



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 ERIN McKEOWN JOYCE DEPUTY TRIAL COUNSEL 1149 SOUTH HILL STREET LOS ANGELES, CALIFORNIA 90015 TELEPHONE: (213) 765.1356  Bar #            149946	Case number(s)  05-O-03286	(for Court's use)  <b>PUBLIC MATTER</b>  <b>FILED</b>  AUG 22 2006 <i>[Signature]</i>  STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent  ERICA A. TABACHNICK 900 WILSHIRE BLVD., STE. 1000 LOS ANGELES, CALIFORNIA 900 17 TELEPHONE: (213) 895-4640  Bar #            94324	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND            DISPOSITION AND ORDER APPROVING</b>  <b>REPROVAL</b> <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  DAVID ALEXANDER WELCH  Bar #            177443  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 July 18, 1995  
(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.

(Do not write above this line.)

- (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 (public reproof)
  - (b)  case ineligible for costs (private reproof)
  - (c)  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)
  - (d)  costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - (e)  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 \_\_\_\_\_

(Do not write above this line.)

- (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.
- (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.

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- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

Respondent fully cooperated in the investigation of this matter and was candid with the State Bar throughout the investigation.

Respondent submitted to the State Bar several letters attesting to his good character. The individuals who submitted character letters stated that the misconduct set forth in this stipulation was aberrational.

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**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 Reproof:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of One (1) 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 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 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 thirty (30) 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. During the period of probation, Respondent must furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (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 of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. 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 required 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 ordered. 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:**

None.

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

IN THE MATTER OF:        DAVID ALEXANDER WELCH

CASE NUMBER:            05-O-03286

**FACTS AND CONCLUSIONS OF LAW**

Respondent admits that the following facts are true and that he is culpable of violating rule 3-110(A) of the Rules of Professional Conduct.

**Facts**

1.        In late 2003, Brent Hoag, an experienced real estate broker, employed Respondent to remove a restriction on the title of a home that Hoag had recently purchased in a small subdivision of San Diego called Fenelon Heights. Hoag planned to add a second level to the existing house. However deed restrictions on the property prevented Hoag from building a second story.
2.        Prior to undertaking the Hoag representation, Respondent concentrated his practice on criminal law. The Hoag representation was one of the first real property matters Respondent ever handled.
3.        Hoag paid Respondent \$3,000.00 as a flat fee to quiet title and remove the cloud on the title of the property.
4.        At the time Hoag met initially with Respondent, Hoag provided a "Declaration of Restrictions" which had been prepared by "Southern Title and Trust Company, a corporation formerly called Southern Title Guaranty Company" in 1949.
5.        Respondent believed the proper defendants in Hoag's contemplated quiet title action were the drafters of the restrictions on his property. Respondent assigned to his paralegal the task of locating the drafters of the restrictions. Respondent's paralegal conducted a search for the entities which drafted the original restrictions. He searched the records of the California Secretary of State, Department of Real Estate, Department of Insurance as well as conducting a general internet search. By conducting the search, Respondent discovered that the two entities that drafted the restrictions were no longer in existence. Accordingly, Respondent determined that service should be effected by publication and the defendants should be named as DOES.
6.        Respondent should have known that Hoag's neighbors in the Fenelon Heights subdivision were proper parties to the quiet title action and that with the exercise of reasonable

diligence in performing basic legal research, Respondent would have discovered that Hoag's neighbors were proper defendants to the quiet title action.

7. On December 18, 2003, Respondent filed a Complaint for Declaratory Relief, Quiet Title, Partial Cancellation of Instrument and to Remove Cloud on Title on behalf of Hoag, in San Diego Superior Court entitled *Brent Hoag v. John Doe, and all persons unknown, claiming any legal or equitable rights, title, estate, lien or interest in the property described in the complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto [and DOES 1-50 inclusive]*, case number GIC 823019.

8. Respondent alleged in paragraph 2 of the complaint that:

All Defendants JOHN DOE and DOES 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants claim some right, title, estate, lien or interest in the hereinafter-described property adverse to Plaintiff's title. . . ."

9. On February 2, 2004, Respondent filed a declaration under penalty of perjury, dated January 15, 2004, in support of an Ex Parte Application for Order For Publication of Summons. In his declaration, Respondent declared that he was unable to identify or locate the DOE defendants. Specifically, in paragraph 5 of his declaration, Respondent averred that

I have been unable to identify nor locate said defendants, within or without the State of California, despite reasonable efforts and diligence.

