




(Do not write above this line.)

State Bar Court of California		
Hearing Department		<input type="checkbox"/> Los Angeles
		<input checked="" type="checkbox"/> San Francisco
Counsel for the State Bar Manuel Jimenez Deputy Trial Counsel/OCTC State Bar of California 180 Howard Street San Francisco, CA 94105 Bar # 218234	Case number(s) 00-0-14958	(for Court's use) PUBLIC MATTER FILED  OCT 11 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent John C. Elstead The Elstead Law Firm Foothill Corporate Center 5820 Stoneridge Mall Road #203 Pleasanton, CA 94588 Bar # 61048	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of John C. Elstead Bar # 61048 A Member of the State Bar of California (Respondent)		

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 18, 1974
(date)
- (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 and order consist of 12 pages.
- (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.

(Do not write above this line.)

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

- (a) costs added to membership fee for calendar year following effective date of discipline (public reproof)
- (b) case ineligible for costs (private reproof)
- (c) costs to be paid in equal amounts for the following membership years:
Costs to be made quarterly during the probationary period.
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e) costs entirely waived

(9) The parties understand that:

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 _____

(Do not write above this line.)

- (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.
- (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.

(Do not write above this line.)

- (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:

(Do not write above this line.)

D. Discipline:

- (1) Private reproof (check applicable conditions, if any, below)
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of One Year.
- (2) During the condition period attached to the reproof, 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 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 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (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 conditions attached to the reprobation.
- (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 of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. 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 required to be filed with the Office of Probation.
- (10) 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 of the effective date of the reprobation.
- No MPRE ordered. Reason: As per Judge Remke, Not Required with Reprobation.
- (11) 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:

The Respondent is to Pay \$2,500, in equal payments, accompanying his quarterly reports. Said payments are to be provided to the probation department to be sent to Michael Pecherer, and represent sanctions awarded against the Respondent and to Mr. Pecherer in the civil action entitled, **Jesus Berrios, John Elstead v. Michael Pecherer.**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: John C. Elstead

CASE NUMBER(S): 00-O-14958

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.

Facts

On July 3, 1996, respondent filed a complaint against Michael Pecherer ("Pecherer") for malpractice, fraud and other allegations on behalf of Jesus Berrios ("Berrios"), (*Jesus Berrios, John Elstead v. Michael Pecherer* Alameda Superior Court case no. 7782227-5). The court set trial in the *Berrios* matter for March 5, 1999.

Prior to March 1999 respondent was scheduled to go to trial in a legal malpractice case, *Zalvaney et al. v Wilson, Sonsini, Goodrich, Rosati, et al.* (Santa Clara County case number CV74460-6). The trial date in *Zalvaney* was May 3, 1999. On March 18, 1999 the trial date in the *Zalvaney* matter was continued from May 3, 1999 to October 25, 1999. On March 19, 1999 the *Berrios* trial was rescheduled to June 4, 1999. On April 1, 1999, respondent filed an ex parte application to have the trial date in the *Berrios* matter reset. In his declaration respondent stated that he was available after August 10, 1999 to try the case because he had to finish work in a Santa Clara case.

Based upon respondent's written statements under oath and his verbal representations at the April 1, 1999 ex parte hearing, the Judge continued the *Berrios* trial from June 4, 1999 to August 13, 1999. On April 5, 1999, after the ex parte hearing, respondent informed the court in writing that the trial date of the Santa Clara (*Zalvaney*) case had been continued to October 25, 1999. On April 13, 1999, the Court issued an Order to Show Cause requesting respondent to appear on May 4, 1999 and show cause why he should not be sanctioned for making misrepresentations to the court in connection with his request for a continuance in the *Berrios* case. On May 25, 1999, the Court issued a decision in which it found that respondent made false and misleading statements orally and in writing to the court in connection with his request for a continuance of the *Berrios* trial date of June 4, 1999. Specifically, the court found that respondent stated he was scheduled to begin a trial in Santa Clara County on May 3, 1999 which would make it impossible for him to go to trial in this case on June 4, 1999. At the time the statements were made, the *Berrios* case he referred to had been continued to October. The court found that respondent knew the case had been continued at the time of his misrepresentations. to the Court.

