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State Bar Court of California Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar Cydney Batchelor Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204 Bar # 114637	Case Number(s) <div style="text-align: center;">CONFIDENTIAL</div> 03-0-3682-JMR 04-0-14083 04-0-14180	<div style="text-align: center;"> LODGED <small>(for Court Use)</small> MAY 22 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per Frank A. D'Alfonsi, Esq. 333 W. Portal Ave., #B San Francisco, Ca 94127 Tele: 415/759-7410 Bar # 146104	<div style="text-align: center;">PUBLIC MATTER</div>	<div style="text-align: center;"> FILED JUL 15 2008 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
In the Matter of FRANK A. D'ALFONSI Bar # 146104 A Member of the State Bar of California (Respondent)	Submitted to Program Judge <div style="text-align: center;">STIPULATION RE FACTS AND CONCLUSIONS OF LAW</div> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted 6/12/1990 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of 10 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
See attached
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
See attached

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- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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

- (1) ☐ Prior Record of Discipline [see standard 1.2(f)]
- (a) ☐ State Bar Court Case # of prior case _____
- (b) ☐ Date prior discipline effective _____
- (c) ☐ Rules of Professional Conduct/State Bar Action violations _____
- (d) ☐ Degree of prior discipline _____
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ Trust violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attached
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) ☒ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct. See attached
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

None

(Do not write above this line.)

C. Mitigating Circumstances [standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to the ~~XXXXXX 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 of force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances are involved.**

Additional mitigating circumstances:

See attached

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **FRANK A. D'ALFONSI**

CASE NUMBER(S): **03-O-3682-JMR, et al.**

FACTS AND CONCLUSIONS OF LAW.

Case No. 03-O-3682 (Mariann Meseke)

Facts: In April 2001, Mariann Meseke employed Respondent to represent her in a real property matter, and paid him \$8000.00 in advanced attorney fees. On August 15, 2001, Respondent requested Ms. Meseke to loan him \$10, 000.00, and Ms. Meseke loaned him that amount of money on August 17, 2001 pursuant to a "Straight Note" prepared by Respondent. The terms of the note were that it was unsecured, was to be repaid in full by December 15, 2001, and that if it was not repaid in full by that date, interest would be added at the rate of 10% per annum from August 15, 2001. Respondent failed to notify Ms. Meseke in writing that she may seek the advice of an independent attorney of her choice to review the note, and failed to obtain her written consent to the loan. Despite numerous requests from Ms. Meseke, Respondent failed to make any payments on the loan until July 1, 2002, and did not complete paying off the principal until May 1, 2003. Respondent failed ever to pay interest to Ms. Meseke as the note required. In addition, Respondent failed to perform any legal services for Ms. Meseke, and in May 2003, Ms. Meseke terminated his services and employed replacement counsel. In May 2003, Ms. Meseke requested a refund of unearned attorney fees, and Respondent agreed to refund the fees by June 20, 2003. However, Respondent failed to refund the unearned fees at that time or at any time since then.

Conclusions of Law: By recklessly failing to perform any legal services on Ms. Meseke's real estate matter, Respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to refund any portion of the \$8000.00 unearned attorney fees to Ms. Meseke, Respondent failed to refund unearned fees promptly upon termination of employment, in violation of Rule of Professional Conduct 3-700(D)(2). By willfully failing to disclose fully in writing all terms of the loan transaction to Ms. Meseke, willfully failing to advise

Ms. Meseke that she could consult an independent attorney about the note, willfully failing to obtain her written consent to the terms of the note, and willfully entering into a loan transaction that was unfair to Ms. Meseke because the loan was unsecured and because Respondent failed to repay the note in a timely manner or to pay interest at all, Respondent improperly entered into a business transaction with a client, in violation of Rule 3-300 of the Rules of Professional Conduct.

