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State Bar Court of California Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
Counsel for the State Bar Robin B. Brune Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 (415) 538-2218 Bar # 149487	Case number(s) 05-H-04692-PEM	(for Court's use) PUBLIC MATTER FILED <i>pm</i> FEB 17 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent James MacMaster P.O. Box 2261 Folsom, CA 95763 (916) 989-4983 Bar # 88823	Submitted to <input type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge	
In the Matter of JAMES MACMASTER Bar # 88823 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted November 29, 1979
(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 12 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.

James
Actual Suspensor

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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):

- 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:
- (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 04-0-12754

(b) Date prior discipline effective August 24, 2004

(c) Rules of Professional Conduct/ State Bar Act violations: B&P 6068(1) - failure to

comply with terms of A.L.D.

(d) Degree of prior discipline private reproof

(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.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

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- (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 attachment

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of _____

- 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 _____ which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) Actual Suspension:

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of sixty (60) days

- 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: take and pass the M.P.R.E.; attend the State Bar's Ethics School; pay costs

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:**

Respondent must complete the M.P.R.E. and Ethics School before he can come off of suspension.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: James L. MacMaster
CASE NUMBER(S): 05-H-04692-PEM, *et al.*

FACTS AND CONCLUSIONS OF LAW.

On or about August 1, 2004, respondent signed a Stipulation in case no. 94-O-12754, for a private reproof with conditions. The conditions of the reproof included the following:

- a) that respondent shall comply with the conditions for one year;
- b) that he shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof;
- c) that he shall submit a final report no earlier than twenty days before the last day of the condition period and no later than the last day of the condition period;
- d) that he shall provide to the Probation Unit satisfactory proof of attendance at Ethics School and passage of the test given at the end of the session within one year of the effective date of the reproof; and
- e) that he shall provide proof of passage of the Multistate Professional Responsibility Examination to the Probation Unit within one year of the effective date of the reproof.

On or about August 25, 2005, the State Bar Court issued a confidential Stipulation and Order in *In the Matter of James Edward MacMaster*, case no. 94-O-12754, approving the Stipulation for a private reproof with the aforementioned conditions.

The State Bar Court served the order on respondent on or about August 25, 2005 to respondent's official membership records address, maintained pursuant to 6002.1 of the Business and Professions Code, at P.O. Box 2261, Folsom, California 95763. Respondent received the order and was aware of its contents. The effective date of the reproof with conditions commenced on September 15, 2004, and continued until September 15, 2005.

jam

On or about September 29, 2005, the Probation Unit of the State Bar sent respondent a letter to his official membership records address, maintained pursuant to 6002.1 of the Business and Professions Code, at P.O. Box 2261, Folsom, California 95763. In the letter, probation officer Eddie Esqueda reminded respondent of his conditions attached to his reapproval. Respondent received the September 29, 2005 letter from the Probation Unit and was aware of its contents.

Respondent filed quarterly reports on January 21, 2005, April 11, 2005, and July 11, 2005.

Respondent failed to submit a final quarterly report no earlier than twenty days before the last day of the condition period and no later than the last day of the condition period of September 15, 2005; respondent failed to provide to the Probation Unit satisfactory proof of attendance at Ethics School and passage of the test given at the end of the session within one year of the effective date of the reapproval; and respondent failed to provide proof of passage of the Multistate Professional Responsibility Examination to the Probation Unit within one year of the effective date of the reapproval.

Conclusions of Law

By failing to complete reapproval conditions of a final quarterly report, Ethics School, and Multistate Professional Responsibility Examination, respondent failed to comply with the conditions of his reapproval, in wilful violation of rule 1-110 of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was January 20, 2006.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 20, 2006, the estimated prosecution costs in this matter are approximately \$2,296.00. 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.

Conroy v. State Bar (1990) 51 Cal.3d 799

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76

In the Matter of Meyer (Review Dept. 1977) 3 Cal. State Bar Ct. Rptr. 697

AGGRAVATING CIRCUMSTANCES.

