

PUBLIC MATTER

FILED

MAR 17 2005

STATE BAR COURT CLERK'S OFFICE  
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STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 03-O-04044 PEM
<b>ROBERT WELCH HUFFHINES, JR.,</b>	)	<b>DECISION</b>
Member No. 43437,	)	
A Member of the State Bar.	)	

INTRODUCTION

Respondent Robert Welch Huffhines, Jr. ("Respondent") is charged in this one-count disciplinary proceeding with a wilful violation of Business and Professions Code section 6068, subdivision (l), which provides that it is the duty of a member of the State Bar to keep all agreements made in lieu of disciplinary prosecution with the State Bar.

Cecilia Horton-Billard appeared throughout this proceeding on behalf of the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"). Respondent appeared *in propria persona* in this proceeding.

After considering the evidence and the law, the Court finds Respondent culpable of the charged misconduct and, by this Decision, imposes upon him a public reproof with conditions.

SIGNIFICANT PROCEDURAL HISTORY

The one-count Notice of Disciplinary Charges ("NDC") in this proceeding was filed on November 4, 2003, and was properly served upon Respondent on the same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section 6002.1, subdivision (c). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

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1 Respondent filed his response to the NDC on March 11, 2004.

2 The parties filed a stipulation as to facts and to the admission of documents on November  
3 1, 2004, but failed to attach the documents. The omitted documents were subsequently filed with  
4 the Court on November 10, 2004. The Court hereby approves the parties' stipulation and receives  
5 the proffered documents into evidence in this proceeding.

6 Trial in this matter was scheduled to commence on November 23, 2004, with a pretrial  
7 conference scheduled for November 8, 2004. However, Respondent did not file a pretrial conference  
8 statement as required by rule 211 of the Rules of Procedure of the State Bar of California ("Rules  
9 of Procedure") and failed to appear at the pretrial conference. In light of the factual stipulation filed  
10 by the parties and in consideration of the fact that Respondent lives in Kelso, Washington, this Court  
11 issued an order on November 8, 2004, directing the parties to show cause why the proceeding should  
12 not be taken under submission without a hearing, based upon the parties' factual stipulation and  
13 agreement to the admission of documents and upon their respective rights to file a closing brief on  
14 the issues of (a) whether the stipulated facts establish Respondent's culpability of the charged  
15 offense; (b) the existence of mitigating and/or aggravating circumstances; and (c) the appropriate  
16 degree of discipline, if any, to be imposed or recommended to the Supreme Court.

17 At a status conference on November 15, 2004, the parties agreed to the submission of this  
18 proceeding without a hearing, upon the filing of closing briefs. The Court ordered the State Bar to  
19 file its closing brief no later than December 6, 2004, and Respondent to file his closing brief no later  
20 than December 27, 2004.

21 The State Bar filed its closing brief on December 3, 2004; however, Respondent did not file  
22 a closing brief, either by December 27, 2004, or at any subsequent time.

23 The Court took this proceeding under submission on January 3, 2005.

24 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

25 It is the State Bar's burden to establish culpability of disciplinary charges by clear and  
26 convincing evidence. (Rule 213, Rules Proc. of State Bar; *In the Matter of Glasser* (Review Dept.  
27 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

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1 **A. Jurisdiction**

2 Respondent was admitted to the practice of law in California on January 9, 1969, and has  
3 been a member of the State Bar at all times relevant to this proceeding.<sup>1</sup>

4 **B. Respondent's Misconduct in the State of Washington**

5 Respondent was formally reprimanded by the Washington State Bar Association on May 10,  
6 2002. Respondent stipulated that he failed to act with reasonable diligence by failing to timely file  
7 a habeas corpus petition on behalf of a client in violation of rule 1.3 of the Washington Rules of  
8 Professional Conduct and that he failed to keep his client reasonably informed about the status of  
9 the matter and to explain the matter to his client sufficiently to permit the client to make informed  
10 decisions about the representation in violation of rule 1.4(a) and (b) of the Washington Rules of  
11 Professional Conduct. (*In re Robert W. Huffhines*, Washington State Bar Association Disciplinary  
12 Board, Review No. 01#00060.)