Case No. 04-O-14083 (Jacqueline Robles)

Facts: In April 2000, Jacqueline Robles employed Respondent to represent her on a contingency basis in a litigation matter. Thereafter, Respondent failed to complete the arbitration in the case as ordered by the court, or to appear at the two subsequent orders to show cause hearings regarding the uncompleted arbitration (for which he was sanctioned a total of \$500.00), or to respond to any of the discovery in the case, or to attend the arbitration hearings although he had notice of the hearings. The arbitrator's award was entered without Respondent's participation, and served on Respondent on April 22, 2003. Respondent then filed a request for trial de novo, and the court set a jury trial date. However, the opposing party filed a motion for summary judgment, and Respondent filed no opposition on Ms. Robles' behalf. The court then entered judgment against her, and awarded the opposing party costs of suit, in September 2003. In June 2004, Ms. Robles discovered that Respondent had changed his telephone and pager numbers without informing her of his new contact information, and obtained his cellular telephone number from a mutual friend. On July 8, 2004, at Ms. Robles' request, Respondent met with her and her daughter, and falsely told her that the opposing party had offered to settle her case for \$3500.00 and the money would be paid within two weeks. In fact, no such settlement in any amount had ever been offered by the opposing party. Subsequent to that meeting, between July 9 and August 22, 2004, Ms. Robles telephoned Respondent six times and left messages for him to return her calls; he failed ever to do so. In August 2004, Ms. Robles learned that she could monitor her court case on the internet, and discovered the truth about what had happened. In November 2004, Ms. Robles terminated Respondent and requested that he return her client file; he failed to do so.

Conclusions of Law: By recklessly and repeatedly failing to conclude the arbitration in a timely manner as ordered by the court, to appear at the two orders to show cause hearings, to respond to discovery, to appear at the arbitration, or to oppose the motion for summary judgment, Respondent failed to perform competently the legal services for which he had been employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to inform Ms. Robles of anything that happened in her case or to inform her that he had changed his telephone and pager numbers, Respondent failed to inform his client of significant events in her case, in violation of Business and Professions Code section

6068(m). By willfully misrepresenting to Ms. Robles that the opposing party had offered to resolve her case for \$3500.00 when no settlement offer had never been extended, Respondent committed an act of moral turpitude, in violation of Business and Professions Code section 6106. By willfully failing to return Ms. Robles client file upon termination, upon her request, Respondent failed to release client papers upon termination, in violation of Rule of Professional Conduct 3-700(D)(1).

Case No. 04-O-14180 (Anthony Cordero)

Facts: In December 2002, Anthony Cordero employed Respondent to represent him at a hearing regarding a claim against his neighbor, and paid him \$1500.00 in advanced attorney fees. Respondent was to file a civil complaint on Mr. Cordero's behalf; however, he failed to do so. From February 2003 to May 2004, Mr. Cordero sent Respondent twelve letters requesting a status report and legal advice; Respondent failed ever to reply. Respondent also failed ever to refund the unearned attorney fees to Mr. Robles.

Conclusions of Law: By recklessly failing to file a complaint on Mr. Cordero's behalf, Respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to respond to any of Mr. Cordero's numerous written requests for status information, Respondent failed to respond to reasonable status inquiries of a client, in violation of Business and Professions Code section 6068(m). By willfully failing to refund the unearned attorney fee to Mr. Cordero, Respondent failed promptly to return unearned attorney fees, in violation of Rule of Professional Conduct 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct: The stipulated misconduct involves multiple acts of misconduct to multiple clients.

Significant Harm: *In the Meseke case:* Ms. Meseke has been deprived of the use of the unearned attorney fees in the amount of \$8000.00 as well as the interest on the unsecured note for a substantial period of time. *In the Robles case:* As a result of Respondent's inaction, Ms. Robles lost her cause of action and her client file. *In the Cordero case:* Mr. Cordero has lost the use of his \$1500.00 in unearned fees for a substantial period of time.

MITIGATING CIRCUMSTANCES.

Facts Supporting Mitigating Circumstances.

Candor and cooperation: Respondent has been completely candid and cooperative with the State Bar during its investigation and resolution of these cases.

Physical and Emotional Problems: During the period of the misconduct stipulated to herein, Respondent suffered physical and emotional difficulties. Physically, Respondent was diagnosed with diabetes, suffered severe kidney problems, and had major surgery. Emotionally, Respondent suffered the deteriorating health and death of his only brother, and the stillbirth of his grandson at full term.

