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

**PUBLIC MATTER**

<p>Counsel For The State Bar</p> <p>Kevin B. Taylor State Bar of California 1149 S. Hill Street Los Angeles, CA 213 765-1630</p> <p>Bar # 151715</p>	<p>Case Number (s) Inv. No. 08-O-10722</p>	<p>(for Court's use)</p> <p align="center"><b>FILED</b></p> <p align="center">FEB 25 2018</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Ellen A. Pansky 1010 Sycamore Ave, Unit 308 South Pasadena, CA 91030 213 626-7300</p> <p>Bar # 77688</p>	<p>Submitted to: <b>Settlement Judge</b></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>	
<p>In the Matter Of: Jim Parsons Mahacek</p> <p>Bar # 77268</p> <p>A Member of the State Bar of California (Respondent)</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 21, 1977.
- (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 11 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".

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- (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.
- (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.

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- (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

See page 9 of this Stipulation.

**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 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 (30) 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:
- |   |   |
|---|---|
| <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 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.

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- (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.
- (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:                      Jim Parsons Mahacek, State Bar No. 77268  
INVESTIGATION NUMBER:              08-0-10722

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

Facts

1.        In or about March 1994, Respondent was hired by Mr. C, an attorney, and Mr. C's law firm as an associate attorney. Respondent's employment continued at Mr. C's law firm until June 2007.
2.        From late 1995 through mid-1999, Respondent represented Mr. C, personally, in a civil dispute and litigation.
3.        As a result of Respondent's representation of Mr. C, Respondent learned a secret about Mr. C from testimony submitted in arbitration and in publically filed documents filed by the opposing party in Superior Court and, subsequently, before the Court of Appeal. The secret consisted of the fact that Mr. C had suffered a criminal conviction in his youth. Respondent further learned that the opposing party intended to try to use that information against Mr. C in the litigation.
4.        During the pendency of the litigation involving Mr. C, Mr. C and Respondent discussed the information disclosed by the opposing party in litigation, including the facts and circumstances surrounding Mr. C's conviction. The discussion between Mr. C and Respondent included methods that might be employed to mitigate the information the opposing party had disclosed in the arbitration and subsequent state court proceedings.
5.        At the time Mr. C discussed his secret with Respondent, Mr. C told Respondent that he wanted to take steps to prevent further public dissemination of the secret information.
6.        At the time Mr. C discussed his secret with Respondent, Mr. C told Respondent that the information was to be kept confidential and not disclosed in the litigation unless disclosure became absolutely necessary.
7.        Mr. C never authorized Respondent to disclose his secret in any other context.
8.        On June 22, 2007, Respondent's employment at Mr. C's law firm was terminated. With the termination, a dispute arose between Respondent and Mr. C regarding Respondent's final compensation.
9.        The compensation dispute became very heated very quickly, Respondent and Mr. C exchanged strongly worded e-mail messages and the two quickly assumed a litigation posture. As a result of Respondent's personal interest in the dispute, he experienced a great deal of emotion and animosity toward Mr. C.
10.      In August 2007, attorney T. M. represented a client who had filed an unrelated lawsuit

against Mr. C's law firm.

11. On or about August 2, 2007, Respondent sent T. M. a message, via e-mail transmission, wherein Respondent stated to T. M.: "May I suggest, if you have not, that you serve [Mr. C] individually with the judicial form interrogatory that asks if he has ever been convicted of a felony? If he denies it, I think that I can point you to some great impeaching evidence. If you do take my suggestion, would you please extend me the courtesy of providing me with a copy of his verified answer?" T.M. received the e-mail message about the time it was sent.

12. At the time Respondent sent his August 2, 2007 e-mail message to T.M., T.M. had no knowledge of Mr. C's criminal conviction or of any of the facts and circumstances surrounding same.

13. On or about September 27, 2007, Respondent sent T. M. another message, via e-mail transmission, wherein Respondent stated to T. M.: "I know that we talked about your trying this discovery tactic and seeing how [Mr. C] responded. Did you give it a shot and what happened?" T.M. received the e-mail message about the time it was sent.

14. In advising T. M. to ask Mr. C if he had ever been convicted of a felony, Respondent made an unauthorized disclosure to T. M. which would reasonably lead to the discovery of Mr. C's secret.

15. On or about September 27, 2007, Mr. C's law firm filed a law suit against Respondent in an attempt to resolve the issue of Respondent's compensation. In or about August 2008, Respondent filed a cross-complaint in the matter.

16. From March 2008 to present, there has been an open State Bar investigation of Respondent's conduct *vis a vis* Mr. C as a result of a complaint filed by Mr. C.

17. In April 2009, Mr. C and Respondent were negotiating a settlement of their compensation dispute. As the two neared a settlement, Respondent demanded as a condition of settlement, that Mr. C, who was the plaintiff in their litigation, withdraw, or bring to a stop, his State Bar disciplinary complaint against Respondent.

## CONCLUSIONS OF LAW

18. By advising T. M. of how to learn of Mr. C's secret criminal conviction, Respondent failed to maintain inviolate and preserve the secret of his former client in willful violation of Business and Professions Code, section 6068(e).

