



(Do not write above this line.)

State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
Counsel for the State Bar Esther Rogers Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 (415) 538-2445 Bar # 148246	Case number(s) 04-0-14030	(for Court's use) PUBLIC MATTER FILED AUG 30 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent Edward O Lear Century Law Group 5200 West Century Blvd. #940 Los Angeles, CA 90045 (310) 642-6900 Bar # 132699	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of LEO G. BARONE, JR. Bar # 175840 A Member of the State Bar of California (Respondent)		

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 February 10, 1995
(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 13 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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (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.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years:
2007, 2008
(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

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.

(4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(Do not write above this line.)

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

(Do not write above this line.)

- (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.
- See attached**
- (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) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two (2) years
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

(Do not write above this line.)

(3) Actual Suspension:

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of one (1) year
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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 period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (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 to the monitor 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 probation 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 probation conditions.

(Do not write above this line.)

- (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) 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:

- (1) **Multistate Professional Responsibility Examination:** 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 during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended. Reason: _____
- (2) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: _____
- (5) **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Leo G. Barone, Jr.

CASE NUMBER(S): 04-O-14030

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct:

Case No. 04-O-14030

Count One

Statement of Facts

At all relevant times, respondent was employed as a deputy district attorney with the Butte County District Attorney's Office ("District Attorney's Office").

On June 9, 2003, a felony complaint was filed against Daniel Pickett ("Pickett") in the matter *People v. Pickett*, Butte County Superior Court, Case number CM019244. The felony complaint charged Pickett with two counts of committing a lewd act upon a child, two separate victims, and sending harmful material to a minor. One of the counts was based upon the contention that Pickett forced one of the victims to view an image on a computer.

Prior to trial, Pickett was first represented by public defender Mark Stapleton, then by public defender Eric Ortner, and then by public defender Jodea Foster ("Foster").

Prior to the trial, respondent obtained images from Pickett's computer, including a picture of a man and woman engaging in sexual intercourse ("the Image"). Prior to the trial, respondent and District Attorney Office Investigator Rick Barton ("Barton") met with the victim and her mother to view the Image. The victim viewed the Image and informed Barton and respondent that the Image was not the picture she had viewed with Pickett. Barton did not prepare a report documenting the victim's denial that the Image was the picture she viewed with Pickett. Respondent did not direct Barton to prepare a report documenting the victim's denial that the Image was the picture she viewed with Pickett.

On or about March 18, 2004, the jury trial commenced in *People v. Pickett*. Prior to March 22, 2004, respondent called the victim to testify at trial that she viewed a picture with Pickett, but respondent never asked the victim to identify the Image as the picture she viewed with Pickett. On March 22, 2004, after the victim was excused and returned to New Mexico, respondent sought to introduce the Image as the picture Pickett forced the victim to view.

Foster, the Public Defender who represented Pickett at trial, objected to the admission into evidence of the Image because the victim did not identify the Image as the picture she viewed with Pickett.

The Court stated that "I don't want the jury to think that this picture was the picture [the victim] saw unless there's something to establish that it is." It also stated that the fact that the Image is similar to a picture the victim described does not establish a foundation "unless [the victim] looked at it and says, yes, this looks like what I saw."

During the discussion of whether a foundation had been laid, respondent stated to the Court, "I'd invite the court to come down here and look at the monitor on the laptop. [The victim] described a female on the floor with a male over the top of her with his private parts inside of her private. That's exactly what this shows." Foster then stated, "That doesn't tell us that's the one she saw."

The Court also stated, "My concern though is the jury has heard [the victim's] statement which could cover several things including perhaps what is depicted. Although I don't see it but Mr. Barone and Mr. Foster have described it, if that's the only image the jury sees they're going to probably assume that's what [the victim] saw and it may not be."

Respondent never informed the court during this discussion that the victim had denied that the Image was the picture she viewed with Pickett. Instead, respondent allowed the Court and Foster to believe that the Image was the picture the victim viewed with Pickett.

Respondent sought to mislead the Court and Foster by giving them the impression that the Image was the picture the victim viewed with Pickett, when respondent knew that the victim denied that the Image was the picture the victim viewed with Pickett.

On March 23, 2004, the jury convicted Pickett of one count of lewd act upon a child and of sending harmful matter to a minor. After the conviction, an unnamed employee in the District Attorney's Office informed District Attorney Michael Ramsey ("Ramsey") that respondent may have committed misconduct at the *Pickett* trial.

Subsequently, Ramsey conducted an investigation regarding respondent's conduct. During that investigation, respondent stated to Ramsey and Francisco Zarate, Chief Deputy

District Attorney, that Foster objected to the admission of the Image under Penal Code section 352 (discretion of court to exclude prejudicial evidence.) Respondent stated to Ramsey and Zarate he did not recall an objection on foundation grounds.

On April 13, 2004, the Court dismissed count 2 because of the issue regarding the Image. On May 28, 2004, Court also dismissed count 3. Therefore, Pickett was not convicted of any offense.

Respondent contends he disclosed to Stapleton that the victim had denied that the Image was the picture she viewed with Pickett. Respondent never disclosed to Foster or Ortner the victim had denied that the Image was the picture she viewed with Pickett.