13 The Court hereby admits into evidence the certified record of the disciplinary proceeding  
14 conducted against Respondent in the State of Washington. On its own motion, the Court also takes  
15 judicial notice of the applicable ethics rules.

16 Respondent stipulated to the following facts in the disciplinary proceeding against him before  
17 the Washington State Bar Association:

18 In 1996, Sergey Spitsyn was charged in the State of Washington with the first degree murder  
19 of a 14-year old girl, Tamara Gretchenko. Spitsyn was tried in May 1997, found guilty of the lesser  
20 offense of second degree murder and sentenced to a prison term of 164 months. Spitsyn's  
21 conviction was subsequently affirmed on appeal on April 16, 1999.

22 Spitsyn thereafter retained Respondent to file a petition for review in the Washington State  
23 Supreme Court. Respondent prepared and timely filed the petition for review in June 1999. The  
24 Supreme Court denied review on November 2, 1999, but Respondent did not promptly inform  
25 Spitsyn about the court's order.

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28 <sup>1</sup> Respondent was also admitted to the practice of law in the State of Washington on October 28,  
1980.

1           After Spitsyn learned about the denial of the petition for review, he retained Respondent to  
2 file a petition for a writ of habeas corpus on his behalf in the United States District Court for the  
3 Western District of Washington. Respondent and Spitsyn's mother, Lucy Spitsyna, signed a fee  
4 agreement on February 3, 2000, in which Respondent agreed to prepare and file the habeas corpus  
5 petition for a fee of \$2,000, which Ms. Spitsyna paid in full.

6           On March 23, 2000, Ms. Spitsyna wrote to Respondent to inquire about his progress on the  
7 habeas corpus petition. She wrote to Respondent a second time on November 29, 2000, expressing  
8 her concern and asking for a status update. Respondent did not respond to either letter.

9           Spitsyn wrote to Respondent on December 12, 2000, expressing his extreme frustration about  
10 Respondent's lack of communication and diligence in his matter. Respondent did not reply to  
11 Spitsyn's letter. Spitsyn wrote a second letter to Respondent on January 15, 2001, in which he  
12 requested the return of his file. Respondent neither replied to the letter nor forwarded Spitsyn's file  
13 to him.

14           Respondent prepared a draft petition for the writ of habeas corpus but did not finalize it or  
15 file it because he concluded there was insufficient legal basis for the writ. However, Respondent did  
16 not notify Spitsyn of this decision prior to the expiration of the filing deadline on November 2, 2000,  
17 and he took no further steps on Spitsyn's behalf. As a result, Spitsyn was time-barred from seeking  
18 relief in federal court.

19           Spitsyn and his mother filed complaints against Respondent with the Washington State Bar  
20 Association in January 2001. On February 13, 2001, Respondent sent Ms. Spitsyna a letter  
21 expressing his regret for not following through on the case and enclosing a check for \$2,005 as a  
22 refund for fees and costs relating to the habeas corpus petition. Respondent finally returned  
23 Spitsyn's file to him on April 4, 2001.

24           Mitigating factors in the Washington disciplinary proceeding included the absence of a  
25 dishonest or selfish motive; restitution; candor and cooperation in the disciplinary proceeding,  
26 including entering into a stipulation; and remorse. Aggravating factors included Respondent's  
27 substantial experience in the practice of law and a record of one prior disciplinary matter. The prior  
28 matter was an admonition in May 2000.

1 **C. Respondent's Violation of His California Agreement in Lieu of Discipline**

2 On May 21, 2002, the Clerk of the Washington State Bar Association's Disciplinary Board  
3 forwarded to the State Bar of California documents relating to the formal reprimand imposed upon  
4 Respondent.

5 On June 11, 2002, the State Bar sent a letter to Respondent indicating its intent to issue an  
6 NDC against him pursuant to Business and Professions Code section 6049.1. Respondent contacted  
7 the State Bar on July 31, 2002, to discuss the allegations. The parties subsequently agreed to dispose  
8 of the matter without filing an NDC by entering into an agreement in lieu of discipline ("ALD").

9 Respondent and the State Bar executed a "Stipulation As To Facts and Agreement In Lieu  
10 of Discipline Pursuant to Business and Professions Code Sections 6068(l) and 6092.5(i)" in State  
11 Bar Court Case No. 02-J-12583. Pursuant to its express terms, the ALD remained in effect for a  
12 period of one year from August 9, 2002, the date upon which it was fully executed by all parties,  
13 until August 9, 2003.

