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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 DONALD R. STEEDMAN SUPERVISING TRIAL COUNSEL 180 HOWARD STREET SAN FRANCISCO, CA 94105 (415) 538-2345 Bar # 104927	Case number(s) 05-C-01374 kwiktag® 022 604 781 	(for Court's use) PUBLIC MATTER FILED  DEC 21 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per Respondent Ephraim Margolin, #32582 240 Stockton St. San Francisco, CA 94108 Douglas L. Rappaport, #136194 260 California St. San Francisco, CA 94111	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge	
In the Matter of J. TONY SERRA Bar # 32639 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING 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 JANUARY 16, 1962
(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):

- 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:
(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 86-C-00026 SF

(b) Date prior discipline effective 06/17/88

(c) Rules of Professional Conduct/ State Bar Act violations: Conviction referral based

on conviction for failing to file tax return (18 U.S. Co. §7203).

(d) Degree of prior discipline 5-years suspension, stayed,
30 days actual suspension

(e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

SEE ATTACHMENT

(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.

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- (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.

(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 (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 must be placed on probation for a period of TWO (2) YEARS, which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of SIX (6) MONTHS

- 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:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: J. Tony Serra

CASE NUMBER(S): 05-C-01374

PROCEDURAL BACKGROUND

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court.
2. On April 5, 2005, respondent pleaded guilty to misdemeanor violations of wilfully failing to pay taxes for the years 1998 and 1999 (26 U.S.C. § 7203, misdemeanors).
3. On July 29, 2005, the federal court sentenced respondent to ten months of custody and to pay \$100,000 toward his obligation to pay back taxes.
4. By means of orders filed on October 31, 2005 and November 2, 2005, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a determination of whether the facts and circumstances of the offense involve moral turpitude or other misconduct warranting discipline and, if so, the discipline to be imposed.

FACTS

Respondent admits that the following facts are true and that he/she is culpable of violations of the specified statutes:

The facts and circumstances underlying the convictions indicate that this conduct occurred for many additional years. For the tax years 1993 to 2001, respondent always filed his tax returns but to date has never paid any of the taxes owed. Respondent's tax returns overstated the amount of taxes owing because they did not set forth allowable business expense deductions. The figures are as follows:

TAX YEAR	DATE RETURN FILED	GROSS RECEIPTS	TAXES DUE PER TAX RETURN	ACTUAL TAXES DUE
1992	May 27, 1993	121,322	21,114	?
1993	October 11, 1994	135,322	25,807	?
1994	June 22, 1995	146,385	30,189	?
1995	August 30, 1996	86,074	7,669	?
1996	April 15, 1997	112,089	18,481	?
1997	August 16, 1998	154,425	32,147	22,655
1998	October 6, 1999	128,425	27,038	18,037
1999	September 21, 2000	152,425	37,335	26,495
2000	December 3, 2001	132,705	25,631	16,362
2001	October 11, 2002	149,590	22,547	14,415

The IRS has written off much of respondent's tax liability as non-collectable. As mentioned above, respondent was ordered to pay \$100,000 toward his tax obligation as a condition of probation. This represents his approximate tax liability for the years 1997 to 2001.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was November 28, 2005.

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE

State Bar Case No. 00-O-14826

Date prior discipline effective: January 3, 2002

Violations: Rule of Professional Conduct 3-110(A) (respondent failed to supervise his staff resulting in the release of confidential victim identification information in violation of statute).

Degree of Discipline: Public Reproval

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Multiple/Pattern of Misconduct. For almost every year since 1969, respondent has failed to pay his taxes. During the initial period, respondent refused to pay taxes as a protest against the Vietnam war. However, respondent's later violations were not based upon a political or moral motivation, but rather his self-described "dysfunctional relationship with money." This disciplinary proceeding arises from respondent's third tax conviction.

MITIGATING CIRCUMSTANCES.

Despite his failure to pay taxes and his celebrity and competence as a lawyer, respondent is not wealthy. Rather, he has virtually no assets and lives a very simple non-materialistic lifestyle.

Respondent has many supporters within the community who attest to his character and reputation. Respondent has been a trial lawyer, primarily criminal defense and civil rights, for over 40 years. His work has resulted in numerous awards, including in 1982, runner-up "Best Lawyer in America" by American Lawyer Magazine, 1992, Drug Policy Foundation (Washington, D.C.) Achievement in the Field of Law, 1993 Boalt Hall Law Review "Alumnus of the Year," 1994 Charles Gary Award, 1997 American Civil Liberties Union Benjamin Dreyfus Civil Liberties Award, 2003 Lifetime Achievement Award by McFetridge-American Inn of Court, and co-recipient of the "2003 Trial Lawyer of the Year" by Trial Lawyers for Public Justice. In addition, Respondent has been a speaker at hundreds of legal professional organizations, addressing many legal and social issues. His work load is enormous, often resulting in actual trial work as much as 11 months out of the year.

