


State Bar Court of the State Bar of California  
Hearing Department     Los Angeles     San Francisco

<b>Counsel for the State Bar</b> Esther Rogers, No. 148246 Office of the Chief Trial Counsel The State Bar of California 180 Howard Street, 7th Floor San Francisco, CA 94105 (415) 538-2445	<b>Case number(s)</b> 03-O-00601 03-O-00794  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">PUBLIC MATTER</div> kwiktag®      022 604 417 	(for Court's use)   <div style="text-align: center; font-weight: bold; font-size: 1.5em;">FILED <i>ADS</i></div> <div style="text-align: center; font-weight: bold; font-size: 1.2em;">DEC 15 2003</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
<b>Counsel for Respondent</b> Carol Langford 100 Pringle Avenue, Suite 570 Walnut Creek, CA 94596 (925) 938-3870	Submitted to <input checked="" type="checkbox"/> assigned judge <input 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	
<b>In the Matter of</b> Andrew K. Borg  Bar #                    122982  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 10, 1986 (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 10 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 reproof)
  - case ineligible for costs (private reproof)
  - costs to be paid in equal amounts for the following membership years:

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(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 that:

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

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

(1)  Prior record of discipline [see standard 1.2(f)] See attached

(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.  
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.
- (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)  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 Reproval:

- (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 reprobation.
- (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. See attached
- (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 reprobation.
- No MPRE ordered. See attached
- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |
- (11)  Other conditions negotiated by the parties:  
See attached

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: Andrew K. Borg

CASE NUMBER(S): 03-O-00601; 03-O-00794

**FACTS AND CONCLUSIONS OF LAW.**

**Case No. 03-O-00601**

Count One

Statement of Facts

On or about November 11, 1996, Sonja Hill-Kaberball was involved in an automobile accident. On or about August 28, 1997, Hill-Kaberball was involved in a second automobile accident. Both of the claims were uninsured motorist claims. Hill-Kaberball employed respondent to represent her on both of her claims. Respondent filed lawsuits on Hill-Kaberball's matters. After filing the lawsuits, respondent performed very few services for Hill-Kaberball.

In or about April 1998, respondent changed office locations. He did inform Hill-Kaberball of his new office location. Through her own efforts, Hill-Kaberball located a new telephone number for respondent. Between approximately June 1998 and June 2001, Hill-Kaberball telephoned respondent on numerous occasions to determine the status of her matters. Respondent failed to her telephone calls.

On or about June 14, 2001, Hill-Kaberball spoke with respondent on the telephone. Respondent stated during the conversation that he would follow up regarding the status of Hill-Kaberball's matter and send her something in writing by the end of the following week. He also indicated that he would schedule an arbitration hearing and notify Hill-Kaberball of the date.

Thereafter, respondent failed to follow up regarding the status of Hill-Kaberball's matter, failed to send her anything in writing and failed to schedule an arbitration hearing.

On or about June 28, 2001, Hill-Kaberball filed a complaint with the Sacramento County Bar Association. On or about June 29, 2001, a representative of the Sacramento County Bar Association wrote to respondent and requested that he respond to Hill-Kaberball's complaint. Respondent failed to respond to the letter and failed to communicate with Hill-Kaberball after receiving the letter.

On or about August 29, 2001, the Sacramento County Bar Association referred Hill-Kaberball to attorney Allen Owen. On or about September 4, 2001, Hill-Kaberball employed Owen to represent her. On or about November 29, 2001, Owen resolved Hill-Kaberball's matter.

### Conclusions of Law

Respondent wilfully violated Rules of Professional Conduct, 3-110(A) by failing to pursuing Ms. Hill-Kaberball's matters.

### Count Two

Count One is incorporated by reference as if fully set forth herein.

### Conclusions of Law

Respondent wilfully violated Business and Professions Code section 6068(m), by failing to return Hill-Kaberball's telephone calls from June 1998 through June 2001 and failing to provide Hill-Kaberball a status update, as promised on June 14, 2001.

### **Case No. 03-O-00794**

### Count One

#### Statement of Facts

On or about June 30, 1999, Carol Burch employed respondent to represent her regarding a medical malpractice claim against Providence Saint Joseph Medical Center. On September 20, 2000, Respondent filed a lawsuit on Burch's behalf.

