



<p>Counsel for the State Bar The State Bar of California Office of the Chief Trial Counsel Enforcement Erin McKeown Joyce, Bar No. 149946 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1356</p>	<p>Case number(s) 02-0-12289 03-0-00010-PEM 03-0-00118-PEM Investigation Matter: 03-0-00912</p>	<p>(for Court's use) ORIGINAL FILED MAY 06 2004</p>
<p>Counsel for Respondent James Richard DiFrank, Bar No. 105591 12227 Philadelphia Street Whittier, CA 90601-3931 Telephone: (562) 789-7734</p>	<p>PUBLIC MATTER STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	
<p>In the Matter of STEVEN R. LISS Bar # 129527 A Member of the State Bar of California (Respondent)</p>		
<p>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</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted September 15, 1987
(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) 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. (Check one option only):
 - costs added to membership fee for calendar year following effective date of discipline (public reproval)
 - case ineligible for costs (private reproval)
 - costs to be paid in equal amounts for the following membership years:
2005, 2006 and 2007
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth under "Partial Waiver of Costs"
 - costs entirely waived

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 of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

(8) The parties understand the

- (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 _____

(e) If Respondent has two or more incidents of prior discipline, use space provided below or under "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 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 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: Consider the 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:

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 shall comply with the conditions attached to the reproof for a period of one (1) year.

(2) During the condition period attached to the reproof, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) Within ten (10) days of any change, Respondent shall report to the Membership Records Office and to the Probation Unit, 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) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, respondent shall 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. If the first report would cover less than thirty (30) days, that report shall 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.

- (5) Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the monitor.
- (6) Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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 reproof.
- (7) Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered.
- (8) Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.
- (9) Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the reproof.
- No MPRE ordered.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (11) Other conditions negotiated by the parties:
See Stipulation attachment.

In the Matter of

STEVEN R. LISS

A Member of the State Bar

Case Number(s):

03-0-00010-PEM

03-0-00118-PEM

Investigation Matter: 03-0-00912

Law Office Management Conditions

- a. Within ___ days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.
- b. Within ___ days/ 10 months ___ years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 2 hours of MCLE approved courses in law office management, attorney client relations and/ or general legal ethics. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ___ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSION OF LAW AND DISPOSITION

IN THE MATTER OF: STEVEN ROBERT LISS

CASE NUMBERS: 03-O-00010, 03-O-00118 and 03-O-00912

FACTS AND CONCLUSIONS OF LAW.

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.

Jurisdiction

Respondent Steven Robert Liss was admitted to the practice of law in the State of California on September 15, 1987, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Case No. 03-O-00010 Rule of Professional Conduct 3-110(A) --Failure to Perform with Competence

Respondent wilfully violated Rule of Professional Conduct 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

On January 24, 2002, Erika Ambuehl employed Respondent to represent her in a divorce proceeding entitled *In re the Marriage of Richard Vernon Ambuehl and Erika Lynn Ambuehl* in the San Diego Superior Court, case no. ED051298, (the "divorce case"). At that time, Ambuehl paid Respondent \$5,000.00 as advanced fees for his services. Respondent agreed to set up mediation and proceed to court on Ambuehl's behalf.

On March 6, 2002, Respondent filed a substitution of attorney form installing himself as Ambuehl's attorney of record in the divorce case.

On May 20, 2002, Respondent failed to appear at a short cause court trial hearing properly noticed by the court. Respondent received notice of the hearing, but failed to attend the hearing and failed to contact the court or his client about his failure to attend.

As a result of Respondent's failure to appear at the May 20, 2002 hearing, on May 31, 2002, a default dissolution judgment was filed. The clerk of the court served Respondent with notice of the entry of judgment by mail to Respondent's State Bar membership records address.

At no time did Respondent inform Ambuehl of the May 20, 2002 trial hearing, or his failure to appear, or the resulting default judgment.

At no time did Respondent take any actions to attempt to set aside the default judgment entered against Ambuehl.

In August 2002, Ambuehl's ex-husband informed her that the divorce was final and the settlement agreement, which Ambuehl had previously refused to sign, had been in effect since May of 2002.

As a result of her conversation with her ex-husband, Ambuehl obtained copies of the divorce case from the court file, reviewed the filings and discovered that Respondent failed to appear at the May 20, 2002 trial hearing.

From January 2002 to August 2002, Ambuehl called Respondent's office and left several messages with Respondent's secretary and with his paralegal requesting that Respondent provide a status report on her legal matter. Respondent's paralegal told Ambuehl several times that Respondent was working on the matter and would be contacting her. Prior to the entry of the default judgment, Respondent returned only one call by leaving a message on Ambuehl's voicemail. He never told her about the status of her legal matter.

On August 21, 2002, Ambuehl consulted with another attorney, who referred her back to Respondent's office to have the settlement agreement set aside at no cost to Ambuehl. Respondent agreed to file the appropriate papers to set aside the settlement agreement. At that time, Respondent assigned two associates of his firm, attorneys Erika Collins ("Collins") and Judith Bazeley ("Bazeley") to handle the divorce case.

By the end of September 2002 however, neither Collins and Bazeley were still working at Respondent's office. About that time, Ambuehl called Respondent's office and left a message requesting a status report and specifically requesting that Respondent contact her to provide a status report.

In October 2002, after receiving no communications from Respondent, Ambuehl e-mailed Respondent requesting him to transfer her file and sign and return a substitution of attorney form to Bazeley once he received it.

In late October 2002 or early November 2002, Bazeley faxed the substitution of attorney form to Respondent three different times in an effort to obtain his signature so she could proceed on Ambuehl's behalf.