10. In paragraph 6 of his January 15, 2004 declaration, Respondent averred that:

It is important to note that the restrictions Plaintiff desires to remove from the title were placed on it in 1949, and all entities from that time are either no longer in existence or have transmuted into forms unknown.

11. On February 4, 2004, Judge John S. Meyer granted Respondent's Application for Publication.

12. On May 7, 2004, Respondent filed a Declaration under penalty of perjury, dated May 7, 2004, in Support of Application for Default Judgment declaring that "the defendants' true identities are unknown to plaintiff" and that "the defendants were served by publication and the time for an answer to be filed has expired."

13. On May 11, 2004, Judge Meyer issued a Judgment by Court After Default.

14. Once the default judgment was obtained, Hoag attempted to use the default



judgment to prevent his neighbors from contesting the construction of a second story on his property. His neighbors were successful in obtaining an order vacating the default judgment, since they were proper parties to the quiet title action who did not receive notice of the quiet title action.

### **Conclusions of Law**

By failing to do the reasonable legal research as to the proper parties to the quiet title action, failing to name as defendants Hoag's neighbors in the Fenelon Heights subdivision in the quiet title action, and failing to properly serve notice on Hoag's neighbors, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

### **AUTHORITIES SUPPORTING DISCIPLINE**

#### **STANDARDS FOR ATTORNEY SANCTIONS**

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Also, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the protection of public confidence in the legal profession.

Pursuant to Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of a violation of rule 3-110(A) of the Rules of Professional Conduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Where the extent of the misconduct is relatively small, and Respondent fully cooperated with the State Bar's investigation, imposition of a reproof is warranted. *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal State Bar Ct. Rptr. 175 (private reproof imposed where violation was deemed minor incident of failure to perform services with competence which was followed by the respondent's candor and cooperation). In this case the imposition of a public reproof complies with the standards and adequately protects the public and the profession.

**PENDING PROCEEDINGS**

The disclosure date referred to, on page one, paragraph A(7), was July 31, 2006.

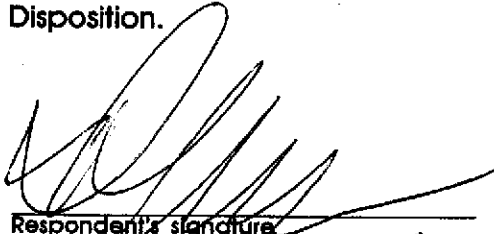
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In the Matter of David Alexander Welch	Case number(s): 05-0-03286
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### SIGNATURE OF THE PARTIES

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.

8-7-06  
Date

  
Respondent's signature

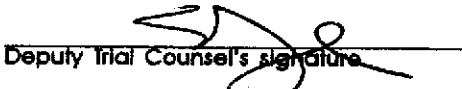
David Alexander Welch  
Print name

8/8/06  
Date

  
Respondent's Counsel's signature

Erica A. Tabachnick  
Print name

8-10-06  
Date

  
Deputy Trial Counsel's signature

Erin McKeown Joyce  
Print name

(Do not write above this line.)

In the Matter of David Alexander Welch	Case number(s): 05-0-03286
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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.

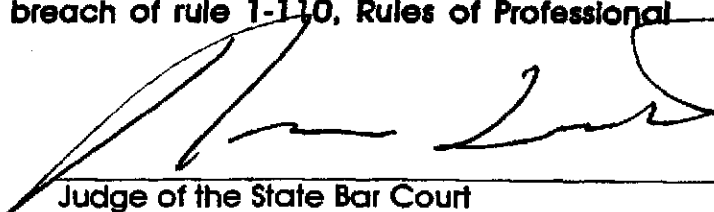
The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 125(b), Rules of Procedure.) Otherwise the stipulation 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.

Date

8/18/08

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 Los Angeles, on August 22, 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:

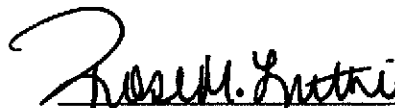
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ERICA TABACHNICK, A/L  
900 WILSHIRE BLVD #1000  
LOS ANGELES CA 90017**

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

**ERIN JOYCE, A/L, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 22, 2006**.



\_\_\_\_\_  
**Rose M. Luthi**  
Case Administrator  
State Bar Court