


(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM

<p>Counsel For The State Bar</p> <p>MONIQUE T. MILLER DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, California 90015-2299 213-765-1486</p> <p>Bar # 212469</p>	<p>Case Number (s) 08-O-13868</p>	<p>(for Court's use)</p> <p>FILED</p> <p>DEC 18 2009 <i>YMC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>DAVID CAMERON CARR Law Offices of David Cameron Carr 3333 Camino Del Rio S Ste 215 San Diego, CA 92108 Tel: (619) 696-0526</p> <p>Bar # 124510</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> <p>kwiktag® 022 606 140</p> 	
<p>In the Matter Of: IVAN BARRY SCHWARTZ</p> <p>Bar # 153264</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 June 5, 1991.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 6 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Do not write above this line.)

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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 94-O-10585, 94-O-11091 and 95-O-15531
 - (b) Date prior discipline effective January 29, 1998
 - (c) Rules of Professional Conduct/ State Bar Act violations: Section (B)(1)(c)(3 violations); Rule 4-100(A) (2 violations); 4-100(B)(4)(2 violations); and B&P 6068(m)(1 violation)
 - (d) Degree of prior discipline 2 years stayed suspension and 2 years probation including 60 days actual suspension
 - (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.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

- (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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: IVAN BARRY SCHWARTZ, Bar # 153264

CASE NUMBER(S): 08-O-13868

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties hereby waive any variance between the Notice of Disciplinary Charges (“NDC”) filed on May 19, 2009 in Case No. 08-O-13868 , and the facts and conclusions of law contained in this stipulation.

Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to the case that is the subject matter of this stipulation.

INCORPORATION OF PRIOR STIPULATION

This stipulation is an addendum intended to supplement the Stipulation re: Facts and Conclusions of Law in Case No. 06-O-13672, which the parties lodged with this Court on December 9, 2008 (the “Prior Stipulation”). The Prior Stipulation is also incorporated as if fully set forth herein.

FACTS AND CONCLUSIONS OF LAW IN CASE NO. 08-O-13868

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.

FACTS

1. On July 18, 2005, Respondent was employed by Maria Navarrete (“Navarrete”) to file a medical malpractice action on her behalf. The medical malpractice action arose out of personal injuries to Navarrete which occurred on June 3, 2005. Due to her diminished capacity, Navarrete authorized Respondent to communicate with her family members regarding her case, including providing them with status updates.
2. Beginning in August 2005 and continuing through December 2007, a member of Navarrete’s family would contact Respondent by telephone or in person on behalf of Navarrete on at least a monthly basis to inquire about the status of Navarrete’s case. During these contacts, Respondent led the family members to believe that he was working on Navarrete’s case.
3. On June 3, 2006, the statute of limitations expired on filing a medical malpractice action on behalf of Navarrete. Respondent never filed a malpractice action on behalf of Navarrete.
4. On June 9, 2006, Respondent sent a *Notice of the Intention To Bring Action Based on Professional Negligence* to Sharp Healthcare Memorial Hospital. In this *Notice* Respondent specifies that on september 15, 2006, he would be filing an action for damages based upon Sharp’s negligence in

providing professional health care services to Navarrete. Subsequent to this letter Respondent failed to take any further action on behalf of Navarrete.

5. On December 7, 2007, Respondent met with Navarrete and members of her family. At this meeting Respondent told Navarrete that he had failed to file a complaint prior to the statute of limitations expiring.

6. On multiple occasions between August 2005 and December 2007, Respondent told Navarrete's daughter Maria that he had filed a medical malpractice action in court on behalf of Navarrete. These statements were false and Respondent knew or was grossly negligent in not knowing they were false at the time he made these statements.

7. On July 18, 2005, Respondent and Navarrete signed a contingency fee agreement prepared by Respondent. The agreement provided that Respondent would collect 33 1/3 percent of any amount collected prior to the filing of a suit and 40 percent of any amount collected after the filing of a suit.

8. Respondent's fee agreement violates Business and Professions Code, section 6146, which prohibits, in pertinent part, entering a contingency fee agreement in a medical malpractice action in excess of the following: 40% of the first \$50,000 recovered; 33 1/3% of the next \$50,000 recovered; 25% of the next \$500,000 recovered; and 15% of any amount on which the recovery exceeds \$600,000.

CONCLUSIONS OF LAW

9. By failing to provide any legal services of value to Navarrete for which he was hired, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

10. By misrepresenting to Navarrete's daughter that a medical malpractice action had been filed in court, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business & Professions Code section 6106.

11. By failing to comply with the fee agreement provisions of Business and Professions Code section 6146, Respondent entered into an illegal fee agreement with Navarrete, in willful violation of Rules of Professional Conduct, 4-200(A).

RULE 133 NOTICE OF PENDING PROCEEDINGS

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on August 7, 2009.

(Do not write above this line.)

In the Matter of IVAN BARRY SCHWARTZ Bar # 153264	Case number(s): 08-O-13868
---	-------------------------------

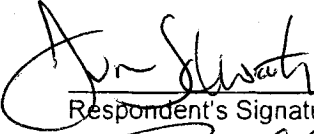
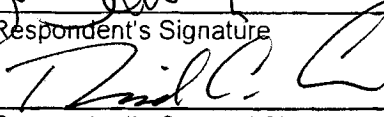
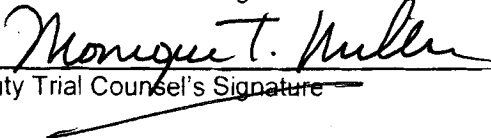
SIGNATURE OF THE PARTIES

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, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>08-17-2009</u> Date	 Respondent's Signature	Ivan Barry Schwartz Print Name
<u>8/19/2009</u> Date	 Respondent's Counsel Signature	David Cameron carr Print Name
<u>8/21/09</u> Date	 Deputy Trial Counsel's Signature	Monique T. Miller Print Name

(Do not write above this line.)

In the Matter Of IVAN BARRY SCHWARTZ Bar # 153264	Case Number(s): 08-O-13868
--	--------------------------------------

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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

12/17/09
Date


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 Los Angeles, on December 18, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW (Case No.06-O-13672)

STIPULATION RE FACTS AND CONCLUSIONS OF LAW (Case No.08-O-13868)

STIPULATION RE FACTS AND CONCLUSIONS OF LAW (Case No.08-O-14600)

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:

**DAVID C. CARR
LAW OFFICE OF DAVID CAMERON CARR
3333 CAMINO DEL RIO S STE 215
SAN DIEGO, CA 92108**

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

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 18, 2009.



Tammy Cleaver
Case Administrator
State Bar Court