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

Counsel For The State Bar Joseph R. Carlucci 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1053 Bar # 172309	Case Number (s) 04-O-14528-DFM 05-O-01970-DFM 06-O-13491-DFM 05-O-00003 (invest.)	(for Court's use) <p align="center">FILED</p> <p align="center">JUN 28 2007 <i>fic</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p align="center">NOT FOR PUBLICATION</p>
In Pro Per Respondent Richard P. Herman Law Offices of Richard Herman 5001 Birch Street Newport Beach, CA 92660 (714) 547-8512	Submitted to: Settlement Judge	
Bar # 53743 In the Matter Of: RICHARD PAUL HERMAN Bar # 53743 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 14, 1972**.
- (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 **15** 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."

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- (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 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 in a separate attachment entitled "Partial Waiver of Costs"
- costs 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 [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.

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- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

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- (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 Reproval:

- (1) Respondent must 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 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 reproof. 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 reproof 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.

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- (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 reprobation.
- (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 reprobation.
- No MPRE recommended. Reason: _____
- (11) 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:

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Attachment language (if any):

SEE ATTCHMENT.

Campana-Walker resolved the fee dispute through mediation.

On September 13, 2004, the Stipulation for Entry of Small Claims Judgment was filed with the court. In the Stipulation, Respondent agreed to refund \$1,000 to Campana-Walker "as long as [Campana-Walker] removes the complaint to the State Bar and provides a copy of the letter to [Respondent]."

On October 13, 2004, Campana-Walker wrote a letter to the State Bar in which she withdrew her complaint against Respondent.

Conclusions of Law

By entering into a settlement agreement with Campana-Walker wherein Respondent would return a portion of the advanced legal fees paid to him by Campana-Walker in exchange for the withdrawal of her State Bar complaint against him, Respondent sought and entered into an agreement that a plaintiff would withdraw a disciplinary complaint, in wilful violation of Business and Professions Code, section 6090.5(a)(2).

CASE No. 04-O-01970-DFM

Facts

On January 18, 2005, Beverly Brown ("Brown") hired Respondent to represent her in a criminal matter following her arrest for driving while under the influence. Respondent also agreed to represent Brown in any Department of Motor Vehicles hearing regarding her license that might arise as a result of her arrest. At that time, Brown paid Respondent a flat fee of \$3,500 for his representation.

On January 21, 2005, Respondent's office scheduled a DMV hearing in Brown's

matter. The hearing was set for February 24, 2005.

On February 14, 2005, Respondent appeared in court on behalf of Brown for a hearing on Brown's criminal matter.

On February 23, 2005, Respondent sent a letter to Brown informing her that the DMV had cancelled her hearing and terminated the proceeding against her because no alcohol had been found in her system.

On February 26, 2005, Brown sent a letter to Respondent in which she advised Respondent that she had hired a new attorney to represent her. In her letter, Brown also requested a refund of the \$3,500 she paid to Respondent. Respondent received the letter.

Following his receipt of Brown's February 26, 2005 demand for a refund of fees, Respondent failed to advise Brown in writing of her right to initiate mandatory fee dispute arbitration under Business and Professions Code, section 6200, et seq. Respondent also failed to take any steps to initiate a fee dispute arbitration with Brown.

On March 10, 2005, Brown submitted a complaint to the State Bar regarding Respondent.

On June 7, 2007, Respondent refunded \$3,500 to Brown

Conclusions of Law

By failing to advise Brown in writing of her right to initiate mandatory fee dispute arbitration and failing to take any steps to initiate a fee dispute arbitration with Brown upon his receipt of Brown's demand for a refund of fees, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A), Rules of Professional Conduct.

CASE No. 05-O-00003 (Investigation)

Facts

On April 29, 2004, Michael Clifton ("Clifton") employed Respondent to represent him in a civil rights case against the County of Orange, several county employees, and a number of Clifton's neighbors.

As early as June 2004, Clifton became dissatisfied with Respondent's handling of Clifton's matter.

On June 10, 2004, Respondent filed a complaint for damages in the United States District Court on behalf of Clifton entitled *Michael Clifton v. County of Orange, et al.*, U.S.D.C. case no. SACV04-669 AHS (Anx).

On July 12, 2004, Clifton sent a letter to Respondent in which he requested an update on the status of and copies of pertinent documents relating to his claim. Respondent received the letter, but did not respond to Clifton. On July 26, 2004, Clifton sent another letter to Respondent in which he again requested a status update and copies of specific documents. Respondent received the letter, but did not respond to Clifton.

In September 2004, Clifton consulted with another attorney, Joshua Stein ("Stein"), about the possibility of Stein assuming representation of Clifton in his civil rights case in place of Respondent. Clifton authorized Stein to communicate with Respondent on his behalf.

On September 16, 2004, Stein sent a letter to Respondent in which he requested that Respondent provide him with a status report regarding Clifton's civil rights case. On September 24, 2004, Respondent responded by letter to Stein's letter. In his letter, Respondent inquired as

to whether Stein was substituting into Clifton's civil rights case, but did not provide Stein with the requested status update.

