

State Bar Court of California
Hearing Department



<p>Counsel For The State Bar</p> <p>Robin Brune Deputy Trial Counsel 180 Howard Street San Francisco, California 94105</p> <p>Bar # 149481</p>	<p>Case Number (s) 07-O-10508</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>[Signature]</i></p> <p>MAR 06 2008</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Kevin Gerry, Esq. 433 N. Camden Drive 4th Floor Beverly Hills, California 90210</p> <p>Bar # 129690</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter Of: Steven Moore</p> <p>Bar # 186179</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>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 **December 11, 1986**.
- (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 12 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):
- 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
 - (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.
- (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. **See attachment**
- (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.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

- (1) **Stayed Suspension:**

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

(2) **Probation:**

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

(3) **Actual Suspension:**

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

E. Additional Conditions of Probation:

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

whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (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:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
 No MPRE recommended. Reason: _____
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, 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 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, 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.

(Do not write above this line.)

- (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: Steven Moore

CASE NUMBER(S): 07-O-10508 ET AL.

FACTS AND CONCLUSIONS OF LAW.

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

From September 18, 2006 through December 28, 2006, respondent was suspended from the practice of law for failure to pay his annual bar dues. He nonetheless continued to represent the District Attorney. During this time frame, he was assigned to, and appeared in court on behalf of the District Attorney, on at least forty felony cases, including one felony trial, *People v. Thompson*, which involved charges of child molestation.

On or about November/December 2005, respondent relocated from the Santa Cruz District Attorney's office to the Santa Clara District Attorney's office. He did not update his membership records address after he relocated.

The Santa Cruz District Attorney did periodically sent him large brown envelopes which contained his forwarded mail. He initially opened these envelopes. However, he soon decided that the material was primarily junk mail, he would discard the large brown envelopes, unopened. He did not receive the notices of his late Bar dues or his impending suspension, which were mailed to him by the State Bar on November 15, 2005; February 22, 2005; May 26, 2005; and August 16, 2005. Respondent surmises that this material was in the large brown envelopes of his forwarded mail, but that he discarded them.

Respondent become aware of a problem with his 2006 dues when a member of the Santa Clara clerical support staff, assigned to pay the 2007 dues for the attorneys, discovered that he had not paid the 2006 dues. Once informed, he immediately paid these dues on December 28, 2006. However, respondent took no action at that time to ascertain the status of his license and he remained unaware of his suspension until his employer, informed him in January 2007.

Respondent assumed that if he was going to be suspended, the State Bar would personally serve him with a court order of suspension. During the course of these proceedings, he realized this was an error.

Conclusions of Law

1. By appearing in court on behalf of the District Attorney of Santa Clara, when suspended for non-payment of his bar dues, respondent practiced law when he was not licensed to do so, in wilful violation of Business and Professions Code, sections 6068(a) and 6125/6126 of the Business and Professions Code.
2. By failing to update his membership records address when he relocated from the Santa Cruz District Attorney's Office to the Santa Clara District Attorney's office, respondent failed to maintain his current address with the State Bar pursuant to Business and Professions Code, section 6002.1., and thereby violated Business and Professions Code, section 6068(j).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was February 1, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 1, 2008, the costs in this matter are \$ 1,983.00. 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.

Standards

Standard 2.6 Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in *disbarment or suspension* 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. Subsection (d) of Standard 2.6 refers to 6125 and 6126. Standard 1.3 confirms that the primary purposes of discipline is to protect the public, the courts, and the legal profession, and the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.

Standard 2.10 Culpability of a member of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in *reproval or suspension* according to the

gravity of the offense.

In this case, respondent was suspended for a non-disciplinary reason (failure to pay bar dues) and the respondent has no actual knowledge of the suspension.