Additional Mitigating Circumstances.

No prior record of discipline: Although the misconduct stipulated to herein is serious, it should nevertheless be noted that Respondent has no prior record of discipline since being admitted in 1990, over 15 years ago.

Participation in Lawyer's Assistance Program. On September 19, 2005, Respondent contacted the State Bar Lawyer Assistance Program("LAP"). On September 29, 2005, he completed the LAP intake interview and signed the pre-enrollment evaluation plan. At the conclusion of the LAP evaluation, Respondent will meet with the LAP Evaluation Committee and then enter into a long-term participation plan.

PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A.(6), was November 29, 2005.

RESTITUTION.

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

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

Mariann Meseke, or the Client Security Fund if it has paid, in the principal amount of \$8000.00, plus interest at the rate of 10% per annum from May 1, 2001, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

Mariann Meseke, or the Client Security Fund if it has paid, interest on \$10,000.00, at the rate of 10% per annum from August 15, 2001 until May 1, 2003 until paid in full ("the unpaid interest"), and also interest on the unpaid interest at the rate of 10% per annum from August 15, 2001 until paid in full, and furnish satisfactory evidence of restitution to the State Bar.

Anthony Cordero, or the Client Security Fund if it has paid, in the principal amount of \$1500.00, plus interest at the rate of 10% per annum from January 1, 2003, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

(Do not write above this line.)

In the Matter of Frank A. D'Alfonsi	Case number(s): 03-O-3682 04-O-14083 04-O-14180
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ORDER

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

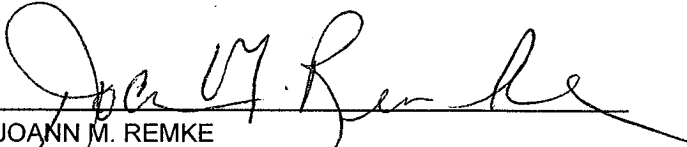
- ☐ The stipulation as to facts and conclusions of law is APPROVED.
- ☒ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☐ All Hearing dates are vacated.

On page 8, under Restitution, the second full paragraph is deleted and the following is inserted in its place:

"Mariann Meseke, or the Client Security Fund if it has paid, in the amount of \$1,709.59 plus interest at the rate of 10% per annum from May 1, 2003, until paid in full."

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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(d), Rules of Procedure.)

5/22/06
Date


JOANN M. REMKE
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on May 22, 2006, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S
ALTERNATIVE DISCIPLINE PROGRAM**

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS
(Rules Proc. of State Bar, rule 803(a))**

in a sealed envelope for collection and mailing on that date as follows:

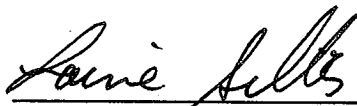
☒ by personal delivery as follows:

**CYDNEY BATCHELOR
180 HOWARD STREET, 6TH
FLOOR
SAN FRANCISCO, CA 94105**

**FRANK A. D'ALFONSI
180 HOWARD STREET, 6TH
FLOOR
SAN FRANCISCO, CA 94105**

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

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 22, 2006**.



Laine Silber
Case Administrator
State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 16, 2008, I deposited a true copy of the following document(s):

DECISION AND ORDER FILING AND SEALING CERTAIN DOCUMENTS

in a sealed envelope for collection and mailing on that date as follows:

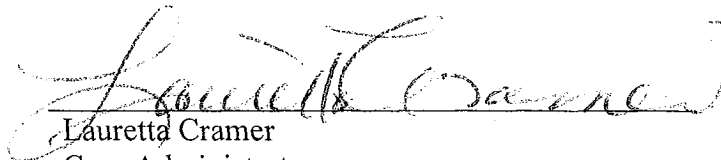
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

FRANK A. D'ALFONSI
LAW OFC FRANK A D'ALFONSI
333 W PORTAL AVE #B
SAN FRANCISCO, CA 94127 - 1411

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

MARK HARTMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 16, 2008.



Laurretta Cramer
Case Administrator
State Bar Court