


Counsel for the State Bar Office of the Chief Trial Counsel Enforcement Wonder Liang SBN 184357 180 Howard Street San Francisco, California 94105 (415) 538-2372	Case number(s) 02-0-15313 02-0-15834 03-0-03017 02-0-15299 04-0-11219 04-0-11075 04-0-11204 04-0-11289 [NOT FILED] kwiktag® 035 118 604 	(for Court's use) PUBLIC MATTER FILED OCT 28 2004 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent Steven Sanders Sanders & Associates 2549 Del Monte Street West Sacramento, CA 95691	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of Robert McCann Bar # 170286 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 7, 1994
(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 20 pages, including page 1A.
- (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):
 - ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years:
2006, 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."

(Stipulation form approved by SBC Executive Committee 10/14/00)

In the Matter of

Robert E. McCann, SBN 170286
A Member of the State Bar

Case Number(s):

02-0-15313, ET AL.

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**Bus. & Prof. Code §6085.5 Disciplinary Charges; Pleas to Allegations**

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

(a) Admission of culpability.

(b) Denial of culpability.

(c) **Nolo contendere**, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)

RULE 133, Rules of Procedure of the State Bar of California STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

(a) A proposed stipulation as to facts, conclusions of law, and disposition shall set forth each of the following: . . .

(5) a statement that respondent either

(i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or

(ii) pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include each of the following:

(a) an acknowledgment that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and

(b) If requested by the Court, a statement by the deputy trial counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter. (emphasis supplied)

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code §6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea shall be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

Date 9/20/04Signature Robert E. McCannROBERT E. McCANN
print name

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: 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:

D. Discipline**1. Stayed Suspension.**

A. Respondent shall be suspended from the practice of law for a period of TWO (2) YEARS

- ☐ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- ☐ iii. and until Respondent does the following: _____

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of TWO (2) YEARS which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

A. Respondent shall be actually suspended from the practice of law in the State of California for a period of SIXTY (60) DAYS

- ☐ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- ☐ iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, 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 of the State Bar 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 period of probation. 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 probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report shall be submitted on the next 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 period of probation and no later than the last day of probation.

- (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 to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation 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 probation conditions.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended.
- (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 to be filed with the Probation Unit.
- (9) ☒ The following conditions are attached hereto and incorporated:
- | | |
|--|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (10) ☐ Other conditions negotiated by the parties:
- ☒ Multistate Professional Responsibility Examination: 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 during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- ☐ No MPRE recommended.
- ☐ Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- ☐ Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- ☐ Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

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Medical Conditions

- a. ☒ Respondent shall obtain psychiatric or psychological help/ treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of ONE times per month and shall furnish evidence to the Probation Unit that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment shall continue for 0 days or 0 months or 1 years or, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- b. ☒ Upon the request of the Probation Unit, respondent shall provide the Probation Unit with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Probation Unit shall be confidential and no information concerning them or their contents shall be given anyone except members of the Office of the Chief Trial Counsel, including the Probation Unit, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

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Law Office Management Conditions

- a. ☒ Within 0 days/ 6 months/ 0 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/ _____ 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 _____ 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, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ROBERT EARL MCCANN

CASE NUMBER(S): 02-O-15313, 02-O-15834, 03-O-03017, 02-O-15299,
04-O-11219, 04-O-11075, 04-O-11294, 04-O-11289
[NOT FILED].

FACTS AND CONCLUSIONS OF LAW.

Facts: Count One (A): Case No. 02-O-15313:

1. On or about November 16, 1998, Kurt Sandhoff ("Sandhoff") filed his complaint involving a contract dispute entitled, *Kurt Sandhoff, dba Gold Financial Services v. SHF Properties, Inc., et al.*, Sacramento Municipal Court, case number 98AM09147.
2. On or about June 24, 2002, the Sacramento Superior Court issued an Order to Show Cause ("OSC") ordering Sandhoff to appear at 8:30 a.m. on August 15, 2002, in Department 16 to explain why he had not complied with the time limits set forth under local Rule 11.20(B) [Time Limits For Disposition of Municipal Court Delay Reduction Program Cases].
3. On or about July 29, 2002, Sandhoff met with respondent at respondent's office to discuss Sandhoff's case including the pending OSC.
4. On or about August 1, 2002, Sandhoff paid respondent \$4,000.00 to represent him in his matter. On the same day, Sandhoff and respondent executed a document with respondent's letterhead entitled, Retainer Agreement ("Fee Agreement").
5. On or about August 5, 2002, respondent filed a substitution of attorney in *Sandhoff* as Sandhoff's attorney of record.
6. On or about August 14, 2002, Sandhoff called respondent's office inquiring as to whether he needed to appear at the OSC scheduled for August 15, 2002. Sandhoff was informed that he need not appear and that respondent will handle the matter.
7. On August 15, 2002, respondent did not appear in Department 16 of the Sacramento County Superior Court on behalf of Sandhoff. In light of the nonappearance by respondent and/or Sandhoff, the court dismissed the matter.

