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State Bar Court of California Hearing Department San Francisco		
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES		
Counsel For The State Bar Mark Hartman Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2558 Bar # 114925	Case Number (s) 05-O-03820-PEM 06-O-14375-PEM <div style="text-align: center;"> CONFIDENTIAL LODGED OCT 22 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>	(for Court's use) <div style="text-align: center;"> PUBLIC MATTER FILED <i>ll</i> SEP 09 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
In Pro Per Respondent James J. Murray Attorney at Law 39827 San Mareno Court Fremont, CA 94539 Telephone: (510) 656-1097 Bar # 66952	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: JAMES J. MURRAY Bar # 66952 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., "Dismissals" and "Facts and Conclusions of Law."

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 18, 1975**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **18 pages, including the order**.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts and Conclusions of Law."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Facts and Conclusions of Law".

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

B. Aggravating Circumstances [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: **82-O-210 AL**.
 - (b) Date prior discipline effective: **October 18, 1984**.
 - (c) Rules of Professional Conduct/ State Bar Act violations:

The stipulation for State Bar case number 82-O-210 AL states that respondent violated:

(1) sections 6067 and 6103 of the Business and Professions Code in that he violated his oath and duties as an attorney,

(2) former rule "6-101(2)" of the Rules of Professional Conduct (i.e., former rule 6-101(A)(2), the predecessor of current rule 3-110(A)) in that he failed to communicate directly with four clients and was inattentive to their needs, and

(3) former rules "8-101(3) and 8-101(4)" of the Rules of Professional Conduct (i.e., former rules 8-101(B)(3) and 8-101(B)(4), the predecessors of current rules 4-100(B)(3) and 4-100(B)(4)) in that he did not provide one client with an accounting and did not promptly pay funds to that client.

- (d) Degree of prior discipline: **Private reproof**
- (e) If Respondent has two or more incidents of prior discipline, use space provided below:
- (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.

Respondent knew that time was of the essence in handling Diane McCutchan's matter because she was terminally ill. He significantly harmed McCutchan as follows: (1) he did not perform any services of value for her; (2) he did not inform her that he was terminating his employment in July 2006; (3) he did not reply to reasonable status inquiries from McCutchan and her assistant; (4) he did not promptly return \$2,200 in unearned advance fees; (5) he did not give

McCutchan notice of his intent to withdraw; and (6) he did not allow McCutchan reasonable time to employ other counsel.

- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

Respondent demonstrated indifference toward rectifying or atoning for the consequences of his misconduct against Diane McCutchan by not promptly refunding the full \$2,200 in unearned advance fees to McCutchan. In May 2007, however, he did send a check for \$825 to McCutchan.

Respondent demonstrated indifference toward rectifying or atoning for the consequences of his misconduct against Elizabeth Holomon by not rendering an appropriate accounting to her.

- (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.

Respondent committed multiple ethical violations in the current disciplinary cases.

- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances: None.

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.

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- (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:

Participation in Lawyer's Assistance Program: On February 9, 2007, respondent voluntarily contacted the State Bar Lawyer Assistance Program ("LAP") to address his mental health condition. On June 6, 2007, respondent entered into a long-term Participation Plan memorializing his commitment to LAP.

<p>In the Matter of</p> <p>JAMES J. MURRAY No. 66952,</p> <p>A Member of the State Bar.</p>	<p>Case Nos. 05-O-03820 and 06-O-14375</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p>
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DISMISSALS

The State Bar dismisses Count One(C) in the Notice of Disciplinary Charges filed against respondent on December 4, 2006.

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violating the specified provisions of the State Bar Act and the Rules of Professional Conduct.

