



State Bar Court of California
Hearing Department
San Francisco

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

<p>Counsel For The State Bar</p> <p>Maria J. Oropeza 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 182660</p>	<p>Case Number (s) 04-O-14278 07-O-14039</p> <p>RECEIVED</p> <p>JUN 30 2008</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court's use)</p> <p>FILED <i>R</i></p> <p>MAR 02 2009</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Frank Epstein 1517 Tennessee Street Vallejo, CA 94590</p> <p>Bar # 97325</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Frank Epstein</p> <p>Bar # 97325</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 **May 11, 1981**.
- (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 the 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 consists of 9 pages, excluding 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) 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 [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:
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice

- (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.
- (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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Frank Epstein, Bar No. 97325

CASE NUMBER(S): 07-O-14039; 04-O-14278 ET AL.

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.

Statement of Facts: Count One (Case No. 04-O-14278)

1. Frank Epstein ("respondent") was admitted to the practice of law in the State of California on May 11, 1981, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California
2. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:
 3. In January 2002, Anthony Kearney employed respondent to represent him in a divorce proceeding entitled *Kearney v. Kearney*, Solano County Superior Court, case number FFL064541. On January 30, 2003, the Court granted the dissolution. After the hearing, respondent was required to prepare and submit the Judgment and other orders to the court so that the divorce could be finalized. Subsequently, respondent failed to prepare the necessary papers to finalize the divorce.
 4. On August 9, 2004, Mr. Kearny filed a complaint with the State Bar. In response to correspondence from the State Bar, respondent stated that he submitted the Judgment and other orders to the Court, but they were returned due to errors. Respondent admitted that he did not resubmit the correct Judgment and other orders in a timely fashion.
 5. On March 21, 2005, respondent submitted the incorrect papers to the Court, and they were returned. Respondent resubmitted the Judgment, but on May 5, 2005, the Court rejected it because it was incomplete.
 6. On June 9, 2005, after respondent submitted a revised Judgment, the court entered judgment.
 7. On August 15, 2005, respondent filed a Findings and Order After Hearing, but included incorrect figures.
 8. On August 22, 2005, after respondent corrected the figures, the Court entered Findings and Order After Hearing. The divorce was finalized as of August 22, 2005.

Conclusions of Law: Count One (Case No. 04-O14278)

9. By failing to complete the divorce until August 2005, when the Court terminated the marriage on January 30, 2003, respondent failed to competently perform in wilful violation of Rules of Professional Conduct, rule 3-110(A).

Statement of Facts: Count Two (Case No. 07-O-14039)

10. Respondent wilfully violated Business and Professions Code, section 6068(l), by failing to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline, as follows:

11. At all times mentioned, the State Bar of California was the agency charged with attorney discipline in the State of California.

12. On April 18, 2006, respondent signed a written agreement in lieu of disciplinary prosecution (ALD) to resolve case number 04-O-14278 . Respondent also agreed that the ALD would have the following effect:

“2. Business and Professions Code section 6068(l) provides that it is the duty of any attorney ‘to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.’ Any conduct by the Respondent within the effective period of this agreement which violates this agreement may give rise to prosecution for violation of Business and Professions Code section 6068(l) in addition to prosecution for the underlying allegations.

“3. The facts stipulated to as to the underlying misconduct are binding upon the Respondent, and the Stipulation as to Facts and Agreement in Lieu of Discipline, while confidential, may be admitted as evidence without further foundation at any disciplinary hearing held in conjunction with Respondent’s failure to comply with the conditions of this agreement.

“4. Should Respondent comply fully with the terms and conditions of this agreement as specified herein, the matter(s) referenced herein will thereafter be closed by the State Bar and the State Bar agrees that it will be precluded from reopening the referenced matters for any reason other than as stated in this agreement.”

13. As consideration for this agreement, respondent promised *inter alia* to comply with the following conditions:

“STATE BAR ETHICS SCHOOL

“Within one year of the date of the execution of this agreement by all parties, Respondent

shall attend the State Bar Ethics School, which is held periodically at the State Bar of California (180 Howard Street, San Francisco) and shall take and pass the test given at the end of such session. Because Respondent has agreed to attend State Bar Ethics School as part of this Agreement in Lieu of Discipline, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

“Respondent also must report the successful completion of State Bar Ethics School to the Probation Unit, Office of the Chief Trial Counsel, 1149 South Hill Drive, Los Angeles, CA 90015 within 10 days of completion.

“MCLE

“Within one year of the date of execution of this agreement by all parties, Respondent must complete no less than three hours of Minimum Continuing Legal Education (“MCLE”) approved in law off [sic, should be “office”] management.

“Respondent also must report the completion of these courses to the Probation Unit, Office of the Chief Trial Counsel, 1149 South Hill Drive, Los Angeles, CA 90015 within 10 days of their completion.”

14. The ALD became effective on or about April 19, 2006 when it was executed by a representative of the Office of the Chief Trial Counsel, and it remained in full force and effect at all times thereafter. At all times after April 19, 2006, 2006, respondent knew or reasonably should have known that the ALD had become effective. Respondent received actual knowledge that the ALD had become effective in or about mid May, 2006.

