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State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles		<input checked="" type="checkbox"/> San Francisco
Counsel for the State Bar ERICA DENNINGS THE STATE BAR OF CALIFORNIA 180 HOWARD STREET SAN FRANCISCO, CA 94105 (415) 538-2000 Bar # 145755	Case number(s) 04-0-15047 04-0-15656 kwiktag® 022 603 013 	(for Court's use) PUBLIC MATTER FILED JUL 07 2005 <i>[Signature]</i> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent MICHAEL D. SENNEFF SENNEFF, FREEMAN & BLUESTONE P.O. BOX 3729 SANTA ROSA, CA 95402 Bar # 39388	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge	
In the Matter of GEORGE ARACK, JR. Bar # 47397 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <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 01/07/71
(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 12 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):

- (a) costs added to membership fee for calendar year following effective date of discipline
(b) costs to be paid in equal amounts prior to February 1 for the following membership years:

_____ (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

- (c) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
(d) 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 _____

(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.

(Do not write above this line.)

- (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. ~~Respondent was admitted to practice in California on 01/07/71 and has no prior record of discipline.~~ Respondent was admitted to practice in California on 01/07/71 and has no prior record of discipline.
- (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. Respondent cooperated throughout the disciplinary 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) **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. (See circumstances described in the accompanying Attachment re Mitigating Circumstances, Attachment Page 2.

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- (10) **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.
- (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 (1) 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 is placed on probation for a period of TWO (2) YEARS, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

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E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) Within 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.
- (4) 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 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 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.
- (5) 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.
- (6) 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.
- (7) 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: _____
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:

- Substance Abuse Conditions Law Office Management Conditions
- Medical Conditions Financial Conditions

(Do not write above this line.)

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 within one year. 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: _____

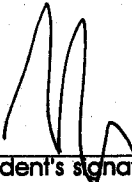
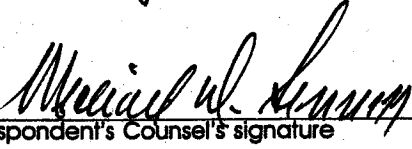

(2) Other Conditions:

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In the Matter of GEORGE ARACK, JR.	Case number(s): 04-0-15047; 04-0-15656
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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 Facts, Conclusions of Law and Disposition.

<u>June 1, 2005</u> Date	 Respondent's signature	<u>GEORGE ARACK, JR.</u> Print name
<u>June 23, 05</u> Date	 Respondent's Counsel's signature	<u>MICHAEL D. SENNEFF</u> Print name
<u>27 June 2005</u> Date	 Deputy Trial Counsel's signature	<u>ERICA DENNINGS</u> Print name

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In the Matter of GEORGE ARACK, JR.	Case number(s): 04-0-15047; 04-0-15656
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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.)

Date

July 6, 2005

Pat McElroy
Judge of the State Bar Court

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: GEORGE ARACK

CASE NUMBER(S): 04-O-15047, 04-O-15656 ET AL.

FACTS AND CONCLUSIONS OF LAW.

Case no. 04-O-15047

On March 15, 2001 Richard D. Roberts ("Roberts") employed respondent to represent him in a DUI matter. Roberts paid respondent \$5,000.00 advanced fees. Thereafter, respondent pursued Roberts' case, including making court appearances and discussing the case with the district attorney. On or about July 5, 2001 Roberts pled guilty and respondent's representation ended.

On or about June 11, 2001 respondent sent Roberts a final billing statement indicating \$3,800.00 in services rendered and a balance due to Roberts of \$1,200.00.

On or about August 9, 2001 Roberts called respondent's office and requested the return of unearned fees. Roberts spoke with Linda Groberg, respondent's office manager and wife, who assured him she would take care of sending the refund.

After August 9, 2001 Roberts sent respondent a letter requesting a refund. Respondent failed to respond to the letter.

Thereafter, Roberts called respondent's office on several occasions to request a refund. Respondent failed to refund unearned fees.

On or about March 25, 2004, Roberts sent respondent a letter requesting a refund of the \$1,200.00 plus interest of \$546.00 by April 8, 2004. Roberts told respondent if he did not refund the money, he would take further action. Roberts sent the letter via certified mail and the return receipt card was signed by Linda Groberg. Respondent failed to return the \$1,200.00.

