

ORIGINAL

(Do not write above this line.)

State Bar Court of California  
Hearing Department  
Los Angeles

**NOT FOR PUBLICATION**

<p>Counsel For The State Bar</p> <p><b>Joy Chantarsompoth</b> Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1718</p> <p>Bar # 222009</p>	<p>Case Number (s) 06-O-12863-DFM</p>	<p>(for Court's use)</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p>OCT 11 2007</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Ellen A. Pansky</b> PANSKY &amp; MARKLE 1010 Sycamore Aveue, #101 South Pasadena, CA 91030 (213) 626-7300</p> <p>Bar # 77688</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>PRIVATE REPROVAL</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: <b>FRED HAROLD MIDDAUGH</b></p> <p>Bar # 62133</p> <p>A Member of the State Bar of California (Respondent)</p>		

**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 **December 20, 1974**.
- (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."



- (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.
- (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 page 8.**
- (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.
- (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 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 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 reproof.
- (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 reproof.
- No MPRE recommended. Reason: **Respondent will be required to complete six (6) hours of Minimum Continuing Legal Education, specifically in the area of Law Office Management. This requirement is in addition to the Minimum Continuing Legal Education he is required to complete as a member of the State Bar of California.**
- (11)  The following conditions are attached hereto and incorporated:
- |   |  |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" 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):

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

IN THE MATTER OF: Fred Harold Middaugh

CASE NUMBER(S): 06-O-12863

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties waive any variance between the Notice of Disciplinary Charges filed on June 4, 2007 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

**STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW**

Facts

1. On July 6, 2005, Rosemary McCauley ("McCauley") employed Respondent to represent her in connection with a civil dispute with George M. Willard. McCauley paid Respondent a \$5,000 in advanced legal fees.
2. At that time, McCauley advised Respondent of a document that had been sent to McCauley's prior address but had not been properly served upon her. Respondent reviewed the document, which Respondent believed was a draft (not yet finalized) of an Orange County Superior Court complaint. The document did not contain a file number and Respondent did not think any action had been filed. Consequently, Respondent did not file a response or formally substitute in on the case.
3. Unbeknownst to McCauley and Respondent, a Complaint had been filed and on August 16, 2005, Willard's attorney, Jeffrey Lonner ("Lonner"), filed a Request for Entry of Default without proper notice to Respondent or McCauley. Subsequently, McCauley's default was entered.
4. In August 2005, unrelated to the entry of default, McCauley requested \$1,600 refund from Respondent, which Respondent refunded.
5. On January 10, 2006, Lonner filed a Request for Court Judgment against McCauley. After learning about the request, on January 16, 2006, McCauley informed Respondent of the same. That same date, Respondent sent a letter to Lonner objecting to the entry of judgment on the grounds that no proper service had been made and requesting that the default be set aside.
6. On January 17, 2006, the court entered a Judgment by Default by Court against McCauley in the amount of \$16,000.00. McCauley eventually received notice of the Judgment by Default by Court and gave

a copy of the judgment to Respondent.

7. Thereafter, between April 2006 and December 2006, McCauley had difficulty communicating with Respondent about the status of her case. Respondent contends that he and his staff attempted to communicate with McCauley but were unable to coordinate their schedules.

8. In April and May 2006, McCauley made four written requests for Respondent to contact her regarding the status of her case. McCauley did not hear back from Respondent until July 15, 2006, when she received a letter from Respondent for her to call him. McCauley then called Respondent's office and scheduled a meeting with Respondent on July 20, 2006. On July 20, 2006, McCauley went to Respondent's office but Respondent was not there. Instead, Respondent's paralegal, Shari, worked with McCauley on a declaration in support of a motion to set aside the default. Pursuant to Shari's instructions, McCauley composed a chronology of the events, which she delivered to Respondent's office on July 24, 2006.

9. Thereafter, in July and August 2006, McCauley called Respondent's office several times to inquire about the status of her case. McCauley had been informed that Shari was working on the declaration for Respondent's review. On August 15, 2006, Respondent left a message for McCauley to call him. McCauley then called Respondent's office and set up a telephonic appointment with Respondent on August 17, 2006. Respondent failed to meet with McCauley by telephone or otherwise on August 17, 2006.

10. On about September 11, 2006, Respondent telephoned McCauley and left a message that he had a declaration for her to sign. Thereafter, McCauley was unable to contact Respondent directly. Both McCauley and Respondent traded voice messages until McCauley went to Respondent's office to sign her declaration on October 16, 2006. Later on October 16, 2006, McCauley spoke to Shari by telephone and discussed changes to the declaration. On October 17, 2006, McCauley delivered the revised declaration to Respondent's office. On December 12, 2006, McCauley sent a fax to Respondent inquiring about the motion to set aside the default. Respondent did not respond to McCauley's fax.

