

State Bar Court of the State Bar of California
Hearing Department: Los Angeles San Francisco
PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Counsel for the State Bar Cydney Batchelor, #114637 State Bar of California 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204	Case Number(s) 00-0-13541-PEM 00-0-13542 01-0-2477 03-0-1552 04-0-11112 04-0-11585 04-0-12337 04-0-12843	PUBLIC MATTER FILED MAR 30 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	for Court use CONFIDENTIAL LODGED DEC 28 2004 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent Michael E. Wine, 58657 3218 E. Holt Ave., #100 West Covina, CA 91791 Tele: 626/858-0602	Submitted to Pilot Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of PAUL N. DANE II Bar # 99591 A Member of the State Bar of California (Respondent)			

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A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted 12/01/81
(Date)

(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, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on 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. Dismissed charge(s)/count(s) are listed under "Dismissals." This stipulation consists of 10 pages.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts".

See attachment

(5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."

See attachment

(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.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

B. Aggravating Circumstances (Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).) Facts supporting aggravating circumstances are required.

(1) ~~xxx~~ Prior Record of Discipline [see standard 1.2(f)]

(a) ~~xxx~~ State Bar Court Case # of prior case S 068808 (96-0-6404)

(b) ~~xxx~~ Date prior discipline effective 7/4/98

(c) Rules of Professional Conduct/State Bar Action violations _____

(d) ~~xxx~~ Degree of prior discipline 2 yr stayed suspension and until rehabilitation
std.1.4(c)(ii), 2 years probation

(e) ~~xxx~~ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" See 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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.

(7) ~~xxx~~ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct. See attached

(8) No aggravating circumstances are involved.

Additional aggravating circumstances:

Prior Discipline: The prior discipline set forth above was consolidated with Case No. 96-0-1437, which became effective on 1/21/98.

C. Mitigating Circumstances [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) ~~XXXX~~
~~XXXX~~ Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to 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 of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs 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:

None.

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

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot 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 Pilot 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.

11/15/04
Date


Respondent's Signature

PAUL N. DANE II
Print Name

11/16/04
Date


Respondent's Counsel Signature

MICHAEL E. WINE
Print Name

11/17/04
Date


Deputy Trial Counsel's signature

CYDNEY BATCHELOR
Print Name

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: PAUL N. DANE II
CASE NUMBER(S): 00-O-13541, ET AL.

DISMISSAL.

Case No. 04-O-11585 (Ulai Taufa): Upon the execution of the pilot program contract by the Respondent and the State Bar Court, the State Bar respectfully requests the Court to dismiss case number 04-O-11585, in the interests of justice, without prejudice. This case arose from a complaint by an opposing party in January 2004 that Respondent was delaying in releasing funds from a community asset. Respondent subsequently released the funds.

FACTS AND CONCLUSIONS OF LAW.

Case No. 00-O-13541 (Mable Roberts)

Facts: In September 1998, Mable Roberts employed Respondent to represent her in a family law matter, and paid him \$1500.00 in advanced attorney fees. Respondent told Ms. Roberts that he would obtain a court date within two weeks; however, he failed to do so. In May 1999, Ms. Roberts obtained subsequent counsel, who wrote to Respondent to request a return of her advance fees. Respondent responded that he would return \$797.00 of the advanced fee, but failed to do so until April 2002, after the intervention of the State Bar.

Conclusions of Law: By recklessly failing to perform the legal services for which he had been employed, Respondent failed to perform legal services competently, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to refund unearned fees promptly to Ms. Roberts, Respondent failed to refund unearned fees promptly, in violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 00-O-13542 (Amy Dunbinsky)

Facts: In April 2000, Amy Dunbinsky employed respondent to represent her in a family law matter, and paid him \$700.00 in advanced fess and costs (filing fee). Ms. Dunbinsky telephoned Respondent numerous times between May and July 2000 for a status report, but Respondent failed to return the calls. In July 2000, Ms. Dunbinsky discharged Respondent and requested the return of her unearned advance fees. Respondent failed to do so until January 2001, after the intervention of the State Bar.