State Bar Case Number 06-O-14375

Violation of rule 3-110(A) of the Rules of Professional Conduct

Facts

1. Prior to on or about June 16, 2006, Diane McCutchan was diagnosed with terminal cancer and was informed that she had less than six months to live.
2. On or about June 16, 2006, McCutchan and respondent discussed matters related to (1) a family trust of which she was the beneficiary and (2) the planning of her own estate, including the preparation of a will and trust. During their discussion, McCutchan explained to respondent that she was terminally ill and therefore required respondent to expedite the preparation of her estate planning documents.
3. On or about June 29, 2006, McCutchan executed an attorney-client fee agreement and paid respondent \$2,200 in advance fees for work on the family trust matter and the estate planning matter.
4. On or about July 3, 2006, McCutchan asked respondent to stop work on the family trust matter.

5. Prior to on or about July 21, 2006, respondent made an appointment to meet with McCutchan regarding the estate planning matter. Respondent represented that he would have drafts of McCutchan's will and trust for McCutchan to review on July 21, 2006.

6. On or about July 21, 2006, respondent canceled the appointment for that day and did not provide McCutchan with any drafts of a will or a trust.

7. On or about July 24, 2006, McCutchan spoke with respondent and asked him to prepare a health care power of attorney so that her personal assistant, Geri Hehir, could have the power of attorney for health care decisions. At the time McCutchan spoke with respondent, she reminded him that the health care power of attorney was an urgent matter because McCutchan was regularly admitted to the hospital and Hehir was unable to act on McCutchan's behalf because she had no health care power of attorney. McCutchan also explained that it was an urgent matter because McCutchan was meeting with the Neptune Society and Hehir needed a health care power of attorney to act as McCutchan's agent with the Neptune Society.

8. On or about August 7, 2006, Hehir telephoned respondent and left respondent a message on his answering machine requesting that respondent provide a status update on the preparation of the health care power of attorney. Respondent received the message.

9. On or about August 9, 2006, respondent left McCutchan a voice mail message stating that he would like to meet on August 10, 2006, to have McCutchan sign her will and to obtain information about Hehir necessary to complete the health care power of attorney.

10. On or about August 10, 2006, Hehir sent respondent an email message and provided him with the information he required to complete the health care power of attorney.

11. Subsequently, respondent failed to meet with McCutchan on August 10, 2006, and failed to provide her with a health care power of attorney or will.

12. Thereafter, respondent made arrangements to meet with McCutchan and Hehir on or about August 15, 2006. On or about August 15, 2006, respondent cancelled their appointment.

13. Thereafter, respondent made arrangements to meet with McCutchan and Hehir on or about August 16, 2006.

14. On or about August 16, 2006, respondent cancelled their appointment.

15. On or about August 16, 2006, Hehir went to respondent's home, which was also his office, and hand-delivered directly to respondent a letter from McCutchan informing respondent that McCutchan urgently required power of attorney documents, a will, and a living trust. The letter indicated that McCutchan would be on vacation from August 20 to August 22, 2006.

16. The August 16, 2006, letter also requested that respondent provide McCutchan with an accounting of the \$2,200 she paid in advanced fees.

17. When Hehir handed over the letter, respondent stated to Hehir that he would provide McCutchan with the estate planning documents prior to her vacation and would telephone McCutchan the next day, August 17, 2006.

18. Subsequently, respondent failed to telephone McCutchan, failed to provide her with an accounting, and failed to provide her with any estate planning documents.

19. On or about August 28, 2006, Hehir telephoned respondent on McCutchan's behalf and left him a message that McCutchan was available to meet on August 29, 2006. Hehir requested that respondent return the call and provide his availability to meet. Respondent received the message.

20. Thereafter, respondent failed to return the telephone call and failed to meet with McCutchan.

21. On or about August 29, 2006, Hehir telephoned respondent on McCutchan's behalf and left him a message informing respondent that he had until September 1, 2006, to provide McCutchan with the estate planning documents. Hehir's message indicated that McCutchan had required emergency surgery the previous day and that the hospital requested the health care power of attorney, which respondent had not yet provided. Respondent received the message.

22. Thereafter, respondent failed to respond to the message and failed to provide any estate planning documents.

23. On or about September 4, 2006, McCutchan sent respondent a letter, by certified mail, return receipt requested, informing respondent that he had failed to provide the documents requested by September 1, 2006, and had failed to respond to Hehir's messages. The letter terminated respondent and requested that respondent return the \$2,200 paid as advanced fees immediately. On or about September 6, 2006, respondent received the September 4, 2006 letter.

