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~~CONFIDENTIAL~~

<b>State Bar Court of California</b> <b>Hearing Department</b> <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco <b>PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES</b>		
<b>Counsel for the State Bar</b> Cydney Batchelor Deputy Trial Counsel 180 Howard St. San Francisco, CA 94105 Tele: 415/538-2204  Bar # 114637	<b>Case Number(s)</b> 04-0-10025 PEM 04-0-14811 05-0-2135 05-0-3349  <b>PUBLIC MATTER</b>  <b>FILED</b> JAN 12 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	<b>(for Court use)</b>  <b>LODGED</b> MAY 15 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> <b>Counsel for Respondent</b> <input type="checkbox"/> <b>In Pro Per</b> David. A. Roberts, Esq. Caswell Bell & Hillison 5200 N. Palm Ave, No. 211 Fresno, CA 93704 Tele: 559/225-6550  Bar # 88723	<b>Submitted to Program Judge</b> <b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>In the Matter of</b> JOHN H. MISSIRLIAN Bar # 66885 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 December 18, 1975 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of 9 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."  
See attached
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."  
See Attached

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

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

- (1) ~~xxx~~ Prior Record of Discipline [see standard 1.2(f)]
- (a) ~~xxx~~ State Bar Court Case # of prior case S 099248 (98-0-3781)
- (b) ~~xxx~~ Date prior discipline effective October 18, 2001
- (c) ~~xxx~~ Rules of Professional Conduct/State Bar Action violations B&P Code 6068(1) and 6068(m); RPC 3-110(A), 3-700(D)(2), 4-100(A), and 4-100(B)(3)
- (d) ~~xxx~~ Degree of prior discipline No actual suspension; 90 day actual suspension; 2 years probation
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ Trust violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ~~xxx~~ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attached
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) ~~xxx~~ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.  
See attached
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

None.

(Do not write above this line.)

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

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to the State Bar during disciplinary investigation and proceedings.  
See attached
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat of force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances are involved.**

**Additional mitigating circumstances:**

See attached

**ATTACHMENT TO**  
**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

IN THE MATTER OF:      **JOHN H. MISSIRLIAN**  
CASE NUMBERS:          **04-O-10025-PEM, ET AL.**

**DISMISSAL.**

**Case No. 05-O-2135 (Aegea McMahon Stone):** The State Bar respectfully requests the Court, upon the execution of the alternative discipline program contract in these matters, to dismiss this case without prejudice. Respondent understands that his failure to comply with the additional restitution condition set forth herein may result in this case being reopened.

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the State Bar Act and/or Rules of Professional Conduct.

**Case No. 04-O-10025 (Gary and Zandra Steinhardt):**

**Facts:** On January 17, 2003, Gary and Zandra Steinhardt ("the Steinhardts") employed Respondent to prepare a living trust, and paid him \$500.00 in advanced attorney fees. On August 20, 2003, the Steinhardts met with Respondent at his office to review what he prepared so far, requested some additions and changes be made, and paid him another \$250.00 in advanced fees. Respondent quoted them a total fee of \$1000.00, and told them that he would make the changes and send the document to them for their review within a couple weeks. However, Respondent failed to do so. On September 16, 2003, the Steinhardts paid Respondent \$350.00 in additional advanced fees. Thereafter, the Steinhardts called Respondent on numerous occasions to obtain a copy of the trust; however, he failed to respond or comply, or to inform them that he had moved his offices. On December 11, 2003, Mr. Steinhardt went to Respondent's office to obtain a copy of the living trust, and he was informed that Respondent was no longer at that address. Mr. Steinhardt then went to Respondent's new address; he was told that Respondent was not available, and left a message for Respondent to call him. Respondent failed to do so, or ever to provide the trust.

**Conclusions of Law:** By repeatedly failing to prepare the trust for the Steinhardts, Respondent failed to perform competently the legal services for which he had been

employed, in violation of Rule of Professional Conduct 3-110(A). By willfully not responding to the Steinhardts' requests for information about the trust, Respondent failed to respond promptly to reasonable status inquiries of a client, in violation of Business and Professions Code section 6068(m).

**Case No. 04-O-14811 (Katherine Rainey):**

**Facts:** On December 4, 2002, Katherine Rainey ("Ms. Rainey") employed Respondent to probate the estate of her deceased mother. Ms. Rainey paid Respondent advanced attorney fees in the amounts of \$500.00 on December 4, 2002, and \$500.00 on January 20, 2003. Respondent took no action on the probate until October 22, 2003, when he filed a petition to probate; however, the petition should not have been filed because the original will could not be located. In February 2004, the probate court requested that Respondent correct the errors in the filing. Despite being given several opportunities to do so, Respondent failed ever to correct his filing errors until July 2004. Thereafter, Respondent failed to make any other appearances or to complete the matter. Ms. Rainey thereafter made numerous telephone calls to Respondent to inquire about the status of the matter, and then hired replacement counsel. Despite numerous requests from Ms. Rainey's replacement counsel that he sign a substitution of attorney and forward the client file, Respondent failed ever to respond.

