



(Do not write above this line.)

State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
Counsel for the State Bar  Manuel Jimenez Deputy Trial Counsel/OCTC 180 Howard Street San Francisco, CA 94105  Bar # 218234	Case number(s) 03-H-4534 03-O-5101	(for Court's use)  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>jm</i>  JUL 2 2 2005  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent  John W. Evans P.O. Box 378 Walnut Creek, CA 94597-0378  Bar # 92161	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND            DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of John W. Evans  Bar # 92161  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 May 30, 1980 (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 15 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) 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.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years:  
2006; 2007  
(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

**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 00-0-13342

(b)  Date prior discipline effective September 11, 2002

(c)  Rules of Professional Conduct/ State Bar Act violations: Rules of Conduct; rule 4-100(A)

(d)  Degree of prior discipline Private Reprimand with Public Disclosure.

(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.

(Do not write above this line.)

- (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:

See Stipulation Attachment, section entitled "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.

(Do not write above this line.)

- (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)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of One Year.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) *Standards for Attorney Sanctions for Professional Misconduct.*
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following: \_\_\_\_\_
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of Two Years.  
which will commence upon the effective date of the Supreme Court order in this matter.  
(See rule 953, Calif. Rules of Ct.)

(Do not write above this line.)

(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of Thirty (30) Days.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following: \_\_\_\_\_

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(Do not write above this line.)

- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: \_\_\_\_\_
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended. Reason: \_\_\_\_\_
- (2)  **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: \_\_\_\_\_
- (5)  **Other Conditions:**
- See Attachment.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        John W. Evans

CASE NUMBER(S):        03-H-4534; 03-O-5101

**FACTS AND CONCLUSIONS OF LAW.**

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

**03-H-4534**

**Facts**

By order filed August 21, 2002 ("order"), effective on or about September 11, 2002, respondent was privately reprovved with public disclosure in State Bar Court case number 00-O-13342-JMR based on a Stipulation Re Facts, Conclusions of Law and Disposition.

Attached to the private reprovral were conditions with which respondent was required to comply for a period of one year: a) compliance with the provisions of the State Bar Act and Rules of Professional Conduct; b) prompt reporting to the State Bar Membership Records Office and Probation Unit ("Probation") of any change in information including current office and telephone number, as prescribed by section 6002.1 of the Business and Professions Code; c) submission of quarterly reports to Probation on each January 10, April 10, July 10 and October 10 of the one-year period with submission of a final report due no later than September 10, 2003, including statements under penalty of perjury as to whether respondent complied with the State Bar Act and Rules of Professional Conduct and all conditions of the reprovral during the preceding calendar quarter; d) truthful answers to any Probation inquiries relating to whether respondent was complying or had complied with the conditions attached to the reprovral; e) proof of attendance for State Bar Ethics School and passage of the test given at the end of the session within one year from the effective date of the reprovral; f) proof of passage of the Multi-State Professional Responsibility Examination ("MPRE") within one year from the effective date of the reprovral; and g) that respondent would in the future refrain from using any designated Client Trust Account for personal purposes and to abide by all rules and regulations relating to attorney client trust accounts.

On August 21, 2002, the State Bar Court served the order on respondent by first class mail, postage prepaid, at his official State Bar membership records address.

By letter dated September 19, 2002, State Bar Probation Deputy Eddie Esqueda ("Esqueda") sent a letter to respondent reminding respondent of the terms of the private reproval. Respondent received Esqueda's September 19, 2002 letter shortly thereafter.

By letter dated February 4, 2003, Esqueda advised respondent that Probation had not received respondent's first quarterly report and respondent was asked to submit the required report immediately. Respondent received Esqueda's February 4, 2003 letter shortly thereafter.

Respondent never submitted any quarterly probation reports to Probation. Nor did respondent ever communicate with Probation.

Respondent did not register for or attend State Bar Ethics School.

Respondent did not register for or take the MPRE.

#### Conclusions of Law

By failing to comply with the conditions attached to his private reproval, respondent wilfully violated rule 1-110 of the Rules of Professional Conduct, and Business and Professions Code, section 6103.