Standard 1.2(b)(ii) – multiple acts or a pattern of misconduct

Standard 1.2(b)(i) – prior record of discipline

PRIOR DISCIPLINE.

Respondent had a private reproof on August 1, 2004.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Respondent's private reproof is for failure to abide by the terms of his A.L.D. The A.L.D. required respondent to take and pass the M.P.R.E. and to take and pass Ethics School. After respondent failed to abide by these A.L.D. terms, taking and passing the M.P.R.E. and taking and passing Ethics school were then made part the conditions of respondent's reproof. Respondent failed to complete these conditions of his reproof. By twice failing to take the M.P.R.E. and attend Ethics School, respondent demonstrates repeated misconduct.

MITIGATING CIRCUMSTANCES.

Standard 1.2(e)(iv) – extreme emotional difficulties

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Respondent intended to attend to his Ethics School and M.P.R.E. responsibilities during the later half of his period of his reproof. However, he was emotionally affected and distracted by the fact that he had to move his mother into a nursing home (assisted living facility) at this time. She had to move from her home of forty-five years. This was emotionally taxing upon respondent and he failed to attend to his conditions of reproof.

ADDITIONAL CIRCUMSTANCES.

Respondent has been employed as a manager at R.E.I. for the past several years. He has not been practicing law and does not intend to in the near future. He has been not entitled/ inactive by choice since the fall of 2001. Respondent wants to preserve his option to return to active status yet currently has no interest in abiding by probation conditions, as taking off work to attend Ethics School or the M.P.R.E. currently presents a financial hardship. The parties have agreed that respondent will receive a straight suspension of sixty days and until respondent completes Ethics School, takes and passes the M.P.R.E., and pays costs of this discipline. In the event that respondent is suspended for a period in excess of ninety days, he shall comply with California Rules of Court, rule 955. In the event that his suspension is for two years or more, respondent must remain actually suspended until he proves to the State Bar Court his 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.

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

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Page #

Attachment Page 4

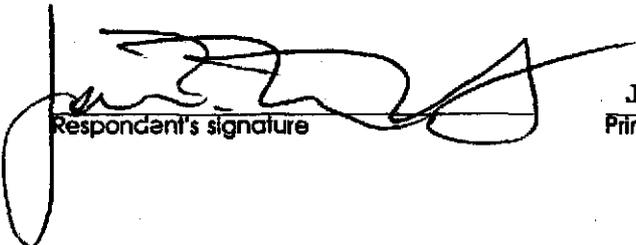
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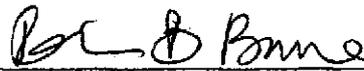
In the Matter of JAMES MACMASTER	Case number(s): 05-H-04692
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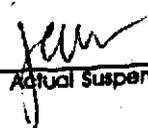
SIGNATURE OF THE PARTIES

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 2/6/06 Respondent's signature  Print name JAMES MACMASTER

Date _____ Respondent's Counsel's signature _____ Print name _____

Date 2/8/06 Deputy Trial Counsel's signature  Print name ROBIN B. BRUNE


Actual Suspension

(Do not write above this line.)

In the Matter of JAMES MacMASTER	Case number(s): 05-H-04692-PEM
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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:

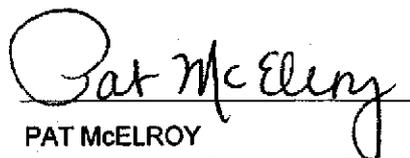
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 2, section B (1)(b)-- the date August 24, 2004, is deleted and inserted in its place is the date September 15, 2004.
2. On page 7, last two paragraphs--the August 25, 2005 dates are deleted and inserted in their place is the date of August 25, 2004.
3. On page 8, the first paragraph-- the September 29, 2005 dates are deleted and inserted in their place is the date of September 29, 2004.

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

Feb 17, 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 February 17, 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:

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

JAMES EDWARD MACMASTER
P O BOX 2261
FOLSOM CA 95763 2261

JAMES EDWARD MACMASTER
9304 TWIN LAKES AVENUE
ORANGEVALE CA 95662

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 17, 2006.



Bernadette C. O. Molina
Case Administrator
State Bar Court