On September 27, 2004, Stein sent another letter to Respondent in which he requested that Respondent provide him with a report on the status of Clifton's civil rights case.

Respondent received the letter, but did not respond to Stein or to Clifton.

On November 9, 2004, Respondent filed a motion to be relieved as counsel for Clifton in his federal civil rights case.

On November 17, 2004, Stein sent another letter to Respondent in which he requested that Respondent provide him with a report on the status of Clifton's civil rights case.

Respondent received the letter, but did not respond to Stein or to Clifton.

On December 13, 2004, the federal district court granted Respondent's motion to be relieved as Clifton's counsel. On December 29, 2004, the order relieving Respondent as Clifton's counsel was filed and became effective.

Clifton then employed a new attorney to represent him in his federal civil rights lawsuit. Clifton's new attorney filed a formal substitution of attorney in Clifton's federal civil rights lawsuit on February 1, 2005.

Legal Conclusions

By failing to respond to Clifton's July 12 and July 26, 2004 and Stein's September 16, September 27, and November 17, 2004 written requests regarding the status of Clifton's civil rights case, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of Business and Professions Code, section 6068(m).

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges filed on November 20, 2006, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Standard 1.2(e)(i))

Respondent was admitted to the State Bar on December 14, 1972 and has no prior record of discipline since his admission. Respondent's misconduct in this matter is also not deemed serious.

Candor/Cooperation (Standard 1.2(e)(v))

Respondent was candid and cooperative with the State Bar during its investigation and prosecution of this matter.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was June 12, 2007.

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DISMISSALS.

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
05-O-01979-DFM	TWO	Rules of Professional Conduct, rule 3-700(D)(2)
05-O-01970-DFM	THREE	Rules of Professional Conduct, rule 4-100(B)(3)
06-O-13491-DFM	FOUR ¹	Rules of Professional Conduct, rule 3-700(D)(2)

AUTHORITIES SUPPORTING DISCIPLINE.

In this matter, Respondent has admitted to violating the following statutes and rules: Business and Professions Code, section 6090.5; Rules of Professional Conduct, rule 3-110(A); and Business and Professions Code, section 6068(m). The stipulated discipline of a private reproof in this matter is supported by the standards and case law.

Standard 1.3 provides that the primary purpose of discipline is the protection of the public, the courts and legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

Standard 2.6 states 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.

¹ Erroneously listed as Count Five in the Notice of Disciplinary Charges filed on November 20, 2006 in this proceeding.

However, Standard 2.4(b) provides that culpability of a member of...wilfully failing to communicate with a client shall result in reproof 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. As such, the imposition of a private reproof in this matter remains consistent with the purposes for imposing discipline set forth in Standard 1.3.

Case law also supports a private reproof for a failure to communicate with a client, even when combined other misconduct not deemed serious. (See, *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439, 455; a single failure to communicate, absent any mitigating circumstances held to merit a private reproof; see also, *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, 179; private reproof held to be appropriate discipline for isolated and relatively minor incident of failing to perform services competently, including failing to communicate with client).


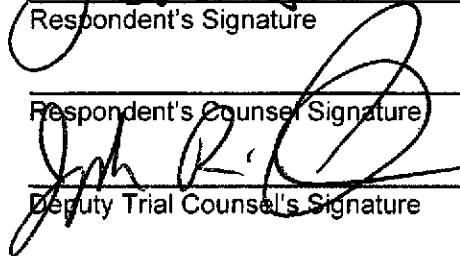
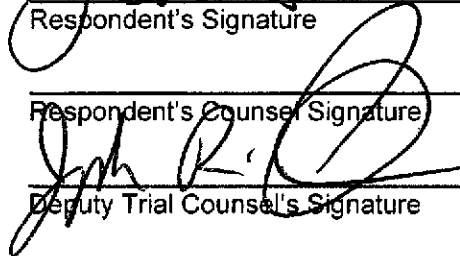
Lastly, Standard 2.4(b)) provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

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In the Matter of RICHARD PAUL HERMAN (No. 53743)	Case number(s): 04-O-14528-DFM, 05-O-01970-DFM, 06-O-13491-DFM, 05-O-00003 (investigation)
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>June 28, 2007</u> Date	 Respondent's Signature	<u>RICHARD PAUL HERMAN</u> Print Name
<u>6/28/07</u> Date	 Respondent's Counsel Signature	<u>NOT APPLICABLE</u> Print Name
<u>6/28/07</u> Date	 Deputy Trial Counsel's Signature	<u>JOSEPH R. CARLUCCI</u> Print Name

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In the Matter Of
RICHARD PAUL HERMAN (No. 77688)

Case Number(s):
**04-O-14528-DFM, 05-O-01970-DFM, 06-O-13491-DFM,
05-O-00003 (investigation)**

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:

- 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.

6/28/07
Date


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 Los Angeles, on June 28, 2007, I deposited a true copy of the following document(s):

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

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:

**RICHARD P. HERMAN
LAW OFC RICHARD P HERMAN
5001 BIRCH ST
NEWPORT BEACH, CA 92660**

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

JOSEPH R. CARLUCCI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 28, 2007**.



Tammy R. Cleaver
Case Administrator
State Bar Court