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State Bar Court of California Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar Cydney Batchelor State Bar of California Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204 Bar # 114637	Case Number(s) 01-0-2736-PEM 01-0-4310 01-0-5293 02-0-11014 03-0-2602 03-0-4475 04-0-10312 04-0-10444 04-0-10824 FILED SEP 26 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	(for Court use) CONFIDENTIAL LODGED OCT 24 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO <i>Strickland</i> <i>per 9/26/06</i> <i>order</i>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per Bernabe Hernandez, Esq. 350 E St. #220 Santa Rosa, CA 95404 Tele: 707/569-7553 Bar # 110671		
In the Matter of BERNABE HERNANDEZ Bar # 110671 A Member of the State Bar of California (Respondent)	Submitted to Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 12, 1983
(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, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of 11 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
See attached
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
See attached

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- (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 [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 Action violations _____
- (d) ☐ Degree of prior discipline _____
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (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 attached
- (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) ☒ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing ~~of Respondent's current misconduct~~
See attachment
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

See attachment

(Do not write above this line.)

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) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to the ~~victim of his/her misconduct~~ and to the State Bar during disciplinary investigation and proceedings. **See attached**
- (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. **See attached**
- (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:

See attached

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In the Matter of BERNABE HERNANDEZ	Case number(s): 01-0-2736-PEM, et al.
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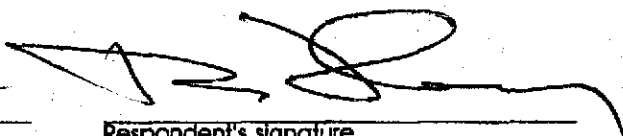

SIGNATURE OF THE PARTIES

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 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, 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.

<u>7/10/05</u> Date	 Respondent's signature	<u>BERNABE HERNANDEZ</u> Print name
<u>N/A</u> Date	<u>N/A</u> Respondent's Counsel's signature	<u>N/A</u> Print name
<u>7/15/05</u> Date	 Deputy Trial Counsel's signature	<u>CYDNEY BATCHELOR</u> Print name

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **BERNABE HERNANDEZ**

CASE NUMBER(S): 01-O-02736; 01-O-04310; 01-O-05293;
02-O-11014; 03-O-02602; 03-O-04475;
04-O-10312; 04-O-10444; 04-O-10824

DISMISSALS.

02-O-11014 (Chili Willie): Upon Respondent's successful completion of the State Bar Court's Alternative Discipline Program, the State Bar will request this Court to dismiss this case, without prejudice. The case involved a failure to cooperate with a State Bar investigation, but no substantive misconduct, and is memorialized below in "aggravating factors."

Case No. 04-O-10312: (Steve Rosen) The State Bar respectfully requests the Court to dismiss this case at this time, without prejudice. If called as a witness, Respondent would testify that he stopped communicating with Mr. Rosen after Mr. Rosen threatened his life. In addition, after Respondent stopped communicating with him, Mr. Rosen was convicted of soliciting the murder of a Sonoma County Sheriff's deputy who was investigating a criminal case against him. The State Bar cannot now offer Mr. Rosen as a credible witness against Respondent here. However, the case also involved Respondent's failure to cooperate with the State Bar investigation in this case, and is memorialized below in "aggravating factors."

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the State Bar Act and/or Rules of Professional Conduct:

Case No. 01-O-02736 (James O'Rourke)

Facts: On May 2, 2000, Respondent was appointed by the Sonoma County Superior Court to represent James F. O'Rourke in a criminal matter. Thereafter, between May 2, 2000 and June 2001, Respondent failed to reply to almost all Mr. O'Rourke's telephone calls for information about his case. Respondent also failed to inform Mr. O'Rourke that the criminal court imposed a fine against him in the amount of \$100.00 pursuant to a plea agreement that Respondent entered into on Mr. O'Rourke's behalf.

Conclusions of Law: By willfully failing to return almost all Mr. O'Rourke's numerous telephone calls, Respondent failed to respond to reasonable status inquiries from his

client, in violation of Bus. and Prof. Code section 6068(m). By willfully failing to inform Mr. O'Rourke that he had entered into a plea agreement on his behalf, Respondent failed to inform his client of a significant development in his case, in further violation of Bus. and Prof. Code section 6068(m).

Case No. 01-O-04310 (Steve and Nancy Nella)

Facts: On January 12, 1998, Steve and Nancy Nella (hereafter "the Nellas") employed Respondent to represent them in civil litigation on a contingency fee basis. Thereafter, Respondent failed to take any further substantive action on the Nellas' behalf. He also failed to respond to most of the Nellas' numerous oral and written communications.

