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State Bar Court of California
Hearing Department
San Francisco

Counsel For The State Bar Erica Dennings Chief Trial Counsel 180 Howard Street San Francisco, California 94105 Bar # 145755	Case Number (s) 04-0-12448 06-0-10688	(for Court's use) PUBLIC MATTER FILED <i>[Signature]</i> JAN 11 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jonathan Irwin Arons 101 Howard Street, Suite 310 San Francisco, California 94105 Bar # 111257	Submitted to: Assigned Judge	
In the Matter Of: John Murcko Bar # 47008 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <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 **June 26, 1970**.
- (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 consists of 9 pages, not including the order.
- (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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

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- (7) 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.
- (8) 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:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived
- (9) 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 a separate attachment entitled "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.

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- (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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

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- (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:

(1) Respondent was admitted to the practice of law in California on June 26, 1970 and has no prior record of discipline.

(3) Respondent cooperated throughout the disciplinary proceedings.

(8) Respondent was diagnosed with a serious illness in July 2004. Between November 2004 and April 2005, respondent had three surgeries to address the illness. While undergoing these various treatments, respondent was tired, in pain some of the time, and distracted from his practice of law. As of April 2006, respondent's health is good, he has reduced the time he practices to five hours per day, and he employs a legal assistant and office staff to provide support on his cases.

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 must comply with the conditions attached to the reproof for a period of **one year**.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), 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) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must 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. Respondent

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must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must 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.

- (6) Respondent must be assigned a probation monitor. Respondent must 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 must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation 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 reproof.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason:
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproof.
- No MPRE recommended. Reason:
- (11) 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 |

F. Other Conditions Negotiated by the Parties:

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ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: John Murcko

CASE NUMBER(S): 04-0-12448, 06-0-10688

FACTS AND CONCLUSIONS OF LAW.

Case number 04-O-12448

Respondent represents tenants in landlord tenant matters in Alameda County. From in or about 2000 through 2003, respondent filed at least eight challenges for cause pursuant to Code of Civil Procedure section 170.8 against Judge James Richman, accusing him of being biased in favor of landlords. Richman, an Alameda County Superior Court judge, was assigned to the Law and Motion Department. One case in which respondent filed such a challenge was *Dan Lieberman v. Maria Galvez*, Alameda County Superior Court case number 2001-29857.

On or about October 30, 2001, in the *Budderman v. Grier* matter, Alameda County Superior Court case number 2001-19702, respondent filed a declaration stating that on September 7, 2001, Budderman told him "Judge Richman is on his side and will always help him." He also stated that it is his understanding that Judge Richman is receiving payment from Budderman and he should open up all of his accounts to show all monies received from Marvin Budderman and his attorneys in return for his rulings to help this slumlord in the city of Oakland.

In the same case, respondent filed a declaration from Clairmont Moore. In his declaration Moore stated that he had witnessed landlord Budderman telling respondent that "Judge Richman is on his payroll and is always willing to help him out."

The challenges for cause filed in the Lieberman and Budderman cases were denied.

In or about 2003, respondent left numerous voice mail messages for Judge Richman in the Alameda County Superior Court Department 31 contested tentative ruling voicemail box. The messages amounted to personal tirades against Judge Richman and accused him of not following the law and being a sycophant of or on his knees for, landlords. Respondent left these messages at odd hours of the night or early morning. The messages were full of invective and personal animosity toward Judge Richman.

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The Presiding Judge of the Alameda County Superior Court conducted a thorough investigation into letters and petitions lodged by respondent concerning Judge Richman. The investigation did not reveal any evidence of bias on the part of Judge Richman.

Conclusions of Law

By accusing Judge Richman of being biased and receiving payments from landlords to rule in their favor without obtaining any evidence to corroborate his allegations and by leaving messages attacking Judge Richman personally, respondent failed to maintain the respect due to the court of justice and judicial officers in willful violation of section 6068(b) of the Business and Professions Code.

Case number 06-0-10688

On April 2, 2004 respondent filed a lawsuit on behalf of fourteen tenants against a landlord seeking damages resulting from breach of the warranty of habitability for in buildings leased from defendants. *Damika Hill, et al. v. Benedict Ezeokoli, et al.* Alameda Superior Court case number WG04-148803.

On April 5, 2005, respondent and defense counsel agreed in writing to submit the case to binding arbitration.

At the time respondent signed the agreement to submit the case to binding arbitration, respondent had informed his clients that there would be arbitration, but he did not tell them it was binding arbitration or the effect of binding arbitration, in particular, that they were waiving their right to a jury trial.

On April 11, 2005 Judge Horace Wheatley approved the stipulation for binding arbitration.

The matter proceeded to arbitration on April 18 and 19, and May 2, 2005. At the onset of the arbitration Judge Ballachey, the arbitrator, explained the final and binding nature of the proceedings and referred to the proceedings as final and binding throughout the proceedings.

On July 1, 2005, Judge Ballachey issued an award in favor of defendants.

On July 25, 2005, respondent filed a motion to vacate the arbitration award on behalf of his clients arguing that his clients had never agreed to binding arbitration. On July 27, 2005, Defendants moved to confirm the award.

To support his motion to vacate the arbitration award respondent submitted a declaration from all fourteen clients asserting under penalty of perjury that they had not given the respondent authority to stipulate to binding arbitration, were not aware of any stipulation for binding arbitration, did not agree to binding arbitration, and were never told by the respondent that they were waiving their right to a jury trial.

On November 16, 2005, the Court denied the motion to vacate the arbitration

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award and confirmed the defendants' motion to confirm the award.

Conclusions of Law

By not informing his clients that he agreed to binding arbitration on their behalf or explaining the effects of binding arbitration to his clients, respondent recklessly failed to perform legal services competently in willful violation of rule 3-110(A) of the Rules of Procedure.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was December 4, 2006.

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.

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In the Matter of John Murcko (#47008)	Case number(s): 04-O-12448, 06-O-10688
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

12/14/06
Date

John I. Arons
Date

19 December 2006
Date

John Murcko
Respondent's Signature

Jonathan I. Arons
Respondent's Counsel Signature

Erica L. M. Dennings
Deputy Trial Counsel's Signature

John Murcko
Print Name

Jonathan I. Arons
Print Name

Erica L. M. Dennings
Print Name

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In the Matter of JOHN MURCKO	Case number(s): 04-0-12448; 06-0-10688
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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.
- All court dates in the Hearing Department are vacated.

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 125(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.

Date Jan 11, 2007

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 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 January 11, 2007, 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:

**JONATHAN IRWIN ARONS
LAW OFC JONATHAN I ARONS
101 HOWARD ST #310
SAN FRANCISCO, CA 94105**

- 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 **January 11, 2007.**


Lauretta Cramer
Case Administrator
State Bar Court