8. Respondent did not inform Sandhoff that he had not appeared at the August 15, 2002 OSC hearing.

9. On August 16, 2002, the court filed its Judgment of Dismissal in *Sandhoff*.

10. On August 19, 2002, respondent sent a letter to Sandhoff stating he had communicated their proposed settlement offer of \$25,000.00 to opposing counsel, Al Seastrand, and the offer was rejected. Respondent also told Sandhoff that he filed a Request for Dismissal, dismissing defendant Beverly Jarvis.

11. Respondent did not make a settlement offer of \$25,000.00 to opposing counsel Al Seastrand by August 19, 2002.

12. Respondent did not file with the Sacramento County Superior Court a Request for Dismissal against defendant Beverly Jarvis by August 19, 2002, in *Sandhoff*.

13. Respondent did not inform Sandhoff that his case was dismissed following on or about August 16, 2002.

14. Following receipt of a copy of the August 16, 2002 Judgment of Dismissal in *Sandhoff*, on or about October 16, 2002, Sandhoff wrote a letter to respondent. In his October 16, 2002 letter, Sandhoff informed respondent of his discovery that respondent did not appear at the August 15, 2002 OSC hearing resulting in his case being dismissed.

15. On or about December 31, 2002, respondent sent a billing statement to Sandhoff. In the December 31, 2002 billing statement, respondent overcharged Sandhoff for services that were not performed.

16. Based on respondent's purported December 31, 2002 billing statement, respondent still possessed, at minimum, unearned fees of \$2,346.24 belonging to Sandhoff.

17. In or around February 2003, Sandhoff hired Leonard C. Hart Nibbrig ("Hart Nibbrig") to represent him in a malpractice action against respondent.

18. On or about March 19, 2003, pursuant to provisions of respondent's Fee Agreement, respondent and Hart Nibbrig agreed to submit to arbitration with American Arbitration Association ("AAA"). On or about August 27, 2003, Sandhoff paid his half of the arbitration fee of \$2,800.00. By on or about September 2, 2003, respondent did not submit his half of the arbitration fee.

19. By failing to submit his half of the arbitration fee, an AAA Arbitrator suspended the administration of Sandhoff's matter.

20. On or about October 17, 2003, Hart Nibbrig filed Sandhoff's civil complaint alleging, among other causes of action, legal malpractice against respondent in Sacramento County Superior Court entitled, *Kurt Sandhoff v. Robert E. McCann, et al.*, case number 03AS05797.

Conclusions of Law : Count One (A): Case No. 02-O-15313:

By failing to appear at the August 15, 2002 OSC hearing, by failing to inform Sandhoff of his failure to appear, by allowing Sandhoff's case to be dismissed, respondent recklessly failed to perform legal services with competence in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

Facts: Count One (B): Case No. 02-O-15313:

21. The allegations in Count One (A) are incorporated by reference as if set forth in full herein.

Conclusions of Law : Count One (B): Case No. 02-O-15313:

By misrepresenting in his August 19, 2002 letter to his client that he had made a proposed settlement offer in *Sandhoff* and that said offer was rejected by opposing counsel, and by misrepresenting to his client that he had filed a Request for Dismissal dismissing defendant Beverly Jarvis, respondent committed acts involving moral turpitude and dishonesty in violation of section 6106 of the Business and Professions Code.

Facts: Count One (C): Case No. 02-O-15313:

24. The allegations in Count One (A) are incorporated by reference as if set forth in full herein.

25. In his December 31, 2002 billing statement, respondent also represented that he left a message for opposing counsel A. Seastrand regarding his representation of Sandhoff on August 5, 2002.