The closest case, *Trousil*, involved one appearance in a bankruptcy case when the attorney was suspended for non-payment of bar dues. However, he then had a second appearance in the same case after he was suspended for disciplinary reasons. Trousil had an extensive disciplinary history, including three priors, and significant mitigation, including a recent diagnosis and treatment for bi-polar disorder, Trousil received two years of suspension, stayed, two years of probation, and one month of actual suspension. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

In general, the case law concerning the unauthorized practice of law ranges from six months actual suspension to disbarment. (See *In Re Naney* (1990) 51, Cal. 3d 186 (disbarment, held himself out on resume, when not entitled to practice.); *Morgan v. State Bar* (1990) 51 Cal. 3d 598 (disbarment, undertook representation in family law matter practiced for at least two months when not entitled, had prior disciplinary history); *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563 (disbarment, undertook representation of three clients for a four month period while suspended, prior disciplinary history); *In re Cadwell v. State Bar*, (1975) 15 Cal.3d 762 (five year interim suspension, held himself out to another lawyer and negotiated a property settlement for a period of five months while suspended, prior disciplinary history) *Farnham v. State Bar*, (1976) 17 Cal. 3d 605 (six months actual suspension, undertook representation of two clients for a period of three months while suspended, prior disciplinary history.); *Arm v. State Bar*, (1990) 50 Cal. 3d 763 (18 months actual suspension, failed to disclose impending suspension to court and client, prepared legal papers while suspended, prior disciplinary history.); *In the Matter of Robert Wyrick*, (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83. (six month actual suspension, acted as an arbitrator for a period of eight months while suspended from the practice of law, prior disciplinary history).

AGGRAVATING CIRCUMSTANCES.

Standard 1.2(b)(iv)

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

As a result of respondent's misconduct, the defendant in the child molestation trial, in which respondent obtained the conviction, *People v. Thompson* is appealing his conviction. Therefore, the government must expend time and effort to defend the appeal.

MITIGATING CIRCUMSTANCES.

Standard 1.2(e)(v) candor and cooperation
Standard 1.2(e)(vi) good character

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Respondent provided six character reference letters from several professional colleagues, friends, and his fiancé, a physician. They are all aware of his misconduct and vouch for his character. In addition, respondent's prior supervisor at the Santa Clara District Attorney's office indicated that he was an excellent attorney.

Respondent has been candid and cooperative with the State Bar.

ADDITIONAL INFORMATION/CIRCUMSTANCES.

As a result of respondent's misconduct, the Santa Clara District Attorney's Office initiated internal disciplinary action against him, which resolved with a confidential agreement in which respondent terminated his employment with the office.

During the course of respondent's employment with the Santa Clara District Attorney's Office, he was promoted from an Attorney III to an Attorney IV.

Respondent was suspended for one day, September 16, 2004, for his late dues payment that year.

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.

(Do not write above this line.)

In the Matter of Steven Moore	Case number(s): 07-O-10508
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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.

2-22-08
Date


 Respondent's Signature Steven Moore
 Print Name

Date

 Respondent's Counsel Signature Kevin Gerry
 Print Name

Date

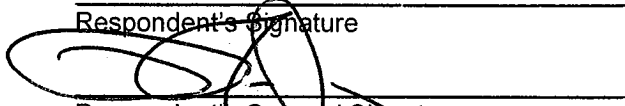
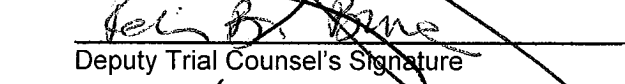
 Deputy Trial Counsel's Signature Robin Brune
 Print Name

(Do not write above this line.)

In the Matter of Steven Moore	Case number(s): 07-O-10508
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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.

Date		Steven Moore Print Name
Date	Respondent's Counsel Signature	Kevin Gerry Print Name
Date		Robin Brune Print Name
Date	Deputy Trial Counsel's Signature	

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 March 6, 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 San Francisco, California, addressed as follows:

KEVIN P. GERRY
433 N. CAMDEN DR., 4TH FLOOR
BEVERLY HILLS, CA 90210

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 6, 2008**.



Bernadette C. O. Molina
Case Administrator
State Bar Court