Brady v. Maryland (1963) 373 U.S. 83 and California Penal Code section 1054.1(e) requires a prosecutor to disclose exculpatory evidence to the defense.

The victim's denial that the Image was the picture she viewed with Pickett was exculpatory. Respondent knew about the victim's statement regarding the Image at all relevant times. At all relevant times, respondent knew or should have known he had a legal duty to disclose the victim's statement regarding the Image to Pickett's defense attorneys. Respondent intentionally failed to disclose the victim's statement regarding the Image to Foster or Ortner. Respondent contends he disclosed the statement to Stapleton.

Respondent had a legal obligation to reveal the victim's statement regarding the Image. Respondent knew or should have known he had a legal duty to disclose the victim's statement regarding the Image. Respondent failed to reveal to Foster or Ortner the victim's statement regarding the Image. Respondent contends that he did disclose the statement to Stapleton.

By failing to disclose the victim's statement regarding the Image to Foster and Ortner, respondent intentionally suppressed evidence in the *Pickett* matter.

Conclusions of Law

Respondent wilfully violated Business and Professions Code section 6106 when he intentionally suppressed evidence of the Images.

Count Two

Statement of Facts

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

Conclusions of Law

Respondent wilfully violated Business and Professions Code section 6068(a) by failing to comply with *Brady v. Maryland* and California Penal Code section 1054.1(e).

Count Three

Statement of Facts

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

Respondent had several opportunities to inform the Court that the victim denied that the Image respondent introduced at trial was the image the victim viewed with Pickett. Respondent never informed the Court that the victim denied that the Image respondent introduced at trial was the image the victim viewed with Pickett.

Respondent sought to mislead the Court by failing to inform the Court that the victim denied that the Image respondent introduced at trial was the image the victim viewed with Pickett and by making statements that were meant to convince the Court that the Image was the same image the victim viewed, when respondent knew that it was not.

Conclusions of Law

Respondent wilfully violated Business and Professions Code section 6106 when he made misrepresentations to the Court.

Count Four

Statement of Facts

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

Respondent stated to Ramsey and Zarate that Foster objected to the admission of the Image under Evidence Code section 352. In truth and in fact, respondent knew that Foster also objected on foundational grounds. Respondent stated to Ramsey and Zarate that he did not recall an objection on foundational grounds. In truth and in fact, respondent knew that Foster did object on foundational grounds.

Conclusions of Law

Respondent wilfully violated Business and Professions Code section 6106 when he made

misrepresentations to Ramsey and Zarate.

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(i). No Prior Record. Respondent was admitted in 1995 and his misconduct occurred no earlier than mid-2003. Therefore, respondent was admitted at least 8 years prior to his misconduct.

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

Standard 1.2(e)(vi). Good Character. Respondent submitted three good character letters.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 4, 2005.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 4, 2005, the estimated prosecution costs in this matter are approximately \$2,296. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

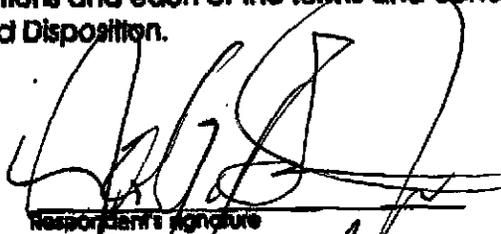
(Do not write above this line.)

In the Matter of	Case number(s):
LEO G. BARONE, JR.	04-0-14030

SIGNATURE OF THE PARTIES

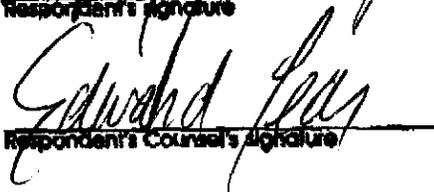
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

8.9.05
Date


Respondent's signature

LEO G. BARONE, JR.
Print name

8/12/05
Date


Respondent's Counsel's signature

EDWARD O. LEAR
Print name

8/17/05
Date


Deputy Trial Counsel's signature

ESTHER ROGERS
Print name

(Do not write above this line.)

In the Matter of Leo G. Bar one, Jr.	Case number(s): 04-O-14030
---	-------------------------------

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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 5, E(1) --the "xx" in front of the box is deleted.

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.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

Date

August 29, 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 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 August 30, 2005, 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:

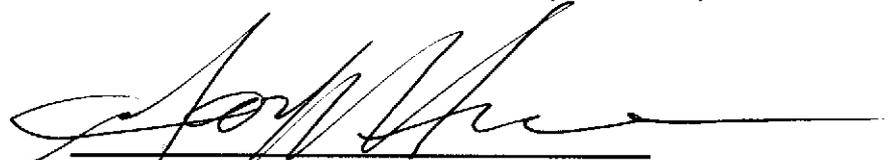
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**EDWARD O. LEAR
CENTURY LAW GROUP
5200 WEST CENTURY BLVD #940
LOS ANGELES CA 90045**

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

ESTHER ROGERS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 30, 2005**.



George Hue
Case Administrator
State Bar Court