

**ORIGINAL**

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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar <b>SHARI SVENINGSON</b> DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, CA 90015 Telephone: (213) 765-1004  Bar # 195298	Case number(s)  04-0-15351	(for Court's use)  <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>  <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED </div>  <div style="text-align: center;">JUL 26 2006</div>  <div style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent Mark C. Ellis P.O. Box 30212 San Bernardino, CA 92413 (916) 549-0774  Bar # 170295	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  STAYED SUSPENSION; NO ACTUAL SUSPENSION  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  Mark C. Ellis  Bar # 170295  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 June 7, 1994  
(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.

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- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- (a)  costs added to membership fee for calendar year following effective date of discipline
  - (b)  costs to be paid in equal amounts prior to February 1 for the following membership years:  
for the next two(2) billing cycles following the effective date of the--  
(hardship, special circumstances or other good cause per rule 282, Rules of Procedure) Superior Court
  - (c)  costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs" Order.
  - (d)  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. See page 11.
- (5)  Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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. See page 11.
- (9)  **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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- (10)  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.
- (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:

#### D. Discipline

1.  Stayed Suspension.

(a)  Respondent must be suspended from the practice of law 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: \_\_\_\_\_

The above-referenced suspension is stayed.

2.  Probation.

Respondent is placed on probation for a period of Eighteen (18) month, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

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**E. Additional Conditions of Probation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  Within 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.
- (4)  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 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 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.

- (5)  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.
- (6)  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.
- (7)  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 State Bar Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason: \_\_\_\_\_
- (8)  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.
- (9)  The following conditions are attached hereto and incorporated:
  - Substance Abuse Conditions       Law Office Management Conditions
  - Medical Conditions                       Financial Conditions

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**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 within one year. 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)  **Other Conditions:**

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

IN THE MATTER OF:        MARK C. ELLIS

CASE NUMBER(S):        04-O-15351

**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.

**FACTS**

1. On or about March 30, 2002, Insa Sutherland ("Sutherland") employed Respondent to represent her minor son and daughter in two separate matters. Sutherland employed Respondent to represent her son, Jason LeBleu, in a juvenile delinquency case pending in Placer County Superior Court, Juvenile Division, case number 52-001382. Sutherland also employed Respondent to represent her in an ongoing, child support and custody matter concerning her daughter, Brigid, including getting the case transferred from Louisiana to California.

2. Sutherland paid Respondent \$1,700.00 as advanced fees. Respondent told Sutherland he would bill at a rate of \$170.00 per hour.

3. Respondent requested that Sutherland provide all documents pertinent to the cases and Sutherland complied with Respondent's request.

4. On or about July 2, 2002, Sutherland also asked Respondent to review a prenuptial agreement and advise her regarding its validity. She provided Respondent with a copy of the proposed prenuptial agreement.

5. On May 6, 2002, Respondent wrote to Sutherland's former attorney, Grant Pegg ("Pegg"), informing him that he had been retained by Sutherland and requesting a complete copy of the file and information relating to both the delinquency and child support matter so that he could file a substitution of attorney. Eventually, Sutherland obtained the documents from both Jason's and Brigid's cases from Pegg and gave them to Respondent.

6. After sending the May 6, 2002 letter to Pegg, Respondent took no action on the Brigid matter.

7. On May 7, 2002, Sutherland spoke with Respondent by telephone to discuss Jason's case. In that conversation, Sutherland told Respondent to put Brigid's matter on the "back burner" to concentrate on Jason's case.

8. Respondent attended four hearings in Jason's case which was eventually resolved by a referral to probation on July 9, 2002.

9. On May 14, 2002, Sutherland sent Respondent a copy of a letter she had sent to her Louisiana attorney. In the letter, Sutherland informed Marlene Samuel, the Louisiana attorney, that Respondent was her new attorney and would contact her regarding Brigid's case soon.

10. On August 27, 2002, Sutherland called Respondent on his cellular phone to determine the status of the Brigid matter, leaving a message for him to return her call. Respondent failed to return the call.

11. Between September 6 and 23, 2002, Sutherland called Respondent on his cellular or office phone to determine the status of the Brigid matter, leaving messages for him to return her calls. Respondent failed to return her calls.

12. On November 2 and 21, 2002, Sutherland called Respondent on his cellular phone to determine the status of the Brigid matter, leaving messages for him to return her calls. Respondent failed to return her calls.

13. On November 22 and December 19, 2002, Sutherland sent letters via facsimile to Respondent to determine the status of the Brigid matter. Respondent failed to respond to the letters.

14. On February 15, 2003, Sutherland sent a letter to Respondent certified mail, return receipt requested, to determine the status of the Brigid matter. Respondent received the letter and failed to respond to it.

15. In the September 23, 2002, letter Sutherland requested that Respondent return her prenuptial agreement as she no longer needed his advice on it.

16. On March 11, 2003, Sutherland sent Respondent a letter via certified mail terminating his services and requesting that he return all documents pertaining to the delinquency matter, the child support matter and the prenuptial agreement.