On or about June 27, 2001, Providence Saint Joseph Medical Center served discovery on respondent. Respondent failed to provide responses to the discovery. On or about September 24, 2001, attorney Peter Arturo, counsel for Providence Saint Joseph Medical Center, sent respondent a letter advising respondent that he had failed to provide responses to the discovery served on June 27, 2001 and providing him with an extension until October 3, 2001 to provide the discovery responses. Respondent failed to provide the discovery responses by October 3, 2001, or at all.

On October 12, 2001, Arturo filed a motion to compel responses to the discovery served on June 27, 2001. Respondent failed to file an opposition to the motion. On November 9, 2001, the court granted the motion to compel and ordered responses to be filed within ten days. Respondent failed to provide discovery responses, within ten days or at all.

On December 26, 2001, Arturo filed a motion for sanctions of \$1,171 against Burch and/or respondent for respondent's failure to comply with the November 9, 2001 order. Respondent failed to oppose the motion. On or about January 8, 2002, respondent and Burch agreed that Burch no longer desired to continue with her lawsuit. Thereafter, respondent did not file a request for dismissal and did not attempt to resolve the pending motion for sanctions.

On January 25, 2001, the court granted the motion for sanctions of \$1,171 against respondent and/or respondent. On January 25, 2002, the court ordered Burch's lawsuit dismissed. On or about October 29, 2003, respondent paid the \$1,171 sanctions.

Respondent never informed Burch that the December 26, 2001 motion for sanctions was pending, that he failed to oppose the motion for sanctions, that her decision to no longer pursue the matter did not eliminate the motion for sanctions or that sanctions were imposed against her.

### Conclusions of Law

Respondent wilfully violated Business and Professions Code section 6068(m), by failing to inform Burch that the December 26, 2001 motion for sanctions was pending, that he failed to oppose the motion for sanctions, that her decision to no longer pursue the matter did not eliminate the motion for sanctions and that sanctions were imposed against her.

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was November 4, 2003.

### **AGGRAVATING CIRCUMSTANCES.**

Prior Record. Standard 1.2(b)(i). Respondent was publicly reprovved, effective October 3, 2002 for similar conduct occurring during the same time as the conduct at issue here.

### **MITIGATING CIRCUMSTANCES.**

Candor and Cooperation. Standard 1.2(e)(v). Respondent agreed to the imposition of discipline without requiring a hearing.

### **OTHER CONDITIONS NEGOTIATED BY THE PARTIES.**

#### Acknowledgement

Respondent acknowledges that he is receiving a second public reprovall because the conduct at issue occurred at the same time as the conduct in his prior record of discipline.

#### Law Practice Management Plan

Respondent agrees that within 30 days of the effective date of this reprovall, he will employ Jerome Fishkin to evaluate his law practice management.

Respondent agrees that within 60 days of the effective date of this reprovall, he will obtain a law practice management plan from Fishkin.

Respondent agrees that within 90 days of the effective date of this reprovall, respondent will implement the law practice management plan recommended by Fishkin.

Respondent agrees that he will comply with the law office management plan recommended by Fishkin and will swear under penalty of perjury in his quarterly probation reports that he has complied with the law office management plan.

### **MPRE EXEMPTION**

Respondent already has been required to take and pass the MPRE as a result of the discipline effective October 3, 2002. Therefore, he is not required to take and pass the MPRE as a condition of this reprovall.



## **ETHICS SCHOOL EXEMPTION**

Respondent already has been required to attend Ethics School as a result of the discipline effective October 3, 2002. Therefore, he is not required to attend Ethics School as a condition of this reproof.

11-13-03  
Date

*Andrew K. Borg*  
Respondent's signature

ANDREW K. BORG  
print name

11-8-03  
Date

*Carol M. Langford*  
Respondent's Counsel's signature

CAROL M. LANGFORD  
print name

11/18/03  
Date

*Esther Rogers*  
Deputy Trial Counsel's signature

ESTHER ROGERS  
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 reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:



The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.



The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

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

12-15-03  
Date

*J. M. Runkle*  
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 December 15, 2003, 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:

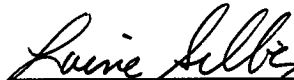
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**CAROL LANGFORD  
100 PRINGLE AVE #570  
WALNUT CREEK CA 94596**

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

**ESTHER ROGERS, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 15, 2003.**



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**Laine Silber**  
Case Administrator  
State Bar Court