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**State Bar Court of California  
Hearing Department  
San Francisco**

<b>Counsel For The State Bar</b>  <b>Office of the Chief Trial Counsel Maria J. Oropeza 180 Howard Street, San Francisco, CA 94105 (415) 538-2569</b>  <b>Bar # 182660</b>	<b>Case Number (s)</b> <b>05-J-04597</b>	<b>(for Court's use)</b> <b>PUBLIC MATTER</b>  <b>FILED</b> <i>LOS</i>  <b>NOV 27 2006</b>  <b>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</b>
<b>Counsel For Respondent</b>  <b>Jonathon Arons 101 Howard Street, Suite 310 San Francisco, CA 94105</b>  <b>Bar # 111257</b>	<b>Submitted to: Assigned Judge</b>	
<b>In the Matter Of: Elaine Yama</b>  <b>Bar # 182210</b>  <b>A Member of the State Bar of California (Respondent)</b>	<b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>PUBLIC REPROVAL</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	

**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, 1996.
- (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 consists of 11 pages, not including 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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproval



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- (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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline (public reproof)
  - case ineligible for costs (private reproof)
  - costs to be paid in equal amounts 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
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproof

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- (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.
- (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.
- (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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproval

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- (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)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  **Public reproof (Check applicable conditions, if any, below)**

**E. Conditions Attached to Reproval:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of **one year**.
- (2)  During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproval

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During the period of probation, Respondent must furnish 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 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 conditions attached to the reprobation.
- (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)  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 of the effective date of the reprobation.
- No MPRE recommended. Reason:
- (11)  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:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:        Elaine Yama

CASE NUMBER(S):        05-J-04597 ET AL.

**FACTS AND CONCLUSIONS OF LAW.**

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

Statement of Facts: Count One (Case No. 05-J-04597)

1.        Elaine Yama (respondent) was admitted to the practice of law in the State of California on June 7, 1996, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2.        On January 12, 2005, Judge Oliver Wagner of the United States District Court for the Eastern District of California, issued an 83 page order in which he imposed a public reproof and sanctioned respondent the sum of \$5,000.00 for Federal Rule of Procedure, rule 11 violations.

3.        Respondent wilfully violated Rules of Professional Conduct, rule 5-200(B), in presenting a matter to a tribunal, by seeking to mislead a judge, judicial officer, or jury by an artifice or false statement of fact or law, as follows:

4.        The firm of Lozano Smith represented the Bret Harte Union High School District in a matter entitled *Robert Moser v. Bret Harte Union High School District*, Case No. CIV-F-99-6273. Respondent was assigned as one of the attorneys of record for the school district.

5.        Lozano Smith had filed the initial briefs in the matter, and respondent was responsible for filing the defendant's motion for summary judgment.

6.        Respondent filed the defendant's motion for summary judgment, on July 31, 2002 and in her motion respondent utilized the firm's previously filed briefs, which contained citations to the administrative record.

7.        On October 17, 2003, the court in the matter issued an order to show cause, why respondent and the firm of Lozano Smith should not be sanctioned, for their conduct contained in their motion for summary judgment briefs.

8.        At page 12 of the order, the court made findings stating that Yama, and Lozano Smith actions in the proceedings had greatly increased the work of the plaintiff's attorney and the court, as well as delayed the just resolution of the case.

9.        At page 12, of the order the court found that respondent's, and Lozano Smith's

conduct fell into four general categories (1) bad faith, frivolous objections, (2) misstatements and mischaracterization of facts contained in the administrative record, (3) misstatements of applicable law and (4) intentional obstruction of the speedy and just resolution of the dispute.

10. Rule 11 of the Federal Rules of Procedure creates and imposes on a party or counsel an affirmative duty to investigate the law and facts before filing.

11. Respondent failed to ensure that the cites to the administrative record in her responsive pleadings were accurate, when she submitted the briefs to the Court.