26. In truth and in fact, respondent did not leave said message for opposing counsel on August 5, 2002.

Conclusions of Law: Count One (C): Case No. 02-O-15313:

By misrepresenting in his December 31, 2002 billing statement that he had left a message for opposing counsel on August 5, 2002, that he had drafted and filed a Request for Dismissal for Defendant B. Jarves only, and that he had called opposing counsel regarding a proposed

settlement, respondent committed acts involving moral turpitude and dishonesty in violation of section 6106 of the Business and Professions Code.

Facts: Count One (D): Case No. 02-O-15313:

27. The allegations in Counts One (A) and (C) are incorporated by reference as if set forth in full herein.

28. As of on or about August 1, 2002, respondent provided no service of value to Sandhoff. Respondent did not earn any of the advanced fees paid by Sandhoff. To date, respondent has not returned any portion of the \$4,000.00 paid by Sandhoff.

Conclusions of Law: Count One (D): Case No. 02-O-15313:

By not refunding the \$4,000.00 to Sandhoff, respondent failed to refund unearned fees promptly, in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Facts Count One (E): Case No. 02-O-15313:

29. The allegations in Counts One (A), (C) and (D) are incorporated by reference as if set forth in full herein.

Conclusions of Law: Count One (E): Case No. 02-O-15313:

By failing to inform Sandhoff of his failure to appear at the August 15, 2002 OSC hearing, respondent failed to keep his client reasonably informed of significant developments in a matter in which he had agreed to provide legal services in violation of section 6068(m) of the Business and Professions Code.

Facts: Count Two: Case No. 02-O-15834:

30. In or around May 2000, respondent was retained by Alice O'Connor ("O'Connor") to defend her in a civil action entitled, *Corner, et al. v. O'Connor*, Sacramento County Superior Court, case number 00AS01409.

31. On or about May 24, 2000, respondent filed an Answer to Complaint on behalf of O'Connor.

32. On or about June 5, 2000, as agreed, O'Connor paid respondent \$1,914.50 to prepare an answer to the complaint.

33. On or about June 20, 2000, O'Connor paid respondent an additional \$183.00 as the filing fee to file the answer.

34. On or about June 26, 2000, O'Connor, respondent, associated counsels Kevin Geckeler and Robert Morris signed an Attorney-Client Fee Contract. On the same day, O'Connor paid respondent an additional \$5,000.00 to be held in trust for future attorney's fees and costs.

35. In or around September 2000, O'Connor's home insurance company, Allstate, provided defense counsel John Lauritsen ("Lauritsen") to represent her in *Corner v. O'Connor*.

36. In or around June 2001, the plaintiffs dismissed their causes of action against O'Connor.

37. On or about November 30, 2001, O'Connor sent respondent a draft letter to be sent to Lauritsen to recoup the initial \$5,000 she paid respondent to represent her in *Corner*.

38. On or about December 31, 2001, respondent sent O'Connor a purported billing statement showing a credit to O'Connor in the amount of \$2,649.30.

39. On or about July 25, 2002, O'Connor sent a letter to respondent requesting for the return of the unearned fees.

40. On August 26, 2002, having not heard from respondent, O'Connor sent respondent her July 25, 2002 letter with a handwritten notation, "May I have the courtesy of a response?".

41. On or about September 6, 2002, O'Connor called respondent regarding the return of the unearned fees. Since respondent was in court, she left a message with the receptionist requesting respondent to return her telephone call.

42. On or about January 3, 2003, O'Connor sent a letter to respondent requesting the return of the unearned fees.

43. On or about January 3, 2003, respondent sent a letter to O'Connor enclosing a December 31, 2002 billing statement. The billing statement did not show the June 5, 2000 payment of \$1,914.50.

44. On or about January 6, 2003, respondent sent a letter to O'Connor enclosing a cashier's check for \$1,000.00.

45. On or about January 7, 2003, O'Connor wrote to respondent that following her review of the billing statement, she would accept respondent's original offer to return \$2,000.

46. In or around January 2003, respondent sent another cashier check for \$1,000 to O'Connor.

47. Respondent did not refund the unearned fees to O'Connor for approximately one and a half years following the dismissal of the case on or about June 2001.