24. Respondent failed to perform any services of value for McCutchan in the estate planning matter.

25. Subsequently, respondent failed to respond to the September 4, 2006, letter and failed to refund any money to McCutchan.

26. On or about September 11, 2006, respondent sent McCutchan an email message indicating that he would respond to her September 4, 2006 letter "asap."

27. Subsequently, respondent failed to respond to McCutchan's September 4, 2006, letter.

28. On or about September 12, 2006, McCutchan employed attorney James Phillips to complete her estate planning documents and paid him \$2,000.

29. On or about October 2, 2006, McCutchan sent respondent a letter, by certified mail, return receipt requested, requesting that respondent provide her with an accounting of the \$2,200 which she had paid respondent and that respondent refund all unearned fees. On or about October 3, 2006, respondent received the October 2, 2006 letter.

30. Subsequently, respondent failed to respond to the October 2, 2006, letter and failed to provide McCutchan with an accounting or with a refund of the unearned fees.

31. On or about October 24, 2006, McCutchan executed the estate planning documents which Phillips prepared.

32. On or about October 25, 2006, McCutchan sent respondent a letter requesting that respondent provide her with an accounting and the refund of the unearned fees. Respondent received the letter soon after it was sent.

33. Subsequently, respondent failed to respond to the October 25, 2006, letter.

Conclusion of Law

34. Respondent wilfully violated rule 3-110(A) of the Rules of Professional Conduct by intentionally, recklessly, and repeatedly failing to perform legal services with competence insofar as he failed to perform any services of value for McCutchan in the estate planning matter.

Violation of section 6068, subdivision (m) of the Business and Professions Code

Facts

1. The prior facts regarding respondent's representation of McCutchan are incorporated by reference

2. Respondent knew that time was of the essence because of McCutchan's terminal illness. Respondent knew that McCutchan employed him to prepare her estate planning documents promptly. Respondent knew that McCutchan immediately needed a health care power of attorney. Respondent constructively terminated his services in the estate planning matter soon after July 2006 by failing to expedite McCutchan's estate planning documents.

3. Respondent performed no services of value for McCutchan in the estate planning matter. Respondent failed to inform McCutchan that he constructively terminated his services soon after July 2006 and that he performed no services of value for her in the estate planning matter.

4. Respondent failed to respond to McCutchan's letters of August 16, 2006; September 4, 2006; October 2, 2006; and October 25, 2006.

5. Respondent failed to respond to Hehir's telephone messages of August 28, 2006, and August 29, 2006.

Conclusions of Law

6. Respondent wilfully violated section 6068, subdivision (m) of the Business and Professions Code by failing to inform a client of significant developments insofar as he did not inform McCutchan that he constructively terminated his services for her in the estate planning matter soon after July 2006.

7. Respondent wilfully violated section 6068, subdivision (m) of the Business and Professions Code by failing to respond promptly to reasonable status inquiries from a client insofar as he did not respond to McCutchan's four letters and Hehir's two telephone messages of 2006.

Violation of rule 3-700(D)(2) of the Rules of Professional Conduct

Facts

1. The prior facts regarding respondent's representation of McCutchan are incorporated by reference.

2. Respondent did not perform any services of value for McCutchan in the family trust matter or the planning matter.

3. Respondent did not earn any of the \$2,200 in advance fees.

4. McCutchan requested the return of all unearned fees in her letters of September 4, 2006; October 2, 2006; and October 25, 2006.

5. In May 2007, respondent sent a check for \$825 to McCutchan.

6. As of the date of this stipulation, respondent has not refunded the rest of the \$2,200 advance (i.e., \$1,375) to McCutchan.

Conclusion of Law

7. Respondent wilfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund promptly part of a fee paid in advance that was not earned insofar as he did not promptly refund the unearned \$2,200 advance fee to McCutchan.