Conclusions of Law: By willfully failing to respond to Ms. Dunbinsky's repeated requests for a status report, Respondent failed to respond to reasonable status requests from his client, in violation of Business and Professions Code section 6068(m). By willfully failing to refund unearned fees promptly to Ms. Dunbinsky, Respondent failed to refund unearned fees promptly, in violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 01-O-2477 (Tina Clark)

Facts: In May 2000, Tina Clark employed Respondent to represent her in a family law matter, and paid him \$1500.00 in advanced fees. In June 2000, Ms. Clark discharged Respondent and requested a refund of the unearned advanced fees, and asked that Respondent telephone her immediately to discuss her account. Respondent failed to reply. In July 2000, Ms. Clark sent Respondent a certified letter, return receipt requested, in which she requested a refund of her unearned fees and an accounting. Respondent again failed to reply. In August 2001, after the intervention of the State Bar, Respondent finally refunded \$300.00 in unearned fees to Ms. Clark.

Conclusions of Law: By willfully failing to respond to Ms. Clark's request for an accounting, Respondent failed to render an accounting to his client, in violation of Rule of Professional Conduct 4-100(B)(3). By willfully failing to refund unearned fees promptly to Ms. Clark, Respondent failed to refund unearned fees promptly, in violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 00-O-13541, 00-O-13542, 01-O-2477 (Probation Violation)

Facts: From July 4, 1998 to July 4, 2000, Respondent was on State Bar probation in case no. S068808 (96-O-6404). One of the conditions of his probation was that he comply with the provisions of the State Bar Act and the Rules of Professional Conduct. However, during the period of probation, Respondent willfully committed the misconduct set forth in the Roberts, Dunbinsky and Clark matters above.

Conclusions of Law: By willfully committing misconduct in the Roberts, Dunbinsky and Clark matters as set forth above, Respondent failed to comply with the State Bar Act and the Rules of Professional Conduct and thereby failed to comply with his probation, in violation of Business and Professions Code section 6068(k).

Case No. 03-O-1552 (Ana Greensides)

Facts: Prior to 2003, Respondent was in a fee dispute with Ana Greensides. In March 2003, Respondent wrote a letter to Ms. Greensides in which he informed her that he would not release her file unless she paid him \$100.00 to copy the file. In April 2003, Respondent finally returned the file, after the intervention of the State Bar.

Conclusion of Law: By willfully failing to return Ms. Greensides file to her promptly, and by willfully conditioning the return of the file on her paying \$100.00 in copying costs, Respondent failed to release client papers and property promptly, in violation of Rule of Professional Conduct 3-700(D)(1).

Case No. 04-O-11112 (Frank Jacques)

Facts: In December 2001, Frank Jacques employed Respondent to represent him in a family law matter, and paid him \$2000.00 in advanced fees. Thereafter, Mr. Jacques telephoned Respondent numerous times, but Respondent failed to reply or to perform any substantive legal services for him. In March 2004, Mr. Jacques sent Respondent a certified letter, return receipt requested, and requested the refund of his unearned fees. Respondent failed to reply or to refund any unearned fees until June 2004, after the intervention of the State Bar.

Conclusion of Law: By recklessly failing to provide any substantive legal services to Mr. Jacques, Respondent failed to perform legal services competently, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to respond to Mr. Jacques' requests for status reports, Respondent failed to respond to reasonably status inquiries from his client, in violation of Business and Professions Code section 6068(m). By willfully failing to return unearned attorney fees until after the intervention of the State Bar, Respondent failed to refund unearned attorney fees promptly, in violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 04-O-12337 (Patrick Vessey)

Facts: In August 2003, Patrick Vessey employed Respondent to represent him in a dissolution matter. Over time, Mr. Vessey paid him \$2000.00 in advanced attorney fees for the representation. Mr. Vessey made several status inquiries to Respondent which were not responded to.