15. Respondent completed two hours of the MCLE required by the ALD, on January 7, 2008.

16. Respondent has not taken Ethics School during the time period required by the ALD.

Conclusions of Law: Count Two (Case No. 07-O-14039)

17. Respondent violated each of the above-mentioned conditions of his ALD in that he (1) failed to attend Ethics School during the one year period or at any time thereafter, (2) failed to report his attendance at Ethics School to the Probation Unit, (3) failed to complete the required MCLE within the one year deadline, and (4) failed to report his compliance with the MCLE requirement to the Probation Unit within the one year deadline. By violating the conditions of his ALD, respondent failed to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline, a wilful violation of Business and Professions Code Section 6068(1).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was June 2, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 2, 2008, the costs in this matter are \$2,296.00. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.6 states culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3, subdivision (a) cites to section 6068.

Standard 1.6(a) states in pertinent part "the appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged in a single disciplinary proceeding and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

The case law concerning violations of Business and Professions Code section 6068(l) is limited¹ to *In the matter of Respondent R*, (1995) 3 Cal. State Bar Ct. Rptr. 227 and *In the Matter of Lawrence Crawford Bragg*, (1997) 3 Cal State Bar Ct. Rptr. 615. Given the limited case law on violations of the terms and conditions of an agreement in lieu of discipline, the Office of Chief Trial Counsel refers to case law concerning violations of the terms and conditions of private reprovls, as a guideline for its recommended level of discipline.

¹*In the Matter of Respondent R*, (1995) 3 Cal. State Bar Ct. Rptr. 227 specifically dealt with an issue of first impression concerning the hearing judge's authority to add a pre-condition to the agreement in lieu of discipline, after dismissing the case. It did not address the level of discipline to be imposed. The court in *Respondent R* distinguished an agreement in lieu of discipline from a stipulation in that an agreement substitutes terms and conditions in place of a disciplinary proceeding, at least on a provisional basis. The Court held that the hearing judge could not add a pre-condition to the agreement unless both parties agreed to the pre-condition.

Violations of the terms and conditions of private reprovls are similar in nature to violations of an Agreement, in that in both types of proceedings, the respondents have failed to fulfill conditional terms. Failure to abide by the terms and conditions of a private reprovl have customarily resulted in 60 or 90 days of actual suspension, with a period of stayed suspension imposed depending on the aggravating factors involved in the proceedings. (See *Conroy v. State Bar* (1990) 51 Cal. 3d. 799, (60 day actual suspension; one year stayed; one year probation) *In the Matter of Jeffrey Meyer* (1997) 3 Cal. State Bar Ct. Rptr. 697 (90 day actual suspension; two year stayed suspension, two years of probation) There is only one instance in which the Court deviated from imposing a period of actual suspension for violating the terms and conditions of a private reprovl. In that case the Court imposed a public reprovl, because the respondent had participated extensively in the violation proceeding, had belatedly complied with the reprovl conditions, respondent's prior misconduct did not involve client matters, and lastly the only condition which the respondent had not complied with was taking and passing the Multi-State Professional Responsibility Exam. (See *In the Matter of Stephen Posthuma* (1998)3 Cal. State Bar Ct. Rptr. 813.)

MITIGATING CIRCUMSTANCES.

No prior record of discipline: Respondent has no prior record of discipline.

(Do not write above this line.)

In the Matter of Frank Epstein, Bar No. 97325	Case number(s): 07-O-14039
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SIGNATURE OF THE PARTIES

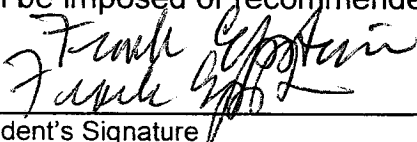
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

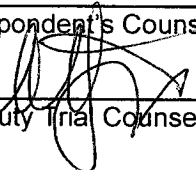
6-11-08
Date


Respondent's Signature

Frank Epstein
Print Name

6/30/06
Date

Respondent's Counsel Signature


Deputy Trial Counsel's Signature

Maria J. Oropeza
Print Name

(Do not write above this line.)

In the Matter Of Frank Epstein, Bar No. 97325	Case Number(s): 07-O-14039; 04-O-14278
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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 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

March 2, 2009
Date

Lucy Armendariz
Judge of the State Bar Court
Lucy Armendariz

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 March 2, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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 _____, California, addressed as follows:

- by certified mail, No. _____, with return receipt requested, through the United States Postal Service at _____, California, addressed as follows:

- by overnight mail at _____, California, addressed as follows:

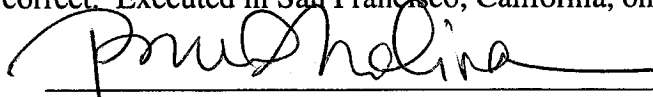
- by fax transmission, at fax number _____. No error was reported by the fax machine that I used.

- By personal service:

FRANK EPSTEIN	MARIA J. OROPEZA
180 HOWARD STREET, 6 TH FLOOR	180 HOWARD STREET, 6 TH FLOOR
SAN FRANCISCO, CA 94105	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 March 2, 2009.



Bernadette C. O. Molina
Case Administrator
State Bar Court