Santa Clara gmr

Respondent was ordered to pay sanctions in the amount of \$2,500 to Pecherer and \$2,500 to the Court within 60 days.

Conclusions of Law

By failing to mention the start date of the Zalvaney trial, Respondent was found to have misled the judge or judicial officers by an artifice or false statement of fact, in violation of Business and Professions Code section 6068(d).

Charges Dismissed

Charges two and three of the Notice of Disciplinary Charges will be dismissed with the filing and approval of this stipulation.

PENDING PROCEEDINGS.

There is no disclosure date, as referenced on page one, paragraph A.(6), because there are no pending investigation not covered by this stipulation as of May 25, 2005.

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.

FINANCIAL CONDITIONS, RESTITUTION.

During the course of the probationary period, the Respondent will make quarterly payments of, in equal installments of \$625 and totaling \$2,500 to the office of probation representing sanctions awarded against the Respondent, and to be paid to Michael Pecherer.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 12, 2005, the estimated prosecution costs in this matter are approximately \$3,654.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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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AUTHORITIES SUPPORTING DISCIPLINE.

The Standards

Standards for Attorney Sanctions for Professional Misconduct ("the standards"):

In determining the appropriate level of discipline, the court should look to the Standards for Professional Misconduct. In *In re Morse* (1995) 11 Cal.4th 184, 206, the California Supreme Court stated;

"To determine the appropriate level of discipline ... we... must first look to the standards for guidance. 'These guidelines are not binding on us, but they promote the consistent and uniform application of disciplinary measures. Hence we have said that 'we will not reject a recommendation arising from application of the standards unless we have grave doubts as to the propriety of the recommended discipline.(Citation Omitted.)'"

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession, the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Despite the need to examine cases on an individual basis, it is also a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been largely achieved through the application of the Standards of Attorney Sanctions for Professional Misconduct. In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

Standard 2.6 provides that a member in violation of the delineated business and professions Code, including 6068 and 6103 shall result in disbarment or suspension.

AGGRAVATING FACTORS

Indifference Toward Rectification/Atonement: As part of the Judge Philip Sarkisian's finding of contempt, the Judge ordered the Respondent to pay sanctions to the opposing side, in the amount \$2,500. The Respondent has thus far failed to do so.

MITIGATING FACTORS

- A. Absence of Prior Discipline: The respondent was admitted to the bar in 1974. Respondent has no prior record of discipline. Little weight should be given this mitigating circumstance in that the respondent has been found in contempt of court in the past, as detailed above.

- B. Excessive Delay: The charged conduct occurred in 1999. In or about June, 1999 the State Bar received a copy of the decision of the Court, issued by Judge Philip V. Sarkisian, indicating that the Respondent was found in contempt. The NDC in the instant case filed on December 21, 2004.

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.

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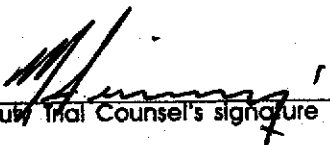
In the Matter of John C. Elstead	Case number(s): 00-0-14958
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SIGNATURE OF THE PARTIES

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 Facts, Conclusions of Law and Disposition.

Date 9/7/05 X  John C. Elstead
Respondent's signature Print name

Date _____ Respondent's Counsel's signature _____ Print name _____

Date 9/9/05 X  Manuel Jimenez
Deputy Trial Counsel's signature Print name

(Do not write above this line.)

In the Matter of John C. Elstead	Case number(s): 00-O-14958
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All Hearing dates are vacated.

On page 2, under section A(8)(c), the language "costs to be made quarterly during the probationary period" is deleted and replaced with "costs to be paid in equal amounts for the following membership years: 2006 and 2007." The proposal by the parties is unworkable as there is no mechanism to monitor quarterly costs payments and no way to enforce non-payment. Since the parties anticipated that the payments would be extended over one year and therefore the final payment technically would not be due until the 2007 membership year, spreading the payments over the two membership years is consistent with their intent.

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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

10-11-05
Date


JOANN M. REMKE
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 San Francisco, on October 11, 2005, 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:

JOHN CLIFTON ELSTEAD
#203
5820 STONERIDGE MALL RD
PLEASANTON CA 94588

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 11, 2005**.


Laurretta Cramer
Case Administrator
State Bar Court