

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

<p>Counsel for the State Bar</p> <p>Erica L.M. Dennings, No. 145755 Office of the Chief Trial Counsel The State Bar of California 180 Howard Street, 7th Floor San Francisco, CA 94105 (415)538-2285</p>	<p>Case number(s) PUBLIC MATTER</p> <p>03-0-03676</p>	<p>(for Court's use)</p> <p>FILED</p> <p>JUN 10 2004</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel for Respondent</p> <p>Amitai Schwartz 2000 Powell Street #1286 Emeryville, CA 94608-1805 (510)597-1775</p>	<p>Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of</p> <p>JOHN HOUSTON SCOTT</p> <p>Bar # 72578</p> <p>A Member of the State Bar of California (Respondent)</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 12, 1976 (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 9 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:

(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)]

(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.
Respondent was admitted to practice in California on December 12, 1976 and has no priors.
- (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.
Respondent cooperated during the disciplinary 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) 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 reproval.
- (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 reproval.
- No MPRE ordered.
- (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:

May 20, 2004
Date


Respondent's signature

JOHN H. SCOTT
print name

May 21, 2004
Date


Respondent's Counsel's signature

AMITAI SCHWARTZ
print name

May 26, 2004
Date


Deputy Trial Counsel's signature

Erica Dennings
print name

ORDER

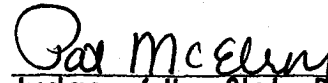
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.

June 10, 2004
Date


Judge of the State Bar Court

In the Matter of

JOHN HOUSTON SCOTT, No. 72578
A Member of the State Bar

Case Number(s):

03-0-3676

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

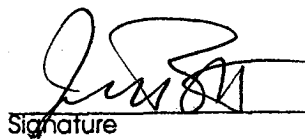
(ii) **pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include each of the following:**

(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).

May 20, 2004
Date


Signature

JOHN A. SCOTT
print name

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOHN HOUSTON SCOTT

CASE NUMBER(S): 03-O-3676 ET AL.

FACTS AND CONCLUSIONS OF LAW.

On or about February 28, 2001 Corey Bell ("Bell") filed a civil rights lawsuit against the state of California ("defendants") in federal court after being stabbed while in Pelican Bay State Prison. Respondent, along with co-counsel, Shannon Thorne, represented Bell.

On or about August 14, 2002, the Court granted the defendants' motion for summary judgment based on Bell's failure to exhaust all administrative remedies prior to initiating a case. As a result of the dismissal, defendants sought to recover costs.

On or about August 23, 2002 defendants filed Defendants' Verified Costs Bill.

On or about August 28, 2002 defendants sent a letter with an offer to waive all costs recovery against Bell in exchange for his agreement not to refile this action and to release all claims against the defendants to this action and any other [California Department of Corrections] personnel or entities. (The "offer"). Respondent rejected this offer on Bell's behalf before he communicated it to him based on his prior communication with Bell giving him authority to reject any such offer.

On or about September 12, 2002 the Clerk taxed costs in favor of defendant in the amount of zero dollars indicating that the decision to deny an award of costs was the result of no documentation provided.

On or about September 23, 2002 defendants filed the Motion to Review. In the Motion to Review, defendants, inter alia, accused respondent and Thorne of failing to communicate the offer to Bell before they rejected it.

In the opposition to the Motion to Review filed October 29, 2002 neither respondent nor Thorne presented evidence that they had communicated the offer to Bell.

Accordingly, on or about November 21, 2002 the Court issued an Order to Present Additional Evidence to Review Clerk's Motion Taxing Costs ("Order for Additional Evidence"). The Order requested that respondent and Thorne provide a declaration from Bell regarding his finances and the circumstances surrounding the communication of the settlement offer to Bell. The Order also requested a declaration from the person who communicated the offer affirming or denying all pertinent matters set out in Bell's declaration. The Court wanted to determine whether the offer was ever communicated to Bell.

On or about January 7, 2003 respondent submitted his declaration and that of Bell. Both declarations stated respondent was fully authorized to reject the offer based on prior communications with Bell. Neither declaration stated whether the offer was ever communicated. Respondent also submitted a brief regarding respondent's concerns about waiver of the attorney client privilege.

On or about February 10, 2003 the Court filed its Order Granting in Part and Denying in Part Defendants' Motion to Review Clerk's Notice Taxing Costs; Order to Show Cause Re: Sanctions (the "OSC"). In the OSC the Court found Bell indigent, that respondent had not communicated the offer before rejecting it, and that Bell authorized and/or ratified the rejection of the offer. The court ordered that costs be taxed in favor of defendants against Bell in the amount of \$4,472.73. The Court further explained that respondent and Thorne had engaged in tactics that resulted in needless multiplication of

May 12, 2004
Page 2

proceedings directed by the Court to determine whether the offer had been communicated. Accordingly, respondent and Thorne were ordered to show cause why sanctions should not be imposed pursuant to 28 U.S.C. §1927 and/or the Court's inherent authority.

On or about August 26, 2003 The Court issued an Order Imposing Sanction Against Plaintiff's Counsel Pursuant to U.S.C. § 1927. The order stated, in part: "The result of their conduct was a needless multiplication of proceedings, resulting in a waste of considerable time and expense. All of these proceedings, with concomitant expenditure of time, energy, and resources, could have been avoided had plaintiff's counsel been forthright from the outset." The Court sanctioned respondent \$7,163.80.

Respondent did not report the sanctions to the State Bar.

By not providing the information requested in the Order for Additional Evidence, respondent wilfully violated an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear in wilful violation of section 6103 of the Business and Professions Code.

By not reporting the \$7,163.00 sanctions to the State Bar of California, respondent wilfully failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of the imposition of any judicial sanctions against the attorney in violation of section 6068(o)(3) of the Business and Professions Code.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was May 13, 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.

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 June 10, 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:

**AMITAI SCHWARTZ
2000 POWELL ST #1286
EMERYVILLE CA 94608 1805**

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

ERICA DENNINGS , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **June 10, 2004.**



Laretta Cramer
Case Administrator
State Bar Court