14 The ALD required, in relevant part, that Respondent provide written quarterly reports to the  
15 State Bar's Office of Probation during the period that the ALD was in effect. Those reports were  
16 due no later than October 10, 2002, January 10, 2003, April 10, 2003 and June 10, 2003. A final  
17 report was due on August 9, 2003. Respondent also was required to complete six hours of  
18 Washington-approved continuing legal education ("CLE") courses in attorney-client relations and  
19 legal ethics within the one-year term of the ALD and was required to submit evidence of his  
20 completion of the CLE courses to the Office of Probation.

21 On August 19, 2002, the Office of Probation wrote to Respondent reminding him of the  
22 terms and conditions of the ALD, including the dates for filing quarterly reports and the continuing  
23 education courses. The letter also warned Respondent that his failure to comply with the terms of  
24 the ALD could result in a non-compliance referral to the State Bar for disciplinary prosecution. The  
25 Office of Probation's letter included copies of the relevant ALD terms and reporting forms. The  
26 letter was sent to Respondent at his official State Bar membership address and was not returned by  
27 the U.S. Postal Service as undeliverable.

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1 On December 9, 2002, Respondent faxed to the Office of Probation the written quarterly  
2 report that was due on October 10, 2002. (State Bar Exhibit 4.) Respondent faxed his January 10,  
3 2003, quarterly report to the Office of Probation on March 3, 2003.<sup>2</sup> In that quarterly report,  
4 Respondent stated that he had completed the required six hours of Washington CLE courses. (State  
5 Bar Exhibit 5). Respondent faxed his April 10, 2003, quarterly report to the Office of Probation on  
6 April 30, 2003 (State Bar Exhibit 6). Finally, Respondent mailed his July 10, 2003, quarterly report  
7 and his August 9, 2003, final report to the Office of Probation on November 19, 2003. (State Bar  
8 Exhibit 7.)

9 **D. Conclusions of Law**

10 Business and Professions Code section 6068, subdivision (1) requires an attorney to keep all  
11 agreements made in lieu of disciplinary prosecution with the State Bar.

12 The terms of the ALD signed by Respondent required him to submit written quarterly reports  
13 to the Office of Probation on or before specific dates, i.e., by January 10, April 10, July 10 and  
14 October 10 of each year or partial year during which the conditions of the ALD were in effect.  
15 Respondent's ALD became effective on August 9, 2002, and remained in effect until August 9,  
16 2003. Therefore, he was required to submit written quarterly reports to the Office of Probation no  
17 later than October 10, 2002, January 10, 2003, April 10, 2003 and July 10, 2003. In addition, the  
18 terms of the ALD also required Respondent to file a final report covering the remainder of the period  
19 during which the ALD was in effect. This final report was due on August 9, 2003.

20 Respondent did not timely submit any of his quarterly reports with the Office of Probation.  
21 The quarterly report that was due on October 10, 2002, was submitted on December 9, 2002, nearly  
22 two months late. The January 10, 2003 report was submitted to Probation on March 3, 2003, and  
23 the April 10, 2003 report was submitted on April 30, 2003. Finally, the July 10, 2003 and August  
24 9, 2003 reports were received by the Office of Probation sometime after November 19, 2003.

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27 <sup>2</sup> Respondent did not provide proof of his attendance at the six hours of Washington CLE courses,  
28 either in conjunction with his March 3, 2003, submission to the Office of Probation or at any subsequent  
time.

1 In addition, the conditions of Respondent's ALD required him to provide the Office of  
2 Probation with satisfactory evidence of his completion of the Washington CLE courses. In that  
3 regard, the ALD specifically provided as follows:

4 "... Respondent [shall] complete six (6) hours of Washington minimum continuing  
5 legal education-approved courses in attorney-client relations and legal ethics within  
6 one (1) year of the date of the execution of this agreement by all parties. Completion  
7 of the State Bar Ethics School or an Ethics School course will not satisfy this  
8 requirement. **Within thirty (30) days after the completion of each said course,  
Respondent shall furnish satisfactory evidence of completion of the course to the  
Probation Unit, Office of the Chief Trial Counsel.** These hours are in addition to  
any requirement Respondent must meet in conjunction with the California Minimum  
Continuing Legal Education Program." (Emphasis added.)