03-O-5101

#### Facts

On April 6, 2002, Steve Schember ("Schember") hired respondent to represent him, signed a fee agreement drafted by respondent, and paid \$950 in advance fees and costs. Over the course of representation respondent received a total of \$5,255 as advanced fees and costs. Schember's neighbors claimed an easement over Schember's property. *Egan v. Schember*, Contra Costa County Superior Court case number C02-00848, a quiet title action was filed by the neighbors.

Beginning in June 2003 Schember had difficulty reaching respondent and obtaining information from him regarding the case, including the trial date.

Respondent did not oppose plaintiffs' motion for summary judgment or appear at the July 10, 2003 hearing thereon. Respondent contends that he did not receive and was not aware of the motion for summary judgement. Summary judgment was granted on July 10, 2003, and reduced to a written Order Granting Motion for Summary Adjudication on August 6, 2003.

Respondent was present in court at the hearing at which the mandatory settlement conference ("MSC") date was set by the court. During the second week of September 2004 respondent told Schember that trial was set for late September 2003. Thereafter, respondent



specified that the trial date was September 23, 2003. Respondent did not communicate the date of – or fact of – the MSC to Schember. Neither respondent nor Schember appeared at the MSC in September 2003.

Because summary judgment was granted, the trial date of September 23, 2003, became a hearing on the amount of damages to be awarded plaintiffs. Shortly before September 23, 2003, respondent notified Schember of the summary judgment for the first time. Respondent did not review the summary judgment papers until September 29, 2003.

By order filed October 1, 2003, respondent and Schember were jointly sanctioned \$787.50 for failing to appear at the MSC. Respondent did not pay the sanctions. Schember paid \$1,014.25, which included interest, to the opposing counsel.

On October 22, 2003, the court issued its decision in *Egan v. Schember*.

By letter dated November 11, 2003, Matthew Webb, Esq. ("Webb"), Schember's new attorney, requested that respondent provide him with Schember's file so he could file a motion to set aside the default summary judgment. Webb noted that time was of the essence. Respondent received Webb's November 11, 2003 letter, but did not provide the file to Webb.

By letter dated December 9, 2003, Webb again requested the Schember file, noting that respondent had agreed to provide it the preceding Monday, but had not done so. Under cover of letter dated December 10, 2003, respondent provided Webb a portion of Schember's file.

By letter dated December 15, 2004, Webb requested the remainder of the Schember file.

On or about December 16, 2003, Schember submitted a complaint against respondent to the State Bar.

On or about December 18, 2004, respondent signed the substitution of attorney form in *Egan v. Schember*, and, on December 24, 2003, Webb caused it to be filed.

By letter dated January 6, 2004, respondent responded to Webb's December 15, 2004 letter, but he did not provide Webb with the remainder of the file.

By letter dated January 22, 2004, State Bar Investigator Francoise Jacobs requested a written response from respondent to Schember's allegations. Respondent received Jacobs's January 22, 2004 letter, but did not respond to it.

By letter dated January 29, 2004, requested the remainder of Schember's file from respondent.

By letter dated March 3, 2004, Jacobs requested for the second time a written response from respondent to Schember's allegations. Respondent received Jacobs's March 3, 2004 letter, but did not respond to it.

By order filed March 17, 2004, the motion to set aside the summary judgment was denied. The court found that respondent's declaration lacking in credibility. The court noted that the claim that the motion papers had not been received by respondent had never been previously raised, including at the time of the September 23, 2004 hearing on damages.

Although respondent provided most of Schember's papers to the new attorney by mid-June 2004, respondent had not fully returned all the papers and property to which Schember was entitled as of mid-November 2004.

#### Conclusions of Law

By failing to respond to reasonable status inquiries during June, July, August and early September 2003, respondent wilfully violated Business and Professions Code section 6068(m).

By failing to notify his client of the MSC and by failing to appear himself, and by failing to timely file a motion to set aside the default summary judgment, respondent recklessly failed to perform legal services with competence, respondent wilfully violated rule 3-110(A) of the Rules of Professional Conduct.

By failing to return Schember's file to his new attorney as requested, respondent wilfully violated rule 3-700(D)(1) of the Rules of Professional Conduct.

By failing to respond to the investigator's letters, respondent wilfully violated Business and Professions Code section 6068(i).