Respondent's success as a trial lawyer and advocate has not translated, intentionally, into material aggrandizement. At the beginning of his career, respondent eschewed the material benefits of a successful law practice. In his own words:

I took an informal vow of poverty. I vowed that I would never take profit from the practice of law, that I would not buy anything new, that I would recycle everything, that I would own no properties - no stocks or bonds, no images of prosperity. I still drive an old junk of a car. I still barely make the rent each month; I have accumulated nothing by way of savings, and I live from hand to mouth.

Respondent has never abandoned his vow and all who know him can attest to his lifestyle as one who does not seek, nor value, material possessions of success. Indeed, at any given time one half, and often more, of his case load is comprised of pro bono cases, the costs of which he often pays out of his own pocket. He has so little money, his children have been educated by the generosity of their famous sculptor uncle.

The present prosecution occurs in the context of Respondent's relationship to money. He has failed to pay taxes. He has not failed to file taxes. He has entered into discussions with the government to endeavor to pay taxes that are owing. Respondent's "dysfunctional relationship to money" that lies at the root of his offense behavior and not greed of self-aggrandizement.

CONCLUSIONS OF LAW

The facts and circumstances surrounding respondent do not involve moral turpitude but do involve other misconduct warranting discipline.

AUTHORITIES SUPPORTING DISCIPLINE

At one point in time, the Supreme Court declined to impose discipline for tax crimes in the absence of evidence of concealment or other indicia of moral turpitude (*In re Fahy* (1973) 8 Cal.3d 842). More recently, the Supreme Court has generally a sixty-day actual suspension for non-moral turpitude tax crimes (*In re Rohan* (1978) 21 Cal.3d 195 (60-day actual suspension for failing to file tax returns); *In re Hawk* (1978) 21 Cal.3d 593 (same); *In re Grimes* (1990) 51 Cal.3d 199 (same); *In re Brown* (1995) 12 Cal.4th 205 (60-day actual suspension for failing to pay payroll taxes)).

Respondent must receive increased discipline because of two prior records of discipline (Standard 1.7, Standards Governing Attorney Sanctions for Professional Misconduct; see *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108 (six month suspension imposed for attorney receiving successive convictions for non-moral turpitude offenses)).

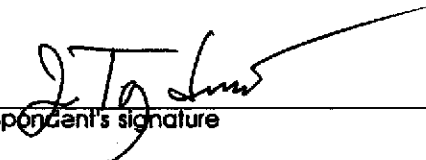
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In the Matter of J. TONY SERRA	Case number(s): 05-C-01374
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SIGNATURE OF THE PARTIES

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.

12/1/05
Date


Respondent's signature


J. TONY SERRA
Print name

12-2-05
Date


Respondent's Counsel's signature

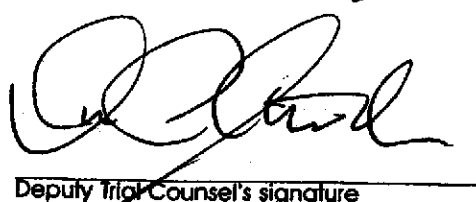
DOUGLAS RAPPAORT
Print name

11.30.05
Date


Respondent's Counsel's signature

Ephraim Margolin
Print name

12/5/5
Date


Deputy Trial Counsel's signature

DONALD R. STEEDMAN
Print name

(Do not write above this line.)

In the Matter of J. Tony Serra	Case number(s): 05-C-01374
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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.

Pursuant to the joint request filed by the parties on December 12, 2005, the clerk of the State Bar Court is hereby directed to transmit this matter to the California Supreme Court on an expedited basis.

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.)

12/21/05
Date


JOANN M. REMKE
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 December 21, 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:

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

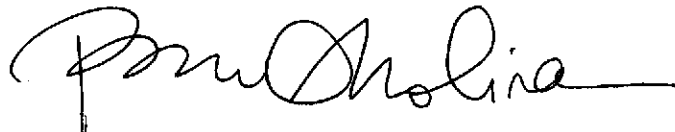
DOUGLAS L. RAPPAPORT
LAW OFC DOUGLAS L RAPPAPORT
260 CALIFORNIA ST #1002
SAN FRANCISCO CA 94111

EPHRAIM MARGOLIN
LAW OFFICE OF EPHRAIM MARGOLIN
240 STOCKTON STREET, 4TH FL.
SAN FRANCISCO CA 94108 5318

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

DONALD R. STEEDMAN , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 21, 2005.**



Bernadette C. O. Molina
Case Administrator
State Bar Court