17. On March 20, 2003, Respondent wrote to Sutherland acknowledging receipt of her March 11, 2003 letter. In the letter Respondent stated that he would be sending an invoice and all relevant file documents under separate cover. Thereafter, Respondent failed to return the



documents or provide an accounting.

18. Sutherland sent letters to Respondent on April 13 and 28, and May 13 and 23, 2003 requesting her file documents and an accounting. Respondent failed to return the documents or provide an accounting.

19. On July 16, 2003, Respondent sent Sutherland a letter and returned the file documents from Jason's case. In the letter, Respondent told Sutherland that documents from her other files would follow.

20. On November 20, 2003, Sutherland sent a letter to Respondent requesting her remaining file documents and an accounting.

21. On May 26, 2006, Respondent mailed a the remaining file documents and an accounting of his fees to Sutherland.

### **CONCLUSIONS OF LAW**

By not taking steps to pursue Brigid's case including not transferring the case from Louisiana to California, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

By not responding to Sutherland's numerous phone calls and letters requesting the status of the Brigid case, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of Business and Professions Code section 6068(m).

By not promptly returning the file regarding the Brigid matter and not returning the prenuptial agreement despite numerous requests by Sutherland, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

By not promptly providing an accounting to Sutherland, Respondent failed to render appropriate accounts to a client regarding all funds of the client coming into Respondent's possession in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was by letter dated May 26, 2006.

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of **May 26, 2006**, the estimated prosecution costs in this matter are approximately **\$3,654**. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.**

Standards 2.2(b), 2.4(b) and 2.6(a) of the Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California.

Standard 2.2(b) provides for a three month actual suspension irrespective of mitigating circumstances for a member's violation of rule 4-100 when the violation does not involve misappropriation of client funds or property.

A deviation from this standard is appropriate here because case law supports it and because Respondent did ultimately provide his client with an accounting of the fees she had paid him. Respondent's delay in providing the accounting was partly caused by the fact the client had moved and Respondent was not aware of the new address.

Standard 2.4(b) provides for reproof or suspension when a member fails to perform services in an individual matter or fails to communicate.

Standard 2.6(a) provides for suspension or disbarment for a violation of Business and Professions Code section 6068.

*Van Sloten v. State Bar*, 48 Cal. 3d 921:

Van Sloten failed to perform by failing to use diligence in procuring a client's marital dissolution, by not properly withdrawing from the case and failing to communicate with the client. The court concluded that the misconduct which was aggravated by his failure to appreciate the discipline process (he failed to appear at the R.D. Hearing proceedings) warranted 6 mo stayed suspension, one year probation, no actual suspension.

*In the Matter of Aguiluz*, (1992) 2 Cal State Bar Ct Rptr. 32

Aguiluz was found culpable of abandoning his client, failing to communicate and failing to return the client's file. Aguiluz received one year stayed suspension and 2 years probation.

**AGGRAVATING CIRCUMSTANCES**

Respondent's failure to perform caused a significant delay in his client's child custody and child support matter.

**MITIGATING CIRCUMSTANCES.**

During the time of the misconduct Respondent suffered from depression. Respondent has since been diagnosed with Major Depression and Alcohol Dependence. Respondent is currently being treated by a psychiatrist and is attending Alcoholics Anonymous meetings regularly.


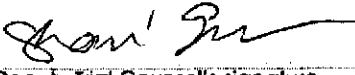
Respondent had attempted to provide Sutherland with the remaining file documents and an accounting of his fees by mail in November 2005, but Sutherland had moved and the mailing was returned to Respondent as "unable to forward." Respondent obtained Sutherland's current address in May 2006 and promptly mailed the remaining file documents and the accounting to Sutherland.

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In the Matter of  MARK C. ELLIS	Case number(s):  04-0-15351
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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, Conclusions of Law and Disposition.

Date	<u>6-20-06</u>		MARK C. ELLIS
		Respondent's signature	Print name
Date	<del>6/23/06</del>		
		Respondent's Counsel's signature	Print name
Date	<u>6/23/06</u>		SHARI SVENINGSON
		Deputy Trial Counsel's signature	Print name

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In the Matter of MARK C. ELLIS	Case number(s): 04-O-15351
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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 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.

On page 2, section A(8)(b) instead of Superior Court order it must read Supreme Court order.

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

July 25, 2006



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 July 26, 2006, 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:

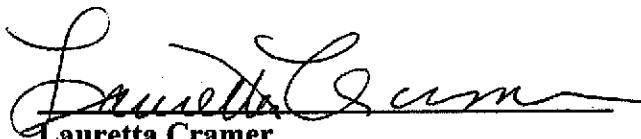
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**MARK CHRISTOPHER ELLIS  
PO BOX 30212  
SAN BERNARDINO, CA 92413**

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

**SHARI SVENINGSON, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 26, 2006.

  
**Laurretta Cramer**  
Case Administrator  
State Bar Court