#### **PENDING PROCEEDINGS.**

There is no disclosure date, as referenced on page one, paragraph A.(6), because there are no pending investigation not covered by this stipulation as of May 24, 2005.

#### **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.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 13, 2005, the estimated prosecution costs in this matter are

approximately \$2,296.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.**

### The Standards

Standards for Attorney Sanctions for Professional Misconduct (“the standards”):

In determining the appropriate level of discipline, the court should look to the Standards for Professional Misconduct. *In re Morse* (1995) 11 Cal.4th 184, 206, the California Supreme Court stated;

“To determine the appropriate level of discipline ... we... must first look to the standards for guidance. ‘These guidelines are not binding on us, but they promote the consistent and uniform application of disciplinary measures. Hence we have said that ‘we will not reject a recommendation arising from application of the standards unless we have grave doubts as to the propriety of the recommended discipline.(Citation Omitted.)”

Standard 1.3 provides that the primary purposes of attorney discipline are, “the protection of the public, the courts and the legal profession, the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession.”

Despite the need to examine cases on an individual basis, it is also a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been largely achieved through the application of the Standards of Attorney Sanctions for Professional Misconduct. *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rper. 291.

Standard 2.4(a) provides that a member’s pattern of willful failure to perform services demonstrating abandonment of the causes in which he was retained shall result in disbarment. Under standard 2.4(b), where such failure to perform services involves an individual matter or matters not amounting to a pattern, the discipline shall be reproof or suspension, depending on the gravity of the harm and the extent of such misconduct.

Standard 2.6 provides that a member in violation of the delineated business and professions Code, including 6068 and 6103 shall result in disbarment or suspension.

Standard 2.9 provides that a member’s wilful violation of rule 1-110 shall result in suspension.

## **AGGRAVATING CIRCUMSTANCES.**

A. Prior Record of Discipline: (Standard 1.2(b)(I)). On December 15, 2004, Respondent was privately reprimanded, case number 00-O-13342, for trust account violations and failing to cooperate with the State Bar. As with the instant case, Respondent alleges that difficulties getting his mail was the cause of his lack of communication with the State Bar.

B. Harm to Client: (Standard 1.2(b)(iv)). Respondent's performance in the Steven Scheme case caused significant harm to his client. Mr. Scheme lost his case, and was forced to pay damages, including punitive damages, for following the advice of Respondent. The damages were exacerbated by Mr. Scheme's ignorance of the default ruling resulting from Respondent's failure to file an answer to the Motion for Summary Judgement. Mr. Scheme paid sanctions and interest resulting from the conduct of the Respondent. Mr. Scheme had to hire new counsel and unsuccessfully attempt to undo the damage caused by Respondent to his case.

C. Lack of Candor and Cooperation to any Victims or State Bar: (Standard 1.2(b)(vi)). Respondent blames the bulk of his problems on the U.S. Postal Service, claiming that he has not received several correspondences, including the State Bars, the aforementioned Motion for Summary Judgement, Decision of the Superior Court. Respondent has been uncooperative with his own client, his client's subsequent attorney and the State Bar.

## **MITIGATING FACTORS**

Extreme Emotional Difficulties: (Standard 1.2(e)(iv)). Respondent suffers from depression.

## **POINTS & AUTHORITIES REGARDING LEVEL OF DISCIPLINE**

### **Case Law**

The Court should also look at case authority in determining the appropriate level of discipline to determine whether the discipline is consistent or disproportional to prior decisions on the same set of facts. *Snyder v. State Bar* (1990) 49 Cal.3d 1302.

In *Wren v. State Bar*, the court suspended Respondent for two years, stayed; and actually suspended him for 45 days, where Respondent who was a member for 22 years, with no prior discipline, failed to perform for a period of 22 months, failed to communicate with his client, failed to return a file or an advance fee and misrepresented the status of the case to the client and to the State Bar. (1983) 34 Cal.3d 81, 192 Cal.Rptr. 743.