12. Respondent submitted a declaration to the Federal District Court explaining her conduct in making the objections and citing to the administrative record. Respondent averred that she had submitted the objections based on her misunderstanding that the court had accepted her letter suggestion that the court deviate from the rules of federal civil procedure with respect to the motion for summary judgment. (pg. 51 of the order)

13. Respondent also averred that she was operating under the assumption that the hearing officer accurately described the facts in the administrative record. (pg. 53 of the order)

14. The court found respondent's statement relating to the hearing officer accurately describing the facts in the administrative record as not credible. The court noted that "the review was de novo, and that case law holds that while deference is given to the hearing officer's facts and findings, that deference only is given if the hearing officer does a thorough and complete job." (pg. 54 of the order)

15. The court also noted "that any deference due to the hearing officer's decisions regarding the law was irrelevant to respondent's misstatements of fact. Any deference due to the hearing officer's findings of fact were made moot by respondent's actual knowledge that her characterizations of factual issues she included in the motion for summary judgment were at a minimum highly suspect. In light of the fact that respondent had received complaints by the plaintiff about her misstatements in the trial de novo briefs as well as two letters requesting the defendant (respondent's client) to correct the record with the court." (pg. 54 of the order)

16. Respondent admitted that she made mistakes, misinterpreted the evidence, overstated the facts or made hyper-technical or improper objections approximately thirty-four times. (pg. 56 of the order)

17. The court found that respondent's "presentation of the record was carefully constructed to omit or minimize adverse facts, portions of transcripts were cited out of context to support made-up facts, that when viewed in their entirety, contradict the true record." (pg. 57 of the order)

18. Respondent's admissions that she did not review the pleadings or the record before submitting her objections and misstatements of disputed facts, shows she acted unreasonably. "Any competent attorney would have made such an investigation, as required by rule 11 to determine the accuracy of the statements of undisputed facts, the law and ground for objections." (pg. 63 of the order)

19. The court found that respondent's actions had violated provisions of Rule 11(b)(1), (3) and (4) as well as 28 U.S.C. §1927. (pg. 62 of the order)

20. Respondent's culpability as determined by Judge Wagner's Order indicates that

rule 5-200(B) of the Rules of Professional Conduct was violated, by respondent when she mischaracterized the testimony from the administrative record in her pleadings.

21. Respondent did not appeal Judge Wagner's order imposing a public reproof and sanctions in the sum of \$5,000.00.

22. The findings and final order are conclusive evidence that respondent is culpable of professional misconduct in this state.

Conclusions of Law: Count One (Case No. 05-J-04597)

23. By failing to ensure that the cites to the administrative record in her responsive pleadings were accurate, respondent sought to mislead a judge, judicial officer, or jury by an artifice or false statement of fact or law, wilful violation of rule 5-200(B) of the Rules of Professional Conduct.

Statement of Facts: Count Two (Case No. 05-J-04597)

24. Respondent wilfully violated Rules of Professional Conduct, rule 5-200(C), in presenting a matter to a tribunal, by intentionally misquoting to the tribunal the language of a book, statute, or decision, as follows:

25. The allegations contained in count one of this stipulation are herein incorporated by reference as if set forth in full.

26. In respondent's July 31, 2002 brief, respondent while citing to a case did not use the complete cite.

27. The Court found that respondent's "partial citation was misleading and an attempt to obscure the rule regarding procedural safeguards and instead created the false impression that minimal education benefit is the *only* measure of what constitutes a FAPE (fair appropriate public education), when the applicable law say no such thing." (pg. 43-44 of the order).