11. Thereafter, McCauley filed a State Bar complaint against Respondent, as a result of which Respondent agreed to refund the balance of unearned fees in the amount of \$3,400. On May 30, 2007, Respondent made the full refund of \$3,400 to McCauley.

12. Notwithstanding the full refund of fees, Respondent agreed to resume representation of McCauley without payment of attorney fees. In August 2007, Respondent obtained a final declaration from McCauley and has moved the court for an order setting aside the default, on the grounds that service was never effectuated upon McCauley. As a result of Mr. Middaugh's efforts, McCauley was relieved of the default on September 21, 2007.

#### Conclusions of Law:

13. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence by failing to verify the filing of a complaint against McCauley, failing to file an Answer, and failing to substitute in as attorney of record on the case.

14. Respondent willfully violated Business and Professions Code, section 6068(m), by failing to promptly respond to McCauley's reasonable status inquiries regarding the status of her case.

## MITIGATING CIRCUMSTANCES

### No Prior Discipline

Respondent has no record of discipline over more than thirty (30) years of practice and is entitled to significant mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.)

## AUTHORITIES SUPPORTING DISCIPLINE

### Standards For Attorney Sanctions For Professional Misconduct

The applicable standard in this proceeding is standard 2.4(b).

Standard 2.4(b) states, “[c]ulpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.”

### Case Law

To determine the appropriate level of discipline after the facts of the misconduct are established, aggravating and mitigating, the court must look first to the standards of the Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California (“standard”) for guidance. (*In re Morse* (1995) 11 Cal.4th 184, 206.) As the Supreme Court has said, the standards are entitled to “great weight.” (*In re Ronald Robert Silverton* 36 Cal. 4<sup>th</sup> 81, 92 [citing to *In re Brown* (1995) 12 Cal.4<sup>th</sup> 205, 220].) The Court should also consider case law in determining appropriate level of discipline and to determine whether the discipline is consistent or disproportional to prior decisions on the same set of facts. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

In *In the Matter of Robert S. Hanson* (1994) 2 Cal. State Bar Ct. Rptr. 703, 715 the attorney was publicly reproofed for committing misconduct in a single client matter. The attorney's misconduct involved failing to promptly refund unearned fees to his clients and upon discharge by the clients, failing to take steps to avoid foreseeable prejudice to his clients. (See *id.*) In January 1990, the attorney's clients terminated the respondent's employment and demanded an accounting and refund of unearned fees. (See *id.* at p. 708.) The attorney testified that in late February 1990, she sent the clients an accounting. (See *id.*) However, the clients denied ever receiving this letter. (See *id.*) In April 1991, after the intervention of the State Bar, the attorney finally refunded his clients the unearned fees plus interest. (See *id.*) The attorney also failed to respond to the opposing counsel's request for written verification that he was no longer representing his clients since his clients were trying to contact the opposing counsel. (See *id.*) The attorney had no mitigating circumstances and was privately reproofed in 1975. (See *id.* at p. 709.)

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**DISMISSALS**

Counts 3 and 4 are dismissed in the interest of justice.

In the Matter of  
Fred Harold Middaugh

Case number(s):  
06-O-12863

A Member of the State Bar

### Law Office Management Conditions

- a.  Within        days/        months/        years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b.  Within        days/ **six (6)** months/        years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **six (6)** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for        year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

(Do not write above this line.)

In the Matter of  
FRED HAROLD MIDDAUGH  
Bar # 62133

Case number(s):  
06-O-12863-DFM

**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.

Sept. 28, 2007  
Date

  
Respondent's Signature

Fred Harold Middaugh  
Print Name

10/8/07  
Date

  
Respondent's Counsel Signature

Ellen A. Pansky  
Print Name

10-10-07  
Date

  
Deputy Trial Counsel's Signature

Jay Chantarasompoth  
Print Name

(Do not write above this line.)

In the Matter Of <b>FRED HAROLD MIDDAUGH</b> Bar # 62133	Case Number(s): <b>06-O-12863-DFM</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 reprov, 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 reprov may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

10-11-07  
Date

  
Judge of the State Bar Court

**RICHARD A. PLATEL**

**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 October 11, 2007, 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:

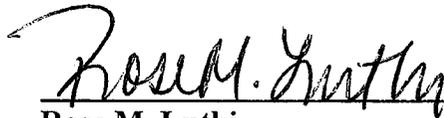
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ELLEN ANNE PANSKY, ESQ.**  
**PANSKY & MARKLE**  
**1010 SYCAMORE AVE #101**  
**SOUTH PASADENA, CA 91030**

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

**JOY CHANTARASOMPOTH, ESQ., Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 11, 2007**.

  
\_\_\_\_\_

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