9 Respondent did not provide evidence of his completion of the six hours of Washington CLE  
10 courses in attorney-client relations and legal ethics, either within thirty days after his completion of  
11 the courses or at any subsequent time.

12 The Court concludes that Respondent's failure to file timely quarterly reports with the Office  
13 of Probation and to provide satisfactory evidence of his attendance at the Washington CLE courses  
14 constitutes a wilful violation of Business and Professions Code section 6068, subdivision (I).

#### 15 LEVEL OF DISCIPLINE

##### 16 A. Aggravating Circumstances

17 Respondent committed multiple acts of misconduct by failing to timely submit five different  
18 reports to the Office of Probation and by failing to provide evidence of his completion of the  
19 required Washington CLE courses in attorney-client relations and legal ethics. (Standard 1.2(b)(ii),  
20 Rules of Procedure of the State Bar of California, tit. IV, Standards for Attorney Sanctions for  
21 Professional Misconduct ("Standards").)

22 Respondent has demonstrated indifference toward rectification of or atonement for the  
23 consequences of his misconduct. (Standard 1.2(b)(v).) He repeatedly filed his quarterly probation  
24 reports in an untimely manner, failed to fully participate in this proceeding and, in his November 19,  
25 2003, letter to the Office of Probation, essentially complained that the State Bar had overreacted to  
26 his Washington discipline case.

##### 27 B. Mitigating Circumstances

28 Respondent bears the burden of establishing mitigation by clear and convincing evidence.

1 However, Respondent has not provided this Court with any basis for finding any factor in mitigation,  
2 other than the significant mitigation accorded by his discipline-free record for approximately 30  
3 years in California. (Standard 1.2(e)(i).)

4 Additionally, Respondent cooperated in this proceeding by stipulating to facts and to the  
5 admission of documentary evidence. (Standard 1.2(e)(v).)

6 **C. Discussion**

7 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect  
8 the public, to preserve public confidence in the profession, and to maintain the highest possible  
9 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v.*  
10 *State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

11 Standard 1.6 provides that the appropriate sanction for the misconduct found must be  
12 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of  
13 imposing discipline. If two or more acts of professional misconduct are found in a single  
14 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.  
15 (Standard 1.6(a).) The level of discipline is progressive. (Standard 1.7(b).) The standards, however,  
16 are guidelines from which the Court may deviate in fashioning the most appropriate discipline  
17 considering all the proven facts and circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d  
18 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences'  
19 imposed in a blind or mechanical manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

20 Standard 2.6(a) is applicable to this proceeding and provides that culpability of a member of,  
21 among other things, a violation of Business and Professions Code section 6068 shall result in  
22 disbarment or suspension on the gravity of the offense or harm, if any, to the victim, with due regard  
23 for the purposes of imposing discipline. Respondent has been found culpable of a wilful violation  
24 of Business and Professions Code section 6068, subdivision (l).

25 The State Bar recommends the imposition of a public reproof upon Respondent. The Court  
26 agrees. In this instance, the Court finds substantial mitigation in Respondent's blemish-free record,  
27 which outweighs the aggravating factors. In consideration of the misconduct and the aggravating  
28 and mitigating factors, the Court believes that a public reproof with conditions is sufficient

1 discipline rather than the more severe levels of discipline suggested by standard 2.6(a). Therefore,  
2 for the protection of the public, the courts and the legal community and to maintain high professional  
3 standards and to preserve public confidence in the legal profession, Respondent is hereby publicly  
4 reproved and is ordered to comply with the conditions set forth below.

