

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

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| <p>Counsel For The State Bar</p> <p>Esther Rogers State Bar of California 180 Howard Street San Francisco, CA 94105 (415)538-2445</p> <p>Bar # 148246</p> | <p>Case Number (s) 06-O-14506</p> | <p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>MAY 18 2007</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> |
| <p>In Pro Per Respondent</p> <p>Cary O. Lindstrom 65 East Taylor Street San Jose, CA 95112 (408)294-5700</p> <p>Bar # 129700</p> | <p>Submitted to: Assigned Judge</p> | |
| <p>In the Matter Of: CARY O. LINDSTROM</p> <p>Bar # 129700</p> <p>A Member of the State Bar of California (Respondent)</p> | <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 11, 1987**.
- (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 **9** 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."



(Do not write above this line.)

- (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.
 - costs to be paid in equal amounts prior to February 1 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

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 **02-O-14508; See Attached**
 - (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.
- (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. **Respondent admitted to the misconduct and cooperated with the State Bar by agreeing to the imposition of discipline without requiring a hearing**
- (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. **Respondent's father was terminally ill during the time of the misconduct. See attached for a detailed description.**
- (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) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one year**.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **three years, to run concurrent with the discipline in matter 02-O-14508**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (5) 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 to the monitor 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 probation monitor.

(Do not write above this line.)

- (6) 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 probation conditions.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: **Respondent was ordered to complete Ethics School in connection with case number 02-O-14508.**
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
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|---|---|
| <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:

- (1) **Multistate Professional Responsibility Examination:** 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. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason: **Respondent was ordered to pass the MPRE in connection with case number 02-O-14508.**
- (2) **Other Conditions:**
- See Attached**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Cary O. Lindstrom

CASE NUMBER(S): 06-O-14506

FACTS AND CONCLUSIONS OF LAW.

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

Count One

Statement of Facts

Prior to January 2006, respondent represented Jesus Valencia in a criminal matter. Prior to January 2006, Dallas Sacher of the Sixth District Appellate Program was appointed to represent Valencia regarding his criminal appeal in the matter *People v. Valencia*, Court of Appeal, Sixth Appellate District, Case No. H029370.

On January 23, February 4, March 1, March 10 and March 27, 2006 Sacher wrote to respondent requesting documents he believed were contained in respondent's client file for Sacher's use in preparing Valencia's appeal. Respondent failed to respond to the letters.

On May 4, 2006, Sacher filed a motion for an order directing respondent to provide Sacher with the documents Sacher requested. On May 15, 2006, the court granted Sacher's motion and ordered respondent to turn over the documents by May 30, 2006. Respondent was properly served with the motion and order, but was unaware of them because his office staff did not bring it to his attention. Therefore, respondent failed to respond to the motion and failed to comply with the order.

On May 31, 2006, Sacher filed a motion for an order holding respondent in contempt for his failure to comply with the May 15, 2006 order. On June 1, 2006, respondent received the motion for an order holding him in contempt, which was the first time he became aware of the motion for an order directing him to turn over the requested documents or the May 15, 2006 order requiring him to turn over the documents.

On June 2 and June 6, 2006, respondent provided Sacher with the documents Sacher

requested and Sacher withdrew his motion to hold respondent in contempt.

Respondent failed to turn over the documents, failed to respond to the motion and failed to timely comply with the order because he was caring for his elderly parents. Beginning in December 2005, respondent began spending considerable time with his father, who underwent surgery for complications from colon cancer. Respondent also took over from his father the care for his bed ridden mother, who was in a convalescent home due to a stroke she had in September 2002. In May 2006, as respondent's father was convalescing from his surgery, he was readmitted to the hospital because the cancer had metastasized. Respondent's father remained bedridden until he died in September 2006.

Between May and September 2006, respondent attended to his father everyday. As a result, he failed to attend to his law practice and relied upon his office staff to handle his cases. During his father's hospitalizations and rehabilitation, respondent failed to properly supervise his office staff to ensure that all correspondence and pleadings were provided to him.

