS

CASE NUMBER(S): 05-O-03346-DFM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statute.

Facts

1. On June 12, 2000, Linda Gertjejansen ("Linda") and Gregory Gertjejansen ("Greg," collectively the "Gertjejansens") were injured in an automobile accident. Linda was in the course and scope of her employment for Kemper Insurance ("Kemper"). Greg was driving Linda because a prior injury prevented her from operating an automobile. Greg was not an employee of Kemper, but Linda's supervisors at Kemper knew that Greg was acting as Linda's driver during the course and scope of her employment.

2. In or about May 2002, the Gertjejansens terminated their prior attorney and hired Respondent to represent them in their personal injury case against the driver of the other automobile who was insured by Nationwide Insurance and Linda's workers' compensation case against Kemper. At or about this time, Respondent also advised the Gertjejansens that Greg had a potential workers' compensation case against Kemper under a "special employee" theory pursuant to Labor Code section 3357. Greg indicated to Respondent that he wanted Respondent to pursue a workers' compensation case on his behalf.

3. Respondent explained to Greg and Linda that for strategic purposes, Respondent wanted to assert or file the claim when the injuries suffered by Linda as a result of the automobile accident became permanent and stationary and her workers' compensation case was ready for settlement. The injuries suffered by Linda as a result of the automobile accident never became permanent and stationary while she was represented by Respondent in her workers' compensation case. Greg also continued to treat for injuries throughout the time that Respondent represented the Gertjejansens.

4. On October 1, 2002, Respondent settled the Gertjejansens' personal injury case against the driver of the other automobile with Nationwide. Nationwide agreed to pay the Gertjejansens the policy limits of $25,000 per person.

5. On November 26, 2002, Respondent received settlement checks from Nationwide totaling $50,000, which he deposited into his client trust account at Desert Community Bank, Account No. 07005911-01 ("CTA").

6. On December 12, 2002, Respondent met with the Gertjejansens to discuss their cases and give Greg a check for $9,000 from the settlement of his personal injury case.

7. On January 31, 2003, Respondent paid attorneys' fees of 1/3 of the $50,000, or $16,666.66, to himself and the Gertjejansens' former attorney. After paying the attorneys' fees, Respondent was required to maintain the sum of $24,333.34 in trust in his CTA for the Gertjejansens, *i.e.*, $16,666.67 for Linda and $7,666.67 for Greg and/or Greg's health care lien holder, Primax Recovery ("Primax").

8. On January 31, 2003, and during several other conversations between in or about January 2003 and April 21, 2003, Respondent advised the Gertjejansens that the $16,666.67 that he was required to maintain on behalf of Linda would remain in the CTA while Linda's workers' compensation was pending.

9. On January 31, 2003, and during several other conversations between in or about January 2003 and April 21, 2003, Respondent also advised the Gertjejansens that the $7,666.67 that Respondent was required to maintain on behalf of Greg would remain in the CTA because Respondent intended, at Greg's request, to file a workers' compensation claim on Greg's behalf when Respondent was ready to settle Linda's workers' compensation claim. Respondent explained to the Gertjejansens that he intended to use Greg's claim combined with leverage from Linda's claim to try to convince the workers' compensation carrier to settle some or all of Greg's ongoing treatment. Respondent explained to the Gertjejansens that if they were to have any success in negotiating a settlement of Greg's workers' compensation claim, the carrier would most likely want some, or all, of Greg's recovery from the personal injury case, which is why those funds needed to remain in the CTA.

10. On June 11, 2003, September 15, 2003, September 22, 2003, October 1, 2003, and October 27, 2003, the Gertjejansens faxed or mailed letters to Respondent requesting, *inter alia*, that he provide them with a written status report of their respective workers' compensation cases. Respondent received the letters; however, Respondent did not provide a written response the Gertjejansens inquiries.

11. On February 13, 2004, after the Gertjejansens had filed a complaint against Respondent with the State Bar, Respondent called the Gertjejansens and left two messages for them on their voice message system requesting that they call him to set up a meeting. The messages were the first attempts made by Respondent to communicate with the Gertjejansens since April 21, 2003.

12. On February 22, 2004, March 18, 2004 and June 9, 2004, the Gertjejansens mailed letters to Respondent requesting, *inter alia*, that he provide them with a written status report of

their respective workers' compensation cases. Respondent received the letters; however, Respondent did not provide a written response the Gertjejansens inquiries.

13. On August 25, 2004, Linda terminated Respondent as her attorney of record in her workers' compensation case and hired new counsel.

14. Subsequent to his termination, Respondent forwarded a check in the sum of $16,758.21 (the original $16,666.67 plus interest) to Kemper's workers' compensation carrier on behalf of Linda. Respondent also resolved the Primax lien and forwarded a check to them on Greg's behalf.

15. Prior to said disbursements, Respondent at all times maintained the Gertjejansens funds in the CTA.

Conclusion of Law

By failing to provide the status reports requested by the Gertjejansens, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client in wilful violation of Business and Professions Code section 6068(m).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was February 5, 2008.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

Case No.	Count	Alleged Violation
05-O-03346	One	Rule 3-110(A) of the Rules of Professional Conduct
05-O-03346	Two	Rule 4-100(B)(4) of the Rules of Professional Conduct
05-O-03346	Four	Rule 4-100(B)(3) of the Rules of Professional Conduct
05-O-03346	Five	Business and Professions Code section 6068(m)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of February 5, 2008, the costs in this matter are $3,654. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.6 of the Standards for Attorney Sanctions for Professional Misconduct ("Standard(s)") provides that culpability of a member of a wilful violation of Business and Professions Code section 6068, including section 6068(m), shall result in suspension or disbarment 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.

However, Standard 2.4(b) provides that culpability of a member of wilfully failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

In this matter, there is not clear and convincing evidence of any harm to the victim of Respondent's wilful failure to communicate.

MITIGATING CIRCUMSTANCES.

Absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious is a mitigating circumstance. (Std. 1.2(e)(i).) Respondent has been a member of the State Bar since September 23, 1993, and has no prior record of discipline.

Lack of harm to a client or the person who is the object of the misconduct is a mitigating circumstance under Standard 1.2(e)(ii). Here, apart from the frustration the Gertjejansens experienced as a result of Respondent's wilful failure to communicate with them, there is no clear and convincing evidence of any harm.

Respondent has a record of involvement in bar association and community service activities that demonstrate his good moral character and his commitment to the legal profession.

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.

(Do not write above this line.)

In the Matter of **Scott M. Shields**	Case number(s): **05-O-03346-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 Fact, Conclusions of Law and Disposition.

2-18-08 Date	Respondent's Signature	Scott M. Shields Print Name
2/21/08 Date	Respondent's Counsel Signature	Arthur L. Margolis Print Name
2/22/08 Date	Deputy Trial Counsel's Signature	Eli D. Morgenstern Print Name

(Do not write above this line.)

In the Matter Of **Scott M. Shields**	Case Number(s): **05-O-03346-DFM**

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- [x] 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 125(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 reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

February 27, 2008
Date

Judge of the State Bar Court

DONALD F. MILES

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 28, 2008, 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:

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

ARTHUR LEWIS MARGOLIS, ESQ.
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

ELI MORGENSTERN, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 28, 2008**.

Rose M. Luthi

Rose M. Luthi
Case Administrator
State Bar Court