Conclusions of Law: Count Two: Case No. 02-O-15834:

By taking one and a half years to return unearned fees to O'Connor, respondent wilfully failed to promptly refund any part of a fee paid in advance that had not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Facts: Count Three (A): Case No. 03-O-03017:

48. On or about August 23, 2002, Adrienne S. Volpert ("Volpert") paid respondent \$2,500.00 to represent her in a dissolution of marriage proceeding.

49. On or about September 11, 2002, respondent filed the petition for Dissolution of marriage entitled, *Volpert v. Thompson*, Sacramento County Superior Court, case number 02FL06440.

50. On or about January 31, 2003, respondent sent a purported billing statement to Volpert showing a credit in the amount of \$1,280.60.

51. On or about March 20, 2003, respondent substituted out as the attorney of record for Volpert.

52. On or about May 21, 2003, Volpert sent a letter to respondent requesting the return of unearned fees.

53. On or about February 12, 2004, respondent sent a letter to Volpert with a cashier's check in the amount of \$867.17.

54. On or about February 23, 2004, Volpert sent a letter to respondent inquiring as to the accounting that led to the resulting \$867.17.

55. To date, respondent has not provided an accounting to Volpert that purportedly caused respondent to issue the February 12, 2004 cashier's check.

Conclusions of Law: Count Three (A): Case No. 03-O-03017:

By taking approximately eleven months from March 20, 2003 to return to his client the unearned fees, respondent wilfully failed to promptly refund any part of a fee paid in advance that had not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Facts: Count Three (B): Case No. 03-O-03017:

The allegations in Count Three (A) are incorporated by reference as if set forth in full herein.

Conclusions of Law: Count Three (B): Case No. 03-O-03017:

By failing to provide an accounting to Volpert regarding the \$2,500.00 advance fee paid, respondent wilfully failed to render appropriate accounts to a client regarding all funds of the client coming into his possession in violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

Facts: Count Four (A): Case No. 02-O-15299:

56. On or about April 3, 2002, respondent was paid \$2,500.00 by Deborah C. Murphy ("Murphy") to prosecute her child custody and child support matter. On or about the same date, Murphy executed a retainer agreement prepared by respondent and was assured that her matter would be expedited. On or about the same date, respondent assigned Murphy's matter to an associate who was admitted to the State Bar of California on December 3, 2001 ("the Associate").

57. On or about May 6, 2002, Murphy called respondent's office and left a message for the Associate requesting an update as to the status of her case.

58. From on or about May 6, 2002 to on or about June 20, 2002, respondent nor anyone from his office returned Murphy's May 6, 2002 telephone call.

59. On or about June 21, 2002, Murphy received a telephone call from Sean who represented that he was an associate in respondent's office and that Murphy's matter "shouldn't be too much longer and they would contact" her.

60. On or about July 8, 2002, respondent called Murphy and reassured her that the Associate was handling her case and that her case was progressing.

61. On or about July 24, 2002, Murphy called the Associate and left a message requesting an update as to the status of her case.

62. From on or about August 8, 2002 to on or about September 12, 2002, Murphy called respondent's office and left messages for a call back from the Associate to ascertain if a court date was scheduled and to inquire about the status of this matter.

63. On or about September 17, 2002, having not heard from respondent's office, Murphy sent respondent a certified letter discharging respondent, requesting the return of her client file and the \$2,500.00 fee.

64. On or about September 23, 2002, Murphy sent a messenger to respondent's office to pick up her client file and the \$2,500.00 unearned fee. The messenger was able to obtain the file but not the \$2,500.

65. On or about September 24, 2002, Murphy sent a certified letter to respondent confirming receipt of her client file and requesting an itemized billing and receipts for respondent's work on her matter.

66. On or about October 14, 2002, respondent's paralegal, Deborah Cooper, sent a letter to the Office of the District Attorney, Sacramento County Bureau of Family Support, informing them that as of September 23, 2002, respondent's office no longer represented Murphy and that respondent's office at no time filed any papers on Murphy's behalf, therefore a withdrawal of counsel was unnecessary.

