




(Do not write above this line.)

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

<b>Counsel For The State Bar</b>  <b>Susan I. Kagan</b> <b>Deputy Trial Counsel</b> <b>180 Howard Street</b> <b>San Francisco, CA 94105</b> <b>(415) 538-2037</b>	<b>Case Number (s)</b> <b>06-O-11802</b>	<b>(for Court's use)</b>  <b>PUBLIC MATTER</b>  <b>FILED</b>   NOV 05 2008  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>Bar # 214209</b> <b>Counsel For Respondent</b>  <b>John F. Vannucci, Esq.</b> <b>120 Montgomery Street, 16<sup>th</sup> Floor</b> <b>San Francisco, CA 94104</b> <b>(415) 981-7500</b>		
<b>Bar # 174329</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>PUBLIC REPROVAL</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter Of:</b> <b>Gary L. Lacy</b>  <b>Bar # 108444</b>  <b>A Member of the State Bar of California (Respondent)</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 **6/3/83**.
- (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 **8** 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."

- (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.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See p. 7.**
- (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. **See p. 7**
- (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.

- (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. **See p. 7**
- (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 (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 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. 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 language (if any):

## **FACTS AND CONCLUSIONS OF LAW**

### **Facts**

1. At all relevant times herein, respondent was the District Attorney of El Dorado County.
2. At all relevant times herein, respondent was dating Jeanette McDonald.
3. Prior to July 8, 1999, Commissioner Gregory S. Emery presided over a family law matter entitled, *Gallo v. McDonald*, El Dorado Superior Court Case No. PD-004934. Jeanette McDonald was one of the parties to the family law matter.
4. On July 8, 1999, Commissioner Emery issued a temporary restraining order ("TRO") against Jeanette McDonald (hereinafter "McDonald") in the *Gallo v. McDonald* matter.
5. Two certified copies of this TRO were issued by the court on July 8, 1999.
6. One of the certified copies of the TRO listed McDonald's daughter as a protected person. This designation of McDonald's daughter as a protected person precluded McDonald from having contact with her daughter even though there was an existing child custody order granted McDonald physical custody of the daughter. No temporary modification of the child custody order had been issued in conjunction with the TRO.
7. The other certified copy of the TRO had a line through the daughter's name as a protected person and this modification was initialed by Commissioner Emery.
8. The removal of the daughter's name as a protected person from one of the copies of the TRO which ultimately was certified, was done by Commissioner Emery after it was discovered it was an error to have included the daughter as a protected person.
9. Due to a clerical error, the certified copy of the TRO which had the daughter's name still included as a protected person was provided for service upon McDonald.
10. McDonald was served with this certified copy of the TRO on July 12, 1999, upon picking up her daughter pursuant to the existing child custody order. This TRO prohibited McDonald from having custody of her daughter while the existing child custody order authorized McDonald to have custody.
11. After being served with the TRO, McDonald contacted respondent for advice regarding the discrepancy between the TRO and the child custody order. Respondent agreed to investigate the matter.
12. On July 13, 1999, respondent, who was neither a party to the *Gallo v. McDonald* matter, nor counsel for any of the parties in the *Gallo v. McDonald* matter approached Commissioner Emery out-of-court to question him about the discrepancies between the two certified copies of the same TRO.
13. At the time, Commissioner Emery did not remember the circumstances surrounding the orders and promised to review the matter upon obtaining the file.
14. Later the same day, Commissioner Emery contacted respondent to explain that the one copy of the TRO had been modified upon discovery of the error in including the daughter as a protected person. Commissioner Emery further explained that the certified copy of the TRO which did not have his modification was erroneously provided for service upon McDonald due to a clerical error.
15. On July 14, 1999, in response to respondent's contact, Commissioner Emery issued an order recusing himself from the *Gallo v. McDonald* matter. The order stated: "Due to unsolicited ex-parte communication received from the El Dorado District Attorney's office, Commissioner Emery hereby recuses himself from hearing any further matters in this case. The case is assigned to the Presiding Judge, the Honorable Suzanne Kingbury, for further assignment."

16. After Commissioner Emery issued the order of recusal, Presiding Judge Suzanne N. Kingsbury and Judge Eddie T. Keller called respondent in a telephone conference call. During this call, the judges explained to respondent that his ex parte communication with Commissioner Emery and intervention on behalf of McDonald was improper.

### **Conclusions of Law**

By improperly communicating directly with Commissioner Emery upon the merits of a contested matter pending before the commissioner, respondent had an improper ex parte communication in willful violation of rule 5-300(B) of the Rules of Professional Conduct.

### **PENDING PROCEEDINGS**

The disclosure date referred to on page two, paragraph A (7) was September 25, 2008.

### **STATE BAR ETHICS SCHOOL**

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

### **FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES**

#### **AGGRAVATING CIRCUMSTANCES**

Standard 1.2(b)(iv). Respondent's misconduct, which occurred while he was District Attorney of El Dorado County, significantly harmed the administration of justice.

#### **MITIGATING CIRCUMSTANCES**

Standard 1.2(e)(i). Respondent has been in practice since 1983. He has no prior record of discipline.

Standard 1.2(e)(vi). Respondent has demonstrated good character.

#### **SUPPORTING AUTHORITY**

Standard 2.10 requires that a violation of any provision of the Rules of Professional Conduct not specified in the standards (e.g., rule 5-300(B)) shall result in reproof or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3

Based on the mitigation in this matter, particularly respondent's 16 years of discipline-free practice, which, in totality, outweighs the aggravating circumstance, a public reproof is the appropriate level of discipline.

(Do not write above this line.)

In the Matter of Gary L. Lacy	Case number(s): 06-O-11802
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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.

10-24-08


Date


10-27-08

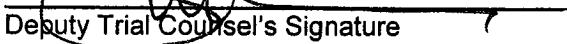
Date

10/29/08

Date

  
Respondent's Signature

  
Respondent's Counsel Signature

  
Deputy Trial Counsel's Signature

Gary L. Lacy

Print Name

John F. Vannucci, Esq.

Print Name

Susan I. Kagan

Print Name

(Do not write above this line.)

In the Matter Of <b>Gary L. Lacy</b>	Case Number(s): <b>06-O-11802</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 reproof, 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 reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

Date

Nov. 4, 2008

Jury M  
Judge of the State Bar Court

Lucy Armendariz

## 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 5, 2008, 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:

**JOHN FITZPATRICK VANNUCCI  
LAW OFFICES OF JOHN  
FITZPATRICK VANNUCCI  
120 MONTGOMERY ST STE 1600  
SAN FRANCISCO, CA 94104 – 4345**

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:

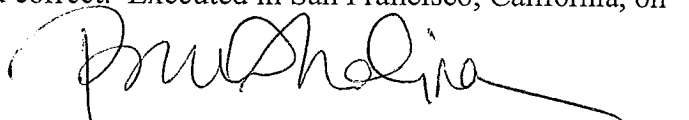
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

**SUSAN I. KAGAN**, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 5, 2008.



Bernadette C.O. Molina  
Case Administrator