Violation of rule 4-100(B)(3) of the Rules of Professional Conduct

Facts

1. The prior facts regarding respondent's representation of McCutchan are incorporated by reference.
2. McCutchan requested an accounting in her letters to respondent of August 16, 2006; September 4, 2006; October 2, 2006; and October 25, 2006.
3. To date, respondent has failed to provide an accounting.

Conclusion of Law

4. Respondent wilfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to render appropriate accounts to a client insofar as he failed to provide McCutchan with a prompt and accurate accounting.

Violation of rule 3-700(A)(2) of the Rules of Professional Conduct

Facts

1. The prior facts regarding respondent's representation of McCutchan are incorporated by reference.
2. As set forth above, respondent did not give notice to McCutchan of his intent to withdraw, did not allow McCutchan reasonable time to employ other counsel, and did not promptly refund the full unearned advance fee to McCutchan.

Conclusion of Law

3. Respondent wilfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to a client insofar as he did not give notice to McCutchan of his intent to withdraw, did not allow McCutchan reasonable time to employ other counsel, and did not promptly refund the full unearned advance fee to McCutchan.

Violation of section 6068, subdivision (i) of the Business and Professions Code

Facts

1. The prior facts regarding respondent's representation of McCutchan are incorporated by reference.

2. On or about September 20, 2006, the State Bar opened an investigation in State Bar case number 06-O-14375.

3. On or about October 16, 2006, State Bar Investigator Amanda Gormley (“Gormley”) sent respondent a letter regarding respondent’s failure to perform in McCutchan’s matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1.

4. Respondent received Gormley’s letter soon after it was sent.

5. Gormley’s letter of October 16, 2007, requested that by November 13, 2006, respondent reply in writing to the allegations of misconduct against him in State Bar case number 06-O-14375.

6. Respondent did not reply to Gormley’s letter of October 16, 2007.

Conclusion of Law

7. Respondent wilfully violated section 6068, subdivision (i) of the Business and Professions Code by failing to cooperate and participate in a disciplinary investigation pending against him insofar as he failed to reply to Gormley’s letter of October 16, 2007.

State Bar Case Number 05-O-03820

Violation of rule 3-110(A) of the Rules of Professional Conduct

Facts

1. Prior to on or about December 6, 2002, Elizabeth Holomon had a business relationship with James Duncalf.

2. Prior to December 6, 2002, Holomon owned a piece of property in Sunnyvale, California.

3. On December 6, 2002, Duncalf sued Holomon in the matter *Duncalf v. Holomon*, Santa Clara County Superior Court, case number 1-02-CV-813200. In the lawsuit, Duncalf claimed that he was entitled to a share of property she owned in Sunnyvale.

4. On December 6, 2002, Duncalf recorded a lis pendens against the Sunnyvale property.

5. On or about December 20, 2002, Holomon employed respondent to represent her regarding the lawsuit and the lis pendens.

6. At the time she employed respondent, Holomon informed respondent that she was in the process of developing the Sunnyvale property and she required clear title so that she could continue to develop and eventually sell the property without any encumbrances on the Sunnyvale property.

7. On March 25, 2003, respondent successfully expunged the lis pendens and the court awarded Holomon \$2,500 in attorney's fees.

8. On or about March 25, 2003, Duncalf paid respondent \$2,500 by personal check, which was returned due to insufficient funds.

9. Prior to on or about June 20, 2003, Holomon instructed respondent to take action to collect the \$2,500 from Duncalf.

10. On or about June 20, 2003, respondent sent Duncalf a letter indicating that if Duncalf failed to pay the \$2,500 within 30 days, then respondent would sue to collect the funds.

11. On or about July 1, 2003, Duncalf sent respondent a letter refusing to pay the \$2,500.

12. On or about July 3, 2003, respondent wrote a letter to Holomon outlining the steps he intended to take to collect the \$2,500.