67. On or about October 21, 2002, Murphy filed a fee dispute with the Sacramento County Bar Association.

68. On or about December 31, 2002, respondent provided Murphy with a billing statement showing respondent had used the \$2,500.00 retainer fee for alleged research and preparation of documents that were never filed. The total amount due as stated on the statement was \$167.50

69. On or about February 13, 2003, the Sacramento County Bar Association issued an award in Murphy's fee dispute.

70. In or around May 2003, respondent paid Murphy \$2,500.00.

71. On or about May 14, 2003, Murphy filed her Petition to Register Out of State Child Custody Order, in pro per, entitled, *Deborah C. Murphy v. Richard C. Murphy*, Sacramento County Superior Court, case number 03FL03042.

Conclusions of Law: Count Four (A): Case No. 02-O-15299:

By failing to prosecute Murphy's matter when retained to do so and by failing to properly supervise his associates in pursuing Murphy's matter, respondent recklessly and repeatedly failed

to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct.

Facts: Count Four (B): Case No. 02-O-15299:

72. The allegations in Count Four (A) are incorporated by reference as if set forth in full herein.

Conclusions of Law: Count Four (B): Case No. 02-O-15299:

By taking approximately eight months from September 2002 to return to his client the unearned fees, respondent wilfully failed to promptly refund any part of a fee paid in advance that had not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Facts: Count Four (C): Case No. 02-O-15299:

73. The allegations in Count Four (A) are incorporated by reference as if set forth in full herein.

Conclusions of Law: Count Four (C): Case No. 02-O-15299:

By not responding to Murphy's inquiries concerning the status of her case from on or about May 6, 2002 to June 20, 2002 and from July 29, 2002 to on or about September 12, 2002, respondent failed to respond to client inquiries in violation of section 6068(m) of the Business and Professions Code.

Facts: Count Four (D): Case No. 02-O-15299:

74. The allegations in Count Four (A) are incorporated by reference as if set forth in full herein.

Conclusions of Law: Count Four (D): Case No. 02-O-15299:

By charging Murphy for costs that were unnecessary and improper, respondent failed to render appropriate accounts to his client regarding the \$2,500.00 fee in violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

Facts: Count Five: Case No. 04-O-11219:

75. In or around August 8, 2003, respondent was hired by Partrick Martinez ("Martinez") to represent him in a family law matter entitled *Benda v. Martinez*, Sacramento County Superior Court, case number 00FL00330.

76. On or about August 7, 2003, Martinez paid respondent \$3,000.00 to represent him in his matter. Between August 12, 2003, and August 19, 2003, respondent and Martinez executed a Retainer Agreement.

77. On or about August 25, 2003, respondent filed a substitution of attorney in *Benda*, as Martinez' attorney of record.

78. On or about December 4, 2003, Martinez wrote respondent a letter inquiring about receiving an itemized statement as soon as possible.

79. On or about March 16, 2004, Martinez sent respondent a letter stating that, as of February 10, 2004, Martinez had never received any sort of billing or invoices from respondent, despite numerous requests over seven months.

80. On or about February 23, 2004, respondent sent Martinez a fax, enclosing a billing statement dated February 29, 2004 covering the period of August 11, 2003 to February 19, 2004.

Conclusions of Law: Count Five: Case No. 04-O-11219:

81. By not providing Martinez a statement for seven months, respondent failed to provide a timely accounting in violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was August 30, 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.

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION.

As part of this stipulation, respondent has agreed to attend and provide proof of passage of the Multistate Professional Responsibility Examination, within **one (1)** year from the effective date of discipline.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

Case Nos.

04-O-11075 [Not Filed]

04-O-11294 [Not Filed]

04-O-11289 [Not Filed]

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 30, 2004 the estimated prosecution costs in this matter are approximately \$6316.00. 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.

Respondent pleads nolo contendere to the above facts and violations. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified herein.

Date

9/20/04

Respondent's signature

Robert E. McCann

Robert E. McCann
print name

Date

9/20/04

Respondent's Counsel's signature

Steven C. Sanders

Steven C. Sanders
print name

Date

9/21/04

Deputy Trial Counsel's signature

Wonder L. Liang

Wonder L. Liang
print name

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.

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.)

Date

October 28, 2004

Judge of the State Bar Court

Pat McElroy

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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 October 28, 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:

**STEVEN SANDERS
SANDERS & ASSOCIATES
3960 INDUSTRIAL BLVD #100
WEST SACRAMENTO, CA 95691**

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

WONDER LIANG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 28, 2004.**



George Hue
Case Administrator
State Bar Court