

(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles

| | | |
|---|---|---|
| <p>Counsel For The State Bar</p> <p>Lee Ann Kern 1149 South Hill Street Los Angeles, California 90015</p> <p>Bar # 156623</p> | <p>Case Number (s) 06-O-14652</p> <p>PUBLIC MATTER</p> <p><i>Settlement</i></p> | <p>(for Court's use)</p> <p>FILED</p> <p>NOV 05 2008 <i>OR</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> |
| <p>Counsel For Respondent</p> <p>Michael G. Gerner 10100 Santa Monica Boulevard, Ste. 300 Los Angeles, California 90067</p> <p>Bar # 65906</p> | <p>Submitted to: Assigned Judge</p> | |
| <p>In the Matter Of: Sean Tabibian</p> <p>Bar # 207447</p> <p>A Member of the State Bar of California (Respondent)</p> | <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |

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 **June 6, 2000**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.



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

- costs added to membership fee for calendar year following effective date of discipline.
- 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
 - (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. **Respondent's client, Catherine Hampton, was deprived of the use of the unearned fees she paid to Respondent when Respondent failed to return those fees upon his termination of employment.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **Respondent has shown lack of insight into the wrongfulness of his conduct. (See Natali v. State Bar (1988) 45 Cal.3d 456, 467; Sodikoff v. State Bar (1975) 14 Cal.3d 422, 432.)**
- (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.
- (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 **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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **2 years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

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 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.
- (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 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 State Bar 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:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

In the Matter of
Sean Tabibian

Case number(s):
06-O-14652

A Member of the State Bar

Law Office Management Conditions

- a. Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ months/ 1 years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for 3 year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Sean Tabibian

CASE NUMBER(S): ET AL. 06-O-14652

FACTS AND CONCLUSIONS OF LAW.

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

COUNT ONE: Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

1. On or about February 2, 2006, Catherine Hampton ("Hampton") met with Respondent at his office and hired him that day to represent her minor grandson, Stanley Mitchell ("Mitchell"), in a criminal matter in which Mitchell had been charged with murder. The case was entitled *People vs. Stanley Mitchell*, Los Angeles Superior Court Case No. TA083254.
2. On or about February 2, 2006, Hampton and Respondent entered into a written fee agreement ("fee agreement") wherein Respondent agreed to represent Mitchell "pre-filing." However, the fee agreement also stated that Respondent would represent Mitchell "through the completion of all pretrial proceedings. (Arraignments, Pretrial Conferences, Plea Negotiations, Preliminary Hearings, Motion Hearings, Structured Disposition, and any Sentencing.)"
3. The fee agreement called for Hampton to pay Respondent a total of \$25,000, with \$10,000 down and the \$15,000 balance due "ASAP." On or about February 2, 2006, Hampton paid Respondent \$10,000 in legal fees towards the \$25,000.
4. On or about February 2, 2006, when Hampton met with and hired Respondent, Hampton told Respondent that Mitchell's arraignment was scheduled the following day, February 3, 2006, in Division 12 of the Compton District of the Los Angeles Superior Court.
5. At no time did Respondent inform Mitchell or Hampton that he was unwilling or unable to attend any pre-trial court appearances in Mitchell's case, including Mitchell's arraignment.
6. On or about February 3, 2006, Respondent intentionally did not appear in court for Mitchell's arraignment because Hampton had not yet paid Respondent his entire \$25,000 fee. Alternate Defense Counsel ("ADC") represented Mitchell at the arraignment. The court continued the arraignment until February 6, 2006, at 8:30 a.m.. Respondent received notice of the continued hearing date from either Mitchell or Hampton.
7. On or about February 6, 2006, Respondent arrived at the courthouse by 8:30 a.m., but again intentionally failed to appear for the continued arraignment because Hampton had not yet paid Respondent his entire \$25,000 fee. Mitchell was represented by ADC in court that day. After

Mitchell's case was called, Respondent met with the ADC and received the police report and the Information in Mitchell's case from the ADC.

8. Between February 2, 2006 and February 10, 2006, Respondent met with Mitchell once while Mitchell was in custody.

9. On or about February 10, 2006, Hampton terminated Respondent's services.

10. Respondent intentionally did not provide Mitchell with the pre-trial services for which Hampton had contracted. Respondent therefore did not earn the entire \$10,000 in advanced fees paid to him by Hampton.

11. The reasonable value of Respondent's services was \$2,000. Respondent did not refund \$8,000 in unearned, advanced fees paid to him by Hampton upon Respondent's termination of employment. On or about October 1, 2008, Respondent mailed Hampton a check in the amount of \$8,000 representing the unearned, advanced fees.

12. By intentionally failing to provide Mitchell with the pre-trial services for which Hampton had contracted, including appearing in court on Mitchell's behalf, Respondent intentionally failed to perform legal services with competence, in wilful violation of rule 3-110(A), Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was October 2, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 17, 2008, the prosecution costs in this matter are \$1,983. 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.

In *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 115, the Review Department concluded that an attorney of record who intentionally absented himself from a client's deposition, despite knowing that the client would be unrepresented, failed to perform legal services competently.

The Supreme Court gives the Standards "great weight," and will reject a recommendation consistent with the Standards only where the Court entertains "grave doubts" as to its propriety. (*In re Naney* (1990) 51 Cal.3d 186, 190; *In re Silverton* (2005) 36 Cal. 4th 81, 91-92.) Although the Standards are not mandatory, it is well established that the Standards may be deviated from only when there is a compelling, well-defined reason to do so. See *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060, fn. 2. There is no compelling reason to deviate from the standards in the instant matter.

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 or the degree of harm to the client.

The stipulated level of discipline, one year stayed suspension and two years probation, is justified and is supported by the standards and the case law.

///
///
///

(Do not write above this line.)

| | |
|--|--------------------------------------|
| In the Matter of Sean Tabibian | Case number(s): 06-O-14652 |
|--|--------------------------------------|

SIGNATURE OF THE PARTIES

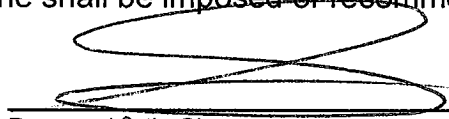
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.


10/7/08
Date



Respondent's Signature

Sean Tabibian
Print Name


10-9-08
Date



Respondent's Counsel Signature

Michael G. Gerner
Print Name

10/10/08
Date



Deputy Trial Counsel's Signature

Lee Ann Kern
Print Name

(Do not write above this line.)

| | |
|--|--------------------------------------|
| In the Matter Of Sean Tabibian | Case Number(s): 06-O-14652 |
|--|--------------------------------------|


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 9.18(a), California Rules of Court.)**

11-5-08
Date


Judge of the State Bar Court

RICHARD A. HONN

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 November 5, 2008, I deposited a true copy of the following document(s):

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

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

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

MICHAEL GALEN GERNER
MICHAEL G GERNER, A PROF LAW CORP
10100 SANTA MONICA BLVD #300
LOS ANGELES, CA 90067

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

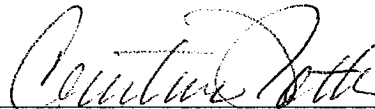
by overnight mail at , California, addressed as follows:

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Lee Ann Kern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 5, 2008.



Cristina Potter
Case Administrator
State Bar Court