5 **ORDER IMPOSING DISCIPLINE**

6 **IT IS ORDERED** that Respondent **ROBERT WELCH HUFFHINES, JR.**, is hereby  
7 publicly reproved. The Court finds that the interests of Respondent and the protection of the public  
8 will be served by attaching certain conditions to the reproof, effective for a reasonable period of  
9 time. Therefore, pursuant to rule 956(a) of the California Rules of Court and rule 271 of the Rules  
10 of Procedure, Respondent is ordered to comply with the following conditions for a period of one year  
11 from the effective date of this reproof:<sup>3/</sup>

- 12 1. Respondent must comply with the provisions of the State Bar Act and of the Rules of  
13 Professional Conduct;
- 14 2. Within 10 calendar days of any change in the information required to be maintained on the  
15 State Bar's membership records pursuant to Business and Professions Code section 6002.1,  
16 subdivision (a), including his office address and telephone number, Respondent must report  
17 such change in writing to the Membership Records Office of the State Bar and to the State  
18 Bar's Office of Probation;
- 19 3. Respondent must submit written quarterly reports to the State Bar's Office of Probation no  
20 later than each January 10, April 10, July 10 and October 10 of the period during which these  
21 conditions are in effect. Under penalty of perjury, Respondent must state whether he has  
22 complied with the State Bar Act, the Rules of Professional Conduct and all conditions  
23 attached to this public reproof during the preceding calendar quarter. If the first report will  
24 cover a period of less than 30 calendar days, that report must be submitted on the reporting  
25 date for the next calendar quarter and must cover the extended period. In addition to all  
26 quarterly reports, Respondent must submit a final report, containing the same information

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28 <sup>3</sup> This public reproof is effective upon the finality of this decision. (Rule 270(a), Rules Proc. of  
State Bar.)

1 required by the quarterly reports. The final report must be submitted no earlier than 20  
2 calendar days before the last day of the period during which these conditions apply and no  
3 later than the last day of that period;

4 4. Within 30 calendar days from the effective date of this public reproof, Respondent must  
5 contact the Office of Probation and schedule a meeting with his assigned probation deputy  
6 to discuss the conditions attached to this public reproof. Upon the direction of the Office  
7 of Probation, Respondent must meet with the probation deputy either in person or by  
8 telephone. During the period in which these conditions are applicable, Respondent must  
9 promptly meet with the probation deputy as directed and upon request;

10 5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly and  
11 truthfully, any inquiries of the Office of Probation that are directed to him personally or in  
12 writing, relating to whether Respondent is complying or has complied with the conditions  
13 attached to this public reproof;

14 6. Respondent must take and pass the Multistate Professional Responsibility Examination  
15 ("MPRE"), administered by the National Conference of Bar Examiners, within one year of  
16 the effective date of this public reproof and must furnish satisfactory proof of his passage  
17 of the MPRE to the Office of Probation within that one-year period;

18 7. The conditions attached to this public reproof will commence upon the date this Decision  
19 becomes final.

20 Respondent is hereby notified that his failure to comply with one or more of the above  
21 conditions may constitute cause for the filing of a separate and further disciplinary proceeding  
22 against him for a wilful breach of rule 1-110 of the Rules of Professional Conduct.<sup>4</sup>

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<sup>4</sup> Rule 1-110 of the Rules of Professional Conduct provides that "[a] member [of the State Bar] shall comply with conditions attached to public or private reprovals or other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 956, California Rules of Court."

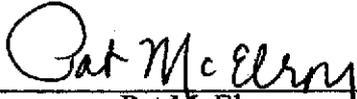
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Respondent is also advised that a public reproof is publicly available as part of his official State Bar membership records on the State Bar's website and is disclosed in response to public inquiries. (Rule 270(b), Rules Proc. of State Bar.)

COSTS

The Court hereby awards costs to the State Bar pursuant to Business and Professions Code section 6086.10. Those costs be payable and enforceable in accordance with Business and Professions Code sections 6086.10, subdivision (a) and 6140.7.

Dated: March 17, 2005

  
\_\_\_\_\_  
Pat McElroy  
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 March 17, 2005, I deposited a true copy of the following document(s):

**DECISION, filed March 17, 2005**

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:

<b>ROBERT W. HUFFHINES, JR.</b>	<b>ROBERT W. HUFFHINES, JR.</b>
<b>1767 20<sup>TH</sup> AVE RM #411</b>	<b>206 NORTH PACIFIC AVE</b>
<b>LONGVIEW WA 98632</b>	<b>KELSO WA 98626</b>

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

**CECILIA HORTON-BILLARD, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 17, 2005**.

  
George Hue  
Case Administrator  
State Bar Court