19. By seeking an agreement that Mr. C withdraw or stop his State Bar disciplinary complaint against Respondent as a condition of settling their litigation, Respondent sought an agreement that the plaintiff in a dispute withdraw a disciplinary complaint or refuse to cooperate with the disciplinary agency in willful violation of Business and Professions Code, section 6090.5.



## ADDITIONAL FACTS

20. Respondent contends that when he sent his August and September 2007 e-mail messages to T.M., he had a good faith but erroneous belief that he was not improperly disclosing the secret of a former client because Mr. C's conviction was a matter of public record.

21. Respondent's misconduct in this matter does not reflect upon his legal competence as an appellate specialist.

## MITIGATING CIRCUMSTANCES

Respondent has no record of prior discipline since being admitted to the practice of law in California on December 21, 1977.

Respondent recognizes and has acknowledged the wrongfulness of his conduct. Furthermore, he was cooperative with the State Bar in the resolution of this matter.

Additionally, Respondent has contributed significant time and effort in support of the State Bar and other community organizations. Respondent has served three years as a member of the State Bar Committee on the Appellate Courts. He has also served as a program chair and section chair of the Orange County Bar Association's Appellate Section. Additionally, Respondent has acted as a guest lecturer and worked with the Orange County Girl Scouts.

## DISCUSSION RE DISCIPLINE

Standard 1.3 of the *Standards For Attorney Sanctions For Professional Misconduct* provides guidance as to the imposition of discipline and interpretation of specific Standards. That Standard states that the primary purpose of discipline is the protection of the public, the courts and the legal profession.

Standard 2.6 provides that a violation of Business and Professions Code, section 6068(e) shall result in disbarment or suspension depending upon the gravity of the offense and the harm, if any, to the victim of the misconduct.

Standard 2.10 provides that a violation of a section of the Business and Professions Code not otherwise specified in the Standards, such as section 6090.5, shall result in reproof or suspension depending upon the gravity of the offense and the harm, if any, to the victim of the misconduct.

Here, Respondent's misconduct involves his professional duty to protect the confidences and secrets of a former client and his obligation to not improperly interfere with State Bar disciplinary investigations. These factors dictate that discipline be imposed in this matter.

However, Respondent's conduct, especially that involving his e-mail messages to T. M., occurred under unique and emotional circumstances which are not likely to reoccur. Furthermore, Respondent now recognizes the wrongfulness of his conduct. Respondent readily admits that he should not have allowed the emotion associated with being personally involved in a dispute distract him from his professional obligations.

These factors, along with Respondent's 31 years of practice without discipline and other mitigation, suggest that Respondent is not likely to commit further misconduct in the future. Therefore, the Court need not impose discipline at the high end of the range provided for in Standard 2.6.

Given the above, the parties submit that the agreed upon 30 day actual suspension, with the agreed upon probationary conditions, is consistent with the Standards and will satisfactorily serve to protect the public.

**PENDING PROCEEDINGS**

The disclosure date referred to, on page one, paragraph A,(7), was January 12, 2010.

**COSTS OF DISCIPLINARY PROCEEDINGS**

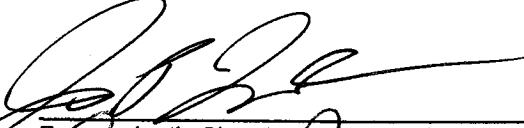

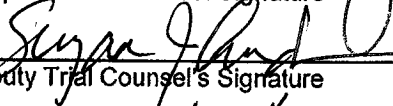
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 12, 2010, the prosecution costs in this matter are approximately \$2,000. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of Jim Parsons Mahacek	Case number(s): Inv No. 08-O-10722
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### SIGNATURE OF THE PARTIES

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

<u>2/12/10</u> Date	 Respondent's Signature	<u>Jim Parsons Mahacek</u> Print Name
<u>2/12/10</u> Date	 Respondent's Counsel Signature	<u>Ellen A. Pansky</u> Print Name
<u>2/12/10</u> Date	 Deputy Trial Counsel's Signature	<u>Kevin B. Taylor</u> Print Name

*for Kevin B. Taylor*

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In the Matter Of  
Jim Parsons Mahacek

Case Number(s):  
Inv. No. 08-O-10722

### 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.)**

Date

02-22-10

Judge of the State Bar Court

  
RICHARD A. PLATEL

**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 February 25, 2010, 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:

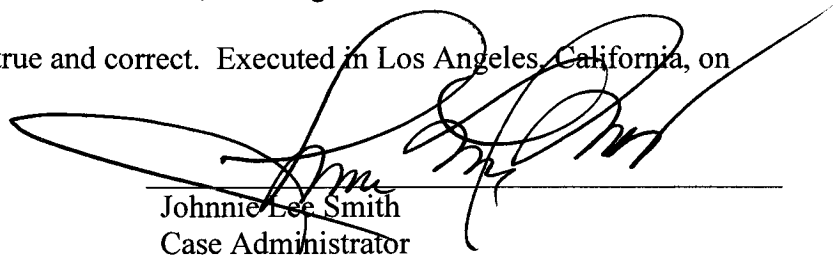
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY  
PANSKY MARKLE HAM LLP  
1010 SYCAMORE AVE UNIT 308  
SOUTH PASADENA, CA 91030

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

Kevin B. Taylor, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 25, 2010.



Johnnie Lee Smith  
Case Administrator  
State Bar Court