On or about August 17, 2004 Roberts filed a complaint with the State Bar against respondent.

On or about November 18 and December 3, 2004 State Bar investigator Crystal Velzco wrote two letters to respondent regarding Roberts' complaint.

On or about January 28, 2005, respondent sent Roberts a check in the amount of \$1,498.00.

By not refunding unearned fees to Roberts for more than three years after his employment ended and Roberts' requested it, respondent failed to promptly returned unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case no. 04-O-15656

Respondent belonged to compliance group one for MCLE purposes. As such, respondent was required to submit a signed card showing he had completed 25 hours of MCLE courses between February 1, 2001 and January 31, 2004.

Respondent received notices from the State Bar of California on at least three occasions indicating he had not submitted a compliance card.

In or about April 2004, respondent returned an unsigned compliance card.

On or about July 15, 2004, a 60 day non compliance notice was sent to respondent indicating that his compliance card was received unsigned and that he would be enrolled as an inactive member by September 15, 2004 if he failed to show compliance with MCLE requirements. Respondent did not return a signed compliance card.

On or about August 6, 2004 the Office of Certification sent a letter to respondent notifying him that he would be enrolled as an inactive member by September 15, 2004. The letter was sent by certified mail and the domestic return receipt was signed by L. Arack.

On or about September 16, 2004, respondent was placed on not entitled status.

On or about September 23, 2004 the Office of Certification wrote respondent notifying him that he had been placed on not entitled status since September 16, 2004.

On or about September 29, 2004, respondent submitted a signed MCLE compliance card along with the reinstatement fee of \$200.00.

On or about October 4, 2004 the Office of Certification sent a letter to respondent notifying him that his reinstatement submission was incomplete because it did not contain documentation of compliance or payment of \$7.50, representing the balance of the \$75 non compliance fee.

Effective December 13, 2004, respondent was reinstated to active status.

Between September 16 and December 13, 2004 respondent practiced law as usual, including making court appearances on behalf of 129 clients. After being told by the District Attorney's office that he was not entitled to practice law, respondent prepared a declaration explaining the circumstances of his not entitled status. A copy of the declaration was placed in the file of each client for whom respondent made appearances.

By practicing law while he was on not entitled status, respondent engaged in the unauthorized practice of law in wilful violation of sections 6068(a), 6125 and 6126 of the Business and Professions Code.

C. Mitigating Circumstances

9. Family Problems

In May 2003, respondent's wife, who is his office administrator, developed a diffuse neurologic condition which caused her to become disabled. From May, 2003 through the year 2004, respondent became her care giver. In January 2004, respondent's elderly mother suffered a stroke and thereafter became the care-giver for his elderly parents, necessitating daily attention to

them. His mother died in September, 2004. The circumstances with respondent's wife, who could not function as his office administrator, and his parents, created chaos in respondent's life and his practice during 2003 and 2004. Respondent has a very active criminal defense practice and typically relied very heavily upon his wife for office administration. Respondent does not recall having received many of the notices from the State Bar in 2003 and 2004 regarding either matter which is the subject of this disciplinary proceeding. During the relevant time period, there was a problem with the Postal Service delivering mail to his office because of a confusion in addresses, which caused some of his mail to be delivered to the wrong address. Some of the mis-delivered mail was retrieved and properly delivered by the Postal Service, but it is not known whether all was delivered to respondent's office. Nevertheless, respondent accepts responsibility for the consequences of the notices and correspondence from the State Bar sent to him.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was June 22, 2005.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 10, 2005, the estimated prosecution costs in this matter are approximately \$2,033.00. 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.

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.

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 San Francisco, on July 7, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed July 7, 2005**

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

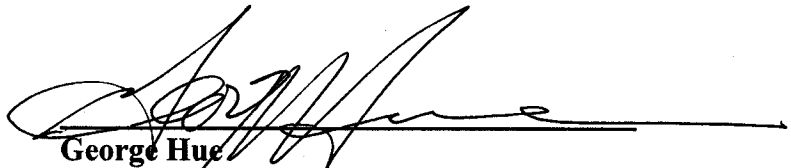
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**MICHAEL D. SENNEFF
SENNEFF, FREEMAN & BLUESTONE
P O BOX 3729
SANTA ROSA CA 95402**

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

ERICA DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 7, 2005**.



George Hue
Case Administrator
State Bar Court