13. Thereafter, respondent failed to take any further action to collect the \$2,500.

14. In or about April 2004, Duncalf employed attorney Steven Hoffman to represent him in his lawsuit against Holomon.

15. On May 3, 2004, Hoffman served discovery on respondent. The responses to the discovery were due on June 8, 2004. Hoffman also served a notice of deposition, noticing Holomon's deposition for June 25, 2004.

16. Respondent failed to respond to the discovery by June 8, 2004.

17. On June 14, 2004, Hoffman faxed respondent a letter requesting that respondent provide the discovery responses and informing respondent that if respondent failed to do so, Hoffman intended to file a motion to compel.

18. Respondent did not inform Holomon that her deposition had been scheduled for June 25, 2004. Nor did he provide Holomon with the discovery, which required her response and verification.

19. On July 21, 2004, Hoffman filed a motion to compel Holomon to testify and a motion to compel discovery responses. The motion was set for hearing on August 20, 2004.

20. Respondent did not inform Holomon that Hoffman filed a motion to compel her deposition testimony and a motion to compel discovery responses.

21. On or about July 27, 2004, Hoffman sent respondent a letter requesting that respondent stipulate to allow Duncalf to amend the complaint and stipulate to allow the filing and recording of a lis pendens. The letter informed respondent that if he failed to stipulate, then Hoffman would file a motion to amend the complaint and to record a lis pendens.

22. Respondent did not stipulate either to allow Duncalf to amend the complaint or to allow the filing and recording of a lis pendens.

23. On August 4, 2004, Hoffman filed a motion to amend the complaint and motion for leave to record a lis pendens. The motion was set for hearing on September 14, 2004.

24. On or about August 19, 2004, respondent and Hoffman agreed that respondent would provide all discovery responses by September 9, 2004; that Holomon's deposition would go forward on October 6, 2004; and that respondent would reimburse Duncalf \$1,000 in attorney's fees by August 26, 2004. In exchange, Hoffman agreed to take the August 20, 2004, discovery hearing off calendar.

25. At that time, respondent did not inform Holomon (1) that he had failed to respond to discovery requests; (2) that he had scheduled her deposition for October 6, 2004; and (3) that he had agreed to reimburse Duncalf \$1,000 in attorney's fees.

26. On or about September 7, 2004, respondent paid Hoffman \$1,000 from his personal funds.

27. On or about September 13, 2004, respondent and Hoffman discussed the motion to amend the complaint and the motion for leave to record a lis pendens. During the discussion, respondent agreed to pay Hoffman \$600 for the time Hoffman spent trying to accommodate respondent's scheduling requests. Respondent also agreed that Holomon would take no action to convey or encumber the land until the lis pendens motion could be heard.

28. On September 14, 2004, the court conducted a hearing and granted Hoffman's motion to amend the complaint. Respondent was present at the hearing. The court continued the lis pendens matter until September 30, 2004.

29. Between in or about March 2004 and in or about September 2004, respondent failed to inform Holomon that Duncalf had served discovery requests and had noticed her deposition.

30. On or about September 17, 2004, respondent informed Holomon that Duncalf was seeking to place another lis pendens on the Sunnyvale property.

31. On or about September 22, 2004, respondent paid Hoffman \$600.
32. On September 30, 2004, the court set an evidentiary hearing for October 25, 2004, on Duncalf's lis pendens motion, which was later continued to December 6, 2004.
33. In or about October 2004, Holomon and respondent provided partial discovery responses.
34. Prior to on or about October 17, 2004, respondent and Hoffman agreed to continue Holomon's deposition to October 19, 2004.
35. On or about October 19, 2004, Hoffman took Holomon's deposition.
36. On or about December 4, 2004, respondent notified Holomon that there would be a hearing regarding the lis pendens motion on December 6, 2004.
37. Respondent and Holomon appeared at the hearing on December 6, 2004.
38. On December 6, 2004, after conducting the hearing on Duncalf's motion for leave to record a lis pendens, the court granted Duncalf's motion.
39. On January 12, 2005, the court set the *Duncalf v. Holomon* matter for trial on April 11, 2005.
40. On February 17, 2005, the court continued the trial until May 31, 2005.
41. On or about April 18, 2005, Holomon terminated respondent and employed new counsel.
42. On or about September 26, 2006, Holomon prevailed in a binding arbitration. The court ordered the lis pendens removed and awarded her costs.
43. Beginning in or about May 2004 and continuing until he was terminated, respondent asserted that he was frequently out of the office and unable to promptly respond to his client and to opposing counsel because his parents were ill and he was caring for them.