Conclusions of Law: By repeatedly failing to provide substantive legal services on the Nellas' behalf, Respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to return almost all the Nellas' numerous verbal and written requests for information, Respondent failed to respond to reasonable status inquiries from his clients, in violation of Bus. and Prof. Code section 6068(m).

Case No. 01-O-05293 (Abelardo Mendoza)

Facts: On July 27, 2001, Abelardo Mendoza employed Respondent in two separate matters, a driving under the influence criminal charge and a traffic citation, and eventually paid him a total of \$1000.00 in advanced fees toward a flat fee of \$2000.00. Thereafter, Respondent failed to perform any substantive services on Mr. Mendoza's behalf, or to return most of his numerous telephone calls for information. In September 2001, Mr. Mendoza wrote to Respondent to request the return of his unearned attorney fees. Respondent failed to respond or comply.

Conclusions of Law: By repeatedly failing to provide any substantive legal services on Mr. Mendoza's behalf, Respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Prof. Conduct 3-110(A). By willfully failing to respond to Mr. Mendoza's numerous telephone messages, Respondent failed to respond to reasonable status inquiries from his client, in violation of Bus. and Prof. Code section 6068(m). By willfully failing to return the unearned attorney fees promptly upon request, Respondent failed to refund unearned fees promptly, in violation of Rule of Prof. Conduct 3-700(D)(2).

Case No. 03-O-02602 (Joseph Hull)

Facts: On March 7, 2002, Joseph Hull employed Respondent to represent him in a criminal matter, and Respondent was paid \$2500.00 in advanced attorney fees towards a quoted fee of \$3500.00. From September 2002 until June 2003, Respondent failed to respond to numerous verbal and written communications. Finally, Respondent failed to return unearned advanced attorney fees.

Conclusions of Law: By willfully failing to respond to Mr. Hull's verbal and written requests for information about the case, Respondent failed to respond to reasonable requests for information from his client, in violation of Bus. and Prof. Code section 6068(m). By willfully failing to respond unearned attorney fees, Respondent failed to respond unearned fees promptly, in violation of Rule of Prof. Conduct 3-700(D)(2).

Case No. 03-O-04475 (Anthony Johnson):

Facts: In April 2003, Respondent represented Anthony Johnson as conflict counsel in a criminal case in which Mr. Johnson was sentenced to serve time in state prison. At that time, Mr. Johnson requested Respondent to file a notice of appeal on his behalf; Respondent agreed, but failed to do so. Respondent also failed to respond to numerous telephone calls from Mr. Johnson about the appeal. Finally, Mr. Johnson's appeal was filed by someone else.

Conclusions of Law: By recklessly failing to file a notice of appeal for Mr. Johnson as he had promised to do, Respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Prof. Conduct 3-110(A). By failing to respond to Mr. Johnson's numerous messages, Respondent failed to respond to reasonable requests for information from his client, in violation of Bus. and Prof. Code section 6068(m).

Case No. 04-O-10444: (Gerald Marchello)

Facts: In October 2002, Gerald Marchello employed Respondent to represent him in a petition to recover several firearms which had been confiscated by the Santa Rosa Police Department, and paid him \$2000.00 in advanced fees. Thereafter, through Respondent's efforts, most of the firearms were returned to Mr. Marchello. However, before returning the final firearm, the City Attorney needed information from Mr. Marchello, and wrote to Respondent to obtain the information on August 14, 2003. Respondent failed inform Mr. Marchello of the issue, or to obtain the information from him. In addition, Respondent failed to respond to numerous inquiries from Mr. Marchello about the firearm. Finally, in March 2004, Mr. Marchello communicated directly with the City Attorney and resolved the issue. Thereafter, Mr. Marchello made several requests to Respondent for his file; however, Respondent failed to comply until after the intervention of the State Bar.

Conclusions of Law: By willfully failing to respond to Mr. Marchello's numerous requests for information about the case, or to inform him about the City Attorney's request for information about the remaining firearm, Respondent failed to communicate adequately with his client, in violation of Bus. and Prof. Code section 6068(m). By willfully failing to return Mr. Marchello's file until after the intervention of the State Bar, Respondent failed to return a client file promptly upon request, in violation of Rule of Prof. Conduct 3-700(D)(1).

Case No. 04-O-10824: (Kris Ingwell)

Facts: In January 2002, Kris Ingwell employed Respondent to represent him in some criminal matters, and Mr. Ingwell's father paid \$2500.00 against the Respondent's verbal agreement to provide the representation for a flat fee of \$5000.00. Respondent thereafter represented Mr. Ingwell at trial. At the conclusion of the trial, Respondent agreed to file an appeal to contest the credit for time spent in custody issue; however, Respondent failed to do so or to respond to Mr. Ingwell's numerous messages about the appeal. In addition, Mr. Ingwell and his family gave Respondent a gold watch, major credit cards and documents to hold in safekeeping. Despite repeated requests from Mr. Ingwell that Respondent release this property to his father, Respondent has failed to do so. Mr. Ingwell's appeal was finally filed by someone else.