Conclusion of Law: By willfully failing to respond to Mr. Vessey's requests for status reports, Respondent failed to reply to a client's requests for information, in violation of Business and Professions code section 6068(m).

Case No. 04-O-12843 (Veree Cardinale)

Facts: In November 2003, Veree Cardinale employed Respondent to represent her in a family law matter, and paid him \$2000.00 in advance attorney fees. Ms. Cardinale made several status inquiries to Respondent which were not returned. Ms. Cardinale's matter was set for hearing on June 22, 2004. On June 14, 2004, Respondent wrote to her by regular U.S. mail, and asked her either to sign a substitution of attorney or he would file a motion to withdraw. He also obtained a continuance in Ms. Cardinale's trial without notifying her until after the fact. Thereafter, Ms. Cardinale made several attempts to contact Respondent, but he never replied.

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Conclusions of Law: By willfully failing to respond to Ms. Cardinale's repeated requests for information about her case, Respondent failed to reply to client inquiries for status reports, in violation of Business and Professions Code section 6068(m). By willfully failing to inform her that he was requesting that her trial be continued until after the fact, Respondent failed to inform his client of significant developments in her case, in further violation of Business and Professions Code section 6068(m).

AGGRAVATING AND MITIGATING FACTORS.

Aggravating Factors:

Prior misconduct: As set forth in full on page 2 herein, Respondent has a prior record of discipline, which represents two separate proceedings that were consolidated.

Multiple Acts of Misconduct: As set forth above, the stipulated to misconduct involves eight separate client matters.

Mitigating Factors:

Cooperation with the State Bar: Throughout the investigation and resolution of these proceedings, Respondent has been completely cooperative with the State Bar.

Other Mitigating Factors:

Lawyer's Assistance Program Participation: Respondent signed an application agreement to be assessed by the Lawyer's Assistance Program in October 2003, and fully cooperated in that assessment process. Respondent also cooperated in an evaluation by a LAP-selected mental health professional, and then met with the LAP Evaluation Committee to discuss full participation in the LAP program. On February 23, 2004, Respondent signed the participation agreement with LAP and memorializes his commitment to the program. He has been in continuous compliance with LAP since October 2003.

Refund of attorney fees: Although he did not do so until after intervention of the State Bar, Respondent voluntarily refunded partial attorney fees to clients Roberts, Dunbinsky, Clark and Jacques.

PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A.(6), was November 12, 2004.

ADDITIONAL RESTITUTION CONDITIONS.

Fee arbitration in Vessey matter: Respondent hereby agrees to write to Mr. Vessey, within ninety days from the date he signs this stipulation, and therein offer to initiate and participate in

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fee arbitration upon Mr. Vessey's request regarding his outstanding dispute with Respondent about \$2000.00 in advanced fees. Respondent further agrees to initiate and participate in fee arbitration upon Mr. Vessey's request, and to abide by the final order if any there be. Respondent understands and agrees that his failure to write the letter, or to initiate or participate in fee arbitration upon Mr. Vessey's request, or to abide by the final order, if any there be, may constitute a violation of this stipulation.

Fee arbitration in Cardinale matter: Respondent hereby agrees to write to Ms. Cardinale, within ninety days from the date he signs this stipulation, and therein offer to initiate and participate in fee arbitration upon Ms. Cardinale's request regarding Respondent's outstanding dispute with her about \$2000.00 in advanced fees. Respondent further agrees to initiate and participate in fee arbitration upon Ms. Cardinale's request, and to abide by the final order if any there be. Respondent understands and agrees that his failure to write the letter, or to initiate or participate in fee arbitration upon Ms. Cardinale's request, or to abide by the final order, if any there be, may constitute a violation of this stipulation.

ORDER

Finding this stipulation to be fair to the parties, 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.

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; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

December 20, 2004
Date

Cat McElroy
Judge of the State Bar Court