At no time did Respondent sign the substitution of attorney form or respond to Ambuehl's phone calls or Bazeley's e-mails.

On November 20, 2002, the court accepted Bazeley's filing of the substitution of attorney form without Respondent's signature. On the same date, Bazeley then filed the notice of motion to set aside the default and an OSC modification.

On December 23, 2002, Ambuehl and her ex-husband participated in a pre-OSC mediation conference.

By failing to appear at the trial hearing, failing to perform any services on Ambuehl's behalf, which led to entry of a default judgment, failing to take steps to set aside the default judgment, and by avoiding Ambuehl and Bazeley's repeated attempts to have him sign the substitution of attorney form, thereby delaying reinstatement of settlement proceedings, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

Case No. 03-O-00118 Rule of Professional Conduct 3-110(A) – Failure to Perform with Competence

Respondent wilfully violated Rule of Professional Conduct 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

On October 29, 2001, Respondent was hired by Joseph Voronovich and his wife Katherine Sue Voronovich, to represent them in an adoption matter involving Mrs. Voronovich's two grandchildren.

Respondent requested a retainer fee of \$5,750.00 to represent the Voronoviches in the adoption matter.

On October 29, 2001, the Voronoviches paid Respondent the \$5,750.00 with their VISA credit card, by authorizing Respondent to charge \$5,750.00 against their VISA account.

Two days later, on October 31, 2001, having not received confirmation that the initial charge had been accepted, Respondent's office staff ran the Voronoviches' VISA account a second time for the identical charge, \$5,750.00. This second charge was made without the clients' knowledge or authorization. The Voronoviches had no prior notice that Respondent made a second charge of \$5,750.00 to their credit card account.

In November 2001, the Voronoviches noticed the double charge made by Respondent on their credit card statement.

After noticing the double charge, Mr. Voronovich contacted Respondent's office several times requesting that Respondent voluntarily reverse the charges. Mr. Voronovich left a series of telephone messages for Respondent explaining the double charges and requesting the reversal, but Respondent

failed to properly respond to the messages and to follow-up with his staff concerning the overcharge. Consequently, Mr. Voronovich reported the unauthorized charge to the credit card company.

On December 4, 2001, the credit card company reversed charges to the Voronoviches, based on Mr. Voronovich's challenge.

By failing to properly supervise his office staff and failing to properly respond to the messages left by the Voronoviches concerning the overcharges, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

**Case No. 03-O-00912 Business and Professions Code section 6103 – Failure to Obey
Court Order**

Respondent wilfully violated Business and Professions Code section 6103, by wilfully disobeying or violating an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, as follows:

Respondent represented petitioner Michael Erickson in the matter entitled *Erickson v. Erickson*, San Diego Superior Court Case No. D281258.

On October 8, 2002, Respondent was ordered by the court to pay sanctions to the respondent in the dissolution action, Carolyn Erickson, in the amount of \$17,000.00 based on evidence presented to the court that Respondent unnecessarily delayed the proceedings.

Respondent failed to appeal the sanctions order, which became final.

Respondent received actual notice of the sanctions order.

Respondent failed to timely comply with the court's sanction order, which required him to pay the \$17,000.00 sanctions forthwith.

It was not until the State Bar completed its investigation of the allegations underlying the Erickson complaint that Respondent complied with the court order to pay sanctions. He has now belatedly done so.

By failing to pay the sanctions ordered by the San Diego Superior Court forthwith, Respondent disobeyed an order requiring him to do an act connected with or in the course of his profession, which he ought in good faith to do, and accordingly violated Business and Professions Code section 6103.

AUTHORITIES SUPPORTING DISCIPLINE

STANDARDS FOR ATTORNEY SANCTIONS

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the protection of public confidence in the legal profession.

Pursuant to Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct of culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

Where an attorney failed to pay court-ordered sanctions, the attorney is culpable of violating Business and Professions Code section 6103. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A. (6), was March 1, 2004.

ADDENDUM TO

STIPULATION RE FACTS, CONCLUSION OF LAW AND DISPOSITION

IN THE MATTER OF: STEVEN ROBERT LISS

CASE NUMBERS: 02-O-12289, 03-O-00010, 03-O-00118 and 03-O-00912

DISMISSAL

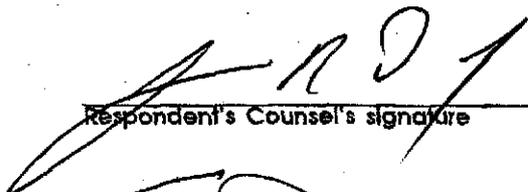
Case No. 02-O-12289 is dismissed with prejudice in the interests of justice.

4/15/04
Date


Respondent's signature

STEVEN R. LISS
print name

4/20/04
Date


Respondent's Counsel's signature

JAMES RICHARD DiFRANK
print name

4-21-04
Date


Deputy Trial Counsel's signature

ERIN McKEOWN JOYCE
print name

ORDER

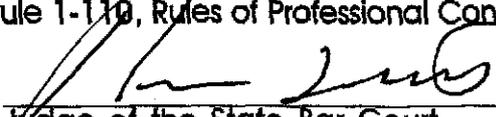
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.

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 reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

4/29/04
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. 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 May 6, 2004, 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:

**JAMES RICHARD DIFRANK
12227 PHILADELPHIA ST
WHITTIER CA 90601 3931**

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

GORDON GRENIER , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 6, 2004.



Laretta Cramer
Case Administrator
State Bar Court