Conclusions of Law: By recklessly failing to file an appeal on the sentencing issue, Respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to respond to Mr. Ingwell's numerous requests for information, Respondent failed to communicate adequately with his client, in violation of Bus. and Prof. Code section 6068(m). By willfully failing to release the personal property upon the request of Mr. Ingwell, behalf of Ingwell and by failing to perform any substantive work after sentencing, Respondent wilfully failed upon termination of employment to take reasonable steps to avoid reasonably foreseeable prejudice to his client in violation of Rules of Professional Conduct, rule 3-700(A)(2). By failing to release Ingwell's personal property upon request, Respondent failed to deliver as requested by the client property in his possession, in violation of Bus. and Prof. Code section 4-100(B)(4).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was June 15, 2005.

AGGRAVATING CIRCUMSTANCES.

Facts Supporting Aggravating Circumstances:

Multiple Acts of Misconduct: The facts and conclusions set forth above involve multiple acts of misconduct to multiple clients.

Significant Harm: *The Nellas* case: During the time that Respondent failed to pursue the case, the primary defendant died without her testimony being preserved. *The Mendoza* case: As a result of Respondent's inaction, Mr. Mendoza's driving license was suspended.

Failure to provide fee agreements: In the *Mendoza* and *Ingwell* matters, Respondent failed to provide written fee agreements to his clients, in violation of Bus. and Prof. Code section 6148(a).

Failure to cooperate in investigations: Although Respondent has cooperated fully with the deputy trial counsel of record in resolving these cases, he failed to cooperate with the investigator in the following matters: *Nellas, Mendoza, Willie, Hull, Johnson, Rosen, Marchello, and Ingwell.*

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has no prior record of discipline since being admitted to practice in 1983, eighteen years ago.

Candor and cooperation: Despite the seriousness of the offenses, Respondent has been completely and extraordinarily candid and cooperation with the State Bar during its resolution of these cases.

Objective Steps Promptly Taken: *In the O'Rourke case*, Respondent voluntarily paid restitution to his client in the amount of \$400.00; this was the civil penalty and attorney's fee charge assessed against Mr. O'Rourke for the unpaid \$100.00 fine. *In the Mendoza case*, Respondent has voluntarily agreed to return the entire \$1000.00 advanced attorney fees, as well as the \$234.00 in additional penalties assessed against his client as a result of the delay in resolving the traffic citation. *In the Hull case*, Respondent has agreed to refund the entire \$2000.00 advanced attorney fees. *In the Marchello case*, Respondent has agreed to return the entire \$2000.00 advanced attorney fees. *In the Ingwell case*, Respondent has voluntarily agreed to return the entire \$2500.00 advanced attorney fees.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Participation in Lawyer's Assistance Program. In January 2005, Respondent contacted the State Bar Lawyer Assistance Program ("LAP") and completed the intake process. In February 2005, Respondent signed a pre-enrollment assessment agreement with LAP. Respondent was then assessed and monitored for a period for time by the LAP. At the conclusion of the process, Respondent entered into a long-term participation plan with LAP on June 5, 2005.

RESTITUTION.

Respondent waives any objection to immediate payment by the State Bar Client Security Fund upon a claim or claims for the principal amounts of restitution set forth below.

In accordance with the timetable set forth in the "Alternative Discipline Program" contract to be executed between the State Bar Court and Respondent on the captioned cases, Respondent must make restitution as follows:

Abelardo Mendoza, or the Client Security Fund, if it has paid, in the principal amount of \$1,234.00, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

Joseph Hull, or the Client Security Fund, if it has paid, in the principal amount of \$2,000.00, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

Gerald Marchello, or the Client Security Fund, if it has paid, in the principal amount of \$2,000.00, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

Marvin Ingwell, or the Client Security Fund, if it has paid, in the principal amount of \$2,500.00, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

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In the Matter of Bernabe Hernandez	Case number(s): 01-O-02736-PEM, et. al
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ORDER

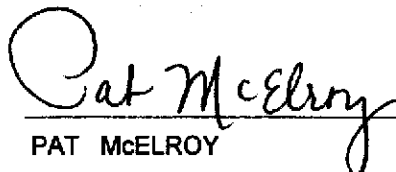
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☐ 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.

1. On page 3, C(8),--an "x" is inserted in the box indicating emotional/physical difficulties.

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 953(a), California Rules of Court.)

October 24, 2005
Date


PAT McELROY
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 September 26, 2006, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

BERNABE HERNANDEZ
350 E ST #220
SANTA ROSA CA 95404

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

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 26, 2006.**


George Hue
Case Administrator
State Bar Court