In addition, after the Court approved a stipulation in matter 02-O-14508 on April 14, 2006, respondent was in the process of winding down his law practice in anticipation of his impending suspension, which took effect September 14, 2006.

Since respondent resumed the practice of law after the completion of his suspension, he voluntarily implemented a law office management plan regarding mail, telephone messages, calendaring of events and regular meetings among his staff.

Conclusions of Law

By failing to provide Sacher with the documents from Valencia's file, respondent failed to return his client's file, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

AGGRAVATING CIRCUMSTANCES

Prior Record of Discipline. Standard 1.2(f). Effective September 14, 2006, in State Bar case number 02-O-4508 (S144121) respondent was suspended for two years, stayed, and placed on probation for two years, including an actual 60 day suspension, for two counts of failing to maintain client funds in trust.

MITIGATING CIRCUMSTANCES

Emotional Difficulties. Standard 1.2(e)(iv). Respondent was suffering from extreme emotional difficulties due to his mother's and father's illnesses. He also was spending considerable time caring for his parents.

DISCIPLINE

Standard 1.7(a) states that the degree of discipline in this matter shall be greater than the degree of discipline in case number 02-O-14508 unless the discipline was remote in time and the offense for which it was imposed was so minimal that imposing greater discipline would be manifestly unjust.

In this situation, the imposition of greater discipline would be manifestly unjust because if this misconduct had been considered in connection with the prior misconduct, it would not have increased the level of discipline imposed in the prior matter. It also would be manifestly unjust because respondent has presented compelling mitigation regarding his need to care for his bed ridden mother and terminally ill father.

In addition, respondent acted expeditiously once he became aware that Sacher had not received the documents he had previously requested and voluntarily implemented a law office management plan to prevent a similar situation from occurring again.

It is the intent of the parties that the discipline in this matter extend respondent's two year probation in case number 02-O-14508. Therefore, the probation in this matter is to run concurrent with the probation in case number 02-O-14508.

OTHER CONDITIONS

Law Office Management Plan. Respondent must provide a copy of his law office management plan to the probation unit within 30 days of the effective date of the discipline in this matter. Respondent also must state under penalty of perjury in each quarterly report that he has complied his law office management during the preceding calendar quarter.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was May 10, 2007.

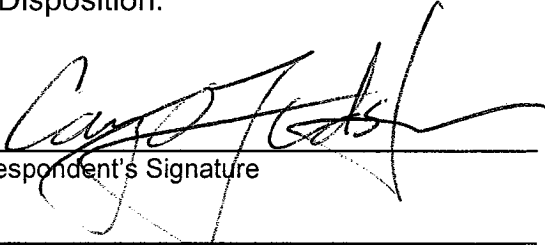
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| In the Matter of Cary O. Lindstrom | Case number(s): 06-O-14506 |
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SIGNATURE OF THE PARTIES

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.

2/9/07
Date


Respondent's Signature

Cary O. Lindstrom
Print Name

Date

Respondent's Counsel Signature

Print Name

5/10/07
Date


Deputy Trial Counsel's Signature

Esther Rogers
Print Name

(Do not write above this line.)

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| In the Matter Of Cary O. Lindstrom | Case Number(s): 06-O-14506 |
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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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates 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 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date May 18 _____ Judge of the State Bar Court Pat McElroy

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 May 18, 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:

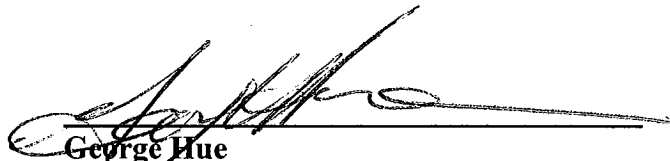
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**CARY O. LINDSTROM
65 EAST TAYLOR ST
SAN JOSE CA 95112**

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

ESTHER ROGERS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 18, 2007**.


George Hue
Case Administrator
State Bar Court