28. In respondent's brief of June 4, 2001, respondent stated that "the plaintiff could not be reimbursed for the purchase of a computer, internet access fee or counseling because 20 USC section 1412(a)(10)(c)(iii) requires that parents give written notice to the district before they can be reimbursed for educational services unilaterally purchased. Respondent repeated the same argument in her opposition to plaintiff's motion for summary judgement." (pg. 44 of the order)

29. The court found that respondent had "seriously mischaracterized the law. First, because the cited text only discussed a situation where the child is enrolled in private school without the consent of the public agency. Second, there may be a denial of reimbursement for private school fees if the parents did not notify the public agency prior to the child's removal from public school. Third, the parents have to be notified of the requirements under this section. The cited portion of the IDEA (Individuals with Disabilities Education Act) does not say what counsel suggests it says. Plaintiff explained in detail why counsel's statement of law was wrong in the reply of October 15, 2001. Yet, on August 15, 2002, defendant's counsel reiterated the



identical (wrong) characterization of the law in the exact same language, verbatim.” (pg.44-45 of the order)

30. The court noted that respondent also suggested “that accommodations that satisfy Section 504 of the Rehabilitation Act would satisfy IDEA requirements. Defendant attempts to perpetuate this deception in the opposition to plaintiff’s motion for summary judgment by claiming the district provided a FAPE based upon those accommodations allegedly made under Section 504 of the disability act.” “This is plainly not the law as discussed in detail in the memorandum decision and order. A school has no leeway to substitute a 504 plan for required IEP/IDEA services.” (pg. 46 of the order)

31. Respondent did not appeal Judge Wagner’s order imposing a public reproof and sanctions in the sum of \$5,000.00.

32. The findings and final order are conclusive evidence that respondent is culpable of professional misconduct in this state.

Conclusions of Law: Count Two (Case No. 05-J-04597)

33. By utilizing incomplete case law cites in attempt to deceive the court as to the true and correct holding of case law, respondent intentionally misquoted to the tribunal the language of a book, statute, or decision a wilful violation of Rule 5-200(C) of the Rules of Professional Conduct.

**AGREEMENTS AND WAIVERS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6049.1.**

Respondent’s culpability determined in the disciplinary proceeding in Federal District Court would warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the misconduct was committed; and

The proceeding in the above jurisdiction provided respondent with fundamental constitutional protection.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was October 25, 2006.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent

that as of October 25, 2007, the estimated prosecution costs in this matter are approximately \$2,046.36. Respondent acknowledges that this figure is an estimate. 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.

**AGGRAVATING CIRCUMSTANCES.**

No aggravating circumstances are present

**MITIGATING CIRCUMSTANCES.**

No prior discipline history: Respondent was admitted in June 1996 and has no prior record of discipline.


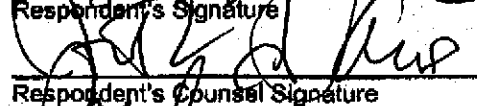
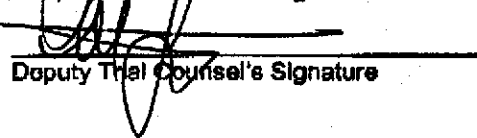
Candor and Cooperation: Respondent cooperated fully with the State Bar in its investigation. Respondent admitted that she made mistakes, misinterpreted the evidence, overstated the facts or made hyper-technical or improper objections approximately thirty-four times.

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In the Matter of Elaine Yama	Case number(s): 05-J-04597
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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 Fact, Conclusions of Law and Disposition.

<u>11/9/2006</u>		Elaine Yama Print Name
Date <u>November 13, 2006</u>		Jonathan Arons Print Name
Date <u>11/13/06</u>		Maria J. Oropeza Print Name
Date	Deputy Trial Counsel's Signature	

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In the Matter of  <b>ELAINE YAMA</b>	Case number(s):  <b>05-J-04597</b>
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### ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- 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 futher modifies the approved stipulation. (See rule 125(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

November 27, 2006  
Date

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 November 27, 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:

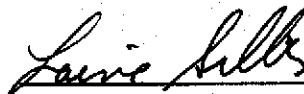
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JONATHAN IRWIN ARONS  
LAW OFC JONATHAN I ARONS  
101 HOWARD ST #310  
SAN FRANCISCO, CA 94105**

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

**MARIA OROPEZA, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 27, 2006.**



\_\_\_\_\_  
**Laine Silber**  
Case Administrator  
State Bar Court