In *Conroy v. State Bar* (1991) 53 Cal.3d 495, respondent failed to timely file a tort claim on behalf of his client and failed to file an adjudication of claim with the Worker's Compensation Appeals Board (WCAB). Respondent misrepresented facts about the status of the cases, and failed to keep his client informed of the true status of the cases over a three year period. The California Supreme Court ordered respondent suspended for five years, execution of the suspension was stayed, and Respondent was placed on probation for five years subject to conditions including actual suspension for one year. In determining the appropriate discipline, the Court considered the fact that the respondent failed to participate in the disciplinary proceedings before the Hearing Department in the instant matter; as well as an earlier disciplinary matter. (Id. at 507.)

In *Hansen v. State Bar* (1978) 23 Cal.3d 68, the Respondent failed to timely file a tort claim within the one year statute of limitations, and neglected to pursue a workers' compensation claim on behalf of the client, and misrepresented to the client that the actions were progressing well. The California Supreme Court ordered the respondent actually suspended from the practice of law for six months.

In *In re Layton* (Review Dept. 1993) 2 State Bar Ct. Rptr. 366, Respondent repeatedly and recklessly failed to perform services in a single probate matter. Respondent failed to distribute the assets and close the estate for over five years and asserted in his defense that he was busy on other matters. He received two years stayed suspension, three years probation and six months actual suspension. The fact that Respondent has practiced for over thirty years with one prior was not deemed important.

In *Lester v. State Bar* (1976) 17 Cal.3d 547, Respondent was found to have wilfully failed to perform legal services in four matters in which he was retained, failed to communicate and failed to refund fees until forced to do so. He showed no mitigation. He received six months actual suspension.

#### **PARTICIPATION IN STATE BAR LAWYER'S ASSISTANCE PROGRAM.**

Respondent shall seek and participate in a program, course of conduct, or regime to treat his diagnosed depression. Respondent shall provide a declaration with his quarterly reports, or any other documents that probation may request, to his Probation Agent that he is engaged in such a program, course of conduct, or regime. If Respondent does not provide such documentary evidence, he shall be required within ten (10) days of receiving written notification to enroll in and actively participate in the State Bar Lap Program.

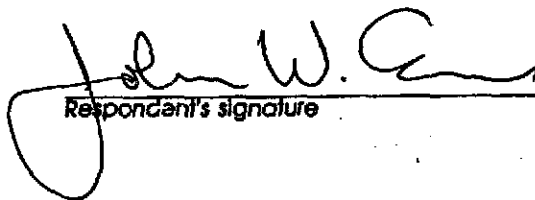
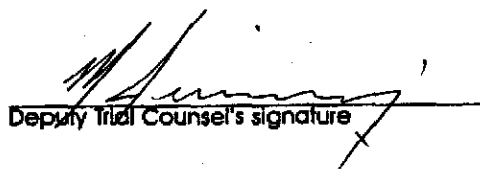
In signing this stipulation, respondent acknowledges that the State Bar Court's separate program for respondents with substance abuse or mental health conditions has been fully explained to him, that he has had an opportunity to request referral to that program, and that he has specifically declined to do so.

(Do not write above this line.)

In the Matter of John W. Evans	Case number(s): 03-H-4534 03-0-5101
-----------------------------------	---

### 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.

Date 7/14/05	 Respondent's signature	John W. Evans Print name
Date	Respondent's Counsel's signature	Print name
Date 7-18-05	 Deputy Trial Counsel's signature	Manuel Jimenez Print name

(Do not write above this line.)

In the Matter of  John W. Evans	Case number(s):  03-H-4534 03-0-5101
---------------------------------------	---

### 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.

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.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

July 22, 2005  
Date

Pat McElroy  
Judge of the State Bar Court

**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 San Francisco, on July 22, 2005, I deposited a true copy of the following document(s):

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

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

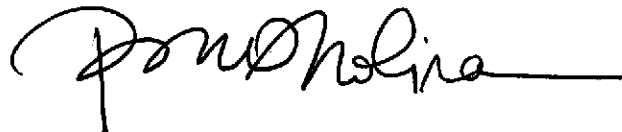
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JOHN W. EVANS  
P O BOX 378  
WALNUT CREEK CA 94597 0378**

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

**MANUEL JIMENEZ, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 22, 2005**.



---

**Bernadette C. O. Molina**  
Case Administrator  
State Bar Court