Conclusion of Law

44. Respondent wilfully violated rule 3-110(A) of the Rules of Professional Conduct by intentionally, recklessly, or repeatedly failing to perform legal services with competence insofar as he did not timely respond to Hoffman's discovery demands and did not take action to collect the \$2,500 which Duncalf owed Holomon in attorney's fees.

Violation of section 6068, subdivision (m) of the Business and Professions Code

Facts

1. The prior facts regarding respondent's representation of Holomon are incorporated by reference.
2. Between March and September 2004, respondent did not keep Holomon informed about his failures to respond timely to Hoffman's discovery demands.

Conclusion of Law

3. Respondent wilfully violated section 6068, subdivision (m) of the Business and Professions Code by failing keep a client reasonably informed about significant developments in the client's matter insofar as he did not keep Holomon informed between March and September 2004 about his failures to respond timely to Hoffman's discovery demands.

Violation of rule 4-110(B)(3) of the Rules of Professional Conduct

Facts

1. The prior facts regarding respondent's representation of Holomon are incorporated by reference.
2. Holomon paid respondent advance fees for the following amounts on the following dates:

12/20/02	\$2,500
1/15/03	\$1,500
1/28/03	\$1,500
8/18/03	\$2,500
8/18/04	\$2,500
9/17/04	\$2,000
<u>2/19/05</u>	<u>\$2,500</u>
Total	\$15,000

3. Between December 2002 and January 2005, Holomon repeatedly asked respondent for an accounting.
4. Between December 2002 and January 2005, respondent did not provide an accounting to Holomon.

5. On or about January 26, 2005, Holomon requested by email that respondent provide her with an accounting. Respondent received the email.

6. On or about February 21, 2005, respondent provided Holomon with a billing statement for \$34,500, which included services performed between December 6, 2002, and February 15, 2005.

7. Respondent's billing statement of February 21, 2005, did not include a credit for any of the payments Holomon had made. Respondent indicated in a letter accompanying the billing statement that he did not have the accounting records regarding the payments Holomon had made. Respondent requested that Holomon provide him with documentation regarding the payments which she had made.

Conclusion of Law

8. Respondent wilfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to render appropriate accounts to a client insofar as (1) he did not provide an accounting to Holomon between December 2002 and January 2005 and (2) his billing statement of February 21, 2005, did not include a credit for any of the payments which Holomon had made.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

On July 17, 2007, deputy trial counsel Mark Hartman faxed a disclosure letter to respondent. In this letter, Hartman advised respondent of any pending investigation or proceeding not resolved by this stipulation.

RESTITUTION

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

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

To Diane McCutchan, or her heirs or estate if she is dead, or the Client Security Fund if it has paid on her behalf, in the principal amount of \$1,375 plus interest at the rate of 10 percent per annum from June 29, 2006, until paid in full. Respondent shall furnish satisfactory evidence of restitution to the State Bar Court.

(Do not write above this line.)

In the Matter of JAMES J. MURRAY, No. 6695, A Member of the State Bar.	Case number(s): 05-O-03820-PEM 06-O-14375-PEM
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

<u>July 30, 2007</u> Date		James J. Murray Print Name
<u>7/30/07</u> Date	Respondent's Counsel Signature	 Print Name
<u>7/30/07</u> Date	<u>Mark Hartman</u> Deputy Trial Counsel's Signature	Mark Hartman Print Name

(Do not write above this line.)

In the Matter Of JAMES J. MURRAY, No. 66952, A Member of the State Bar.	Case Number(s): 05-O-03820-PEM 06-O-14375-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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

October 22, 2007
Date

Pat McElroy
Judge of the State Bar Court