**Conclusions of Law:** By repeatedly failing to complete the Rainey probate matter, as he had been hired to do, Respondent failed to perform competently the legal services for which he had been employed, in violation of Rule of Professional Conduct 3-110(A). By willfully not responding to Ms. Rainey's numerous requests for information about the trust, Respondent failed to respond promptly to reasonable status inquiries of a client, in violation of Business and Professions Code section 6068(m). By willfully not releasing the client file to subsequent counsel upon request, Respondent failed to release client papers promptly upon termination of employment, in violation of Rule of Professional Conduct 3-700(D)(1).

**Case No. 05-O-3349 (Denny Ung):**

**Facts:** In June 2004, Denny Ung ("Mr. Ung") employed Respondent to probate the estate of his deceased father, and paid him \$2000.00 in advanced fees. Thereafter, Respondent failed to complete the probate or respond to Mr. Ung's numerous requests for information about the case, and Mr. Ung employed replacement counsel. In March 2005, Respondent finally contacted Mr. Ung about the probate. Mr. Ung informed Respondent that he had hired another attorney, and Respondent said that he would refund the attorney fees in full. Respondent did refund \$2000.00 plus \$100.00 in interest to Mr. Ung, but not until October 2005, after the intervention of the State Bar.

**Conclusions of Law:** By recklessly failing to complete the Ung probate matter, as he had been hired to do, Respondent failed to perform competently the legal services for which he had been employed, in violation of Rule of Professional Conduct 3-110(A). By willfully not responding to Mr. Ung's numerous requests for information about the trust,

Respondent failed to respond promptly to reasonable status inquiries of a client, in violation of Business and Professions Code section 6068(m).

### **PENDING PROCEEDINGS.**

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

### **AGGRAVATING CIRCUMSTANCES.**

#### **Facts Supporting Aggravating Circumstances:**

Prior Record of Discipline: As set forth in the stipulation, Respondent has a prior record of discipline.

Significant Harm: Ms. Rainey was required to employ replacement counsel to complete the probate matter, and incurred additional attorney fees

### **MITIGATING CIRCUMSTANCES.**

#### **Facts Supporting Mitigating Circumstance:**

Candor and Cooperation: Through counsel, Respondent has been candid and cooperative with the State Bar in resolving these matters.

### **ADDITIONAL MITIGATING CIRCUMSTANCES.**

Restitution: Although he did not do so until after the intervention of the State Bar, Respondent paid restitution to Mr. Ung in the amount of \$2100.00 in October 2005. In addition, as a demonstration of remorse, Respondent has agreed to refund to Ms. Rainey the advanced attorneys fees in full, as well as to compensate her for the additional attorney fees which she incurred as a result of his inaction.

Participation in Lawyer's Assistance Program. In January 2005, Respondent contacted the State Bar Lawyer Assistance Program ("LAP") and completed the intake process. In February 2005, Respondent signed an evaluation plan whereby he agreed to be assessed and monitored for a period of time by the LAP. At the conclusion of the process, Respondent entered into a long-term participation plan with LAP on April 27, 2005.

### **RESTITUTION.**

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

In accordance with the timetable set forth in the State Bar Court alternative discipline program contract to be executed between the State Bar Court and Respondent on the captioned cases, Respondent must make restitution as follows:

Katherine Rainey, or the Client Security Fund if it has paid, in the principal amount of \$1000.00, plus interest at the rate of 10% per annum from February 1, 2003, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

**ADDITIONAL RESTITUTION CONDITION.**

Fee arbitration in matter:, Respondent hereby agrees to write to Aegea McMahon Stone, within ninety days from the date he signs this stipulation, and therein offer to initiate and participate in State Bar fee arbitration upon Ms. Stone's request regarding his outstanding dispute with Respondent about \$3500.00 in advanced fees. Respondent further agrees to initiate and participate in fee arbitration upon Ms. Stone's request, and to abide by the final order if any there be. Respondent understands and agrees that his failure to write the letter, or to initiate or participate in fee arbitration upon Ms. Stone's request, or to abide by the final order, if any there be, may constitute a violation of this stipulation.

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In the Matter of  JOHN H. MISSIRLIAN	Case number(s):  04-0-10025-PEM, et al.
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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.

02/01/06  
Date

  
Respondent's signature

JOHN H. MISSIRLIAN  
Print name

01/22/06  
Date

  
Respondent's Counsel's signature

DAVID A. ROBERTS  
Print name

02/21/06  
Date

  
Deputy Trial Counsel's signature

CYDNEY BATCHELOR  
Print name



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In the Matter of  JOHN H. MISSIRLIAN	Case number(s):  04-0-10025-PEM, et al.
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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.)

May 15, 2006  
Date

Pat McElerny  
Judge of the State Bar Court

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

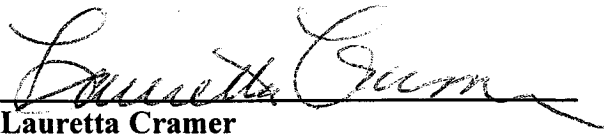
I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on May 15, 2006, I personally served a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW;  
CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND  
ORDERS (Rules Proc. of State Bar, rule 803(a));  
CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR  
COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

**[X]** by personal delivery and addressed as follows:

**CYDNEY BATCHELOR  
DAVID A. ROBERTS  
180 HOWARD ST 6TH FL  
SAN FRANCISCO, CA 94105**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 15, 2006.

  
**Laurretta Cramer**  
Case Administrator  
State Bar Court