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

| Counsel For The State Bar | Case Number (s) | (for Court's use) |
|---|---|---|
| **Tammy M. Albertsen-Murray**<br>**180 Howard Street**<br>**San Francisco, CA 94105**<br>**(415) 538-2527**<br><br>Bar # **154248** | **06-O-15162-PEM**<br><br>PUBLIC MATTER | FILED<br>FEB 25 2009<br>STATE BAR COURT CLERK'S OFFICE<br>SAN FRANCISCO |
| Counsel For Respondent<br><br>**Albert M. Ellis**<br>**Hakeem, Ellis & Morengo**<br>**3414 Brookside Road, Suite 100**<br>**Stockton, CA 95219**<br>**(209) 474-2800**<br><br>Bar # **79996** | Submitted to: **Settlement Judge**<br><br>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING<br><br>**PUBLIC REPROVAL**<br><br>☐ PREVIOUS STIPULATION REJECTED | |
| In the Matter Of:<br>**MICHAEL J. FREEMAN,**<br><br>Bar # **167924**<br><br>A Member of the State Bar of California (Respondent) | | |

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

## A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **December 10, 1993**.

(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."

(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 reproval)
- ☐ case ineligible for costs (private reproval)
- ☒ costs to be paid in equal amounts for the following membership years: **three (3) billing cycles following the effective date of the Supreme Court order herein.**
  (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 reproval 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 officials 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 reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidents of a prior record of discipline under the Rules of Procedure of the State Bar.

(b) ☐ A private reproval 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 reproval 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. **Respondent has no prior record in approxi mately ten (10) years of practice at the time the misconduct occurred.**

(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 has given full access to the State Bar to discover information and documents relating to the incident.**

(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:**

*** By agreeing to stipulate to the resolution of this matter, respondent has saved the State Bar further expenditure of costs to prosecute this matter.**

## D. Discipline:

(1) ☐ **Private reproval (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 reproval (Check applicable conditions, if any, below)**

## E. Conditions Attached to Reproval:

(1) ☒ Respondent must comply with the conditions attached to the reproval for a period of **one (1) year**.

(2) ☒ During the condition period attached to the reproval, 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 reproval. 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 reproval 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 reproval.

(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: **Respondent now resides and works in the State of Colorado; he has no ongoing connection with the practice of law in California nor is it anticipated that respondent will relocate back to California.**

(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 reproval.

☐ No MPRE recommended. Reason: .

(11) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

## F. Other Conditions Negotiated by the Parties:

Attachment language (if any):

**FACTS AND CONCLUSION OF LAW – COUNT ONE**

**Case No. 06-O-15162; Rules of Professional Conduct, rule 5-220 [Suppression of Evidence]**

**FACTS.**

**1. On March 17, 2002, 14-year-old Noro Choun was killed in a gang-related shooting in Stockton, California ("the shooting").**

**2. In April 2002, Hong Le ("Le") , among others, was arrested in connection with the shooting.**

**3. Respondent, a member of the Distrust Attorney's Gang Prosecution team, was assigned as the primary prosecutor in the homicide trial against Le and two other defendants charged in the shooting.**

**4. On March 21, 2002, Respondent moved for and was granted an ex parte order to monitor, copy and record inmate mail and visits. Respondent's motion was served on all defense counsel who were representing any defendant in the case on that date.**

**5. From April 2002 through June 2003, authorities made copies of letters sent by Le to his girlfriend, Linda Vongdeng ("Vongdeng"), while he was in jail. Authorities also recorded conversations between Le and Vongdeng during her visits with him in jail. Respondent received copies of the letters sent by Le to Vongdeng and recordings of the conversations between Le and Vondeng. Respondent learned from the communications between Le and Vongdeng that, among other things, Le was attempting to establish a false alibi defense through Vongdeng.**

**6. Defense counsel made numerous and ongoing discovery requests. During the course of pretrial proceedings, respondent produced thousands of pages of documents as well as other forms of discovery to the various defense counsel in response to the requests. However, respondent failed to produce some of the letters from Le to Vongdeng, especially regarding the false alibi ("the letters").**

7. California Penal Code section 1054.1 requires that: "[t]he prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies: . . . (b) Statements of all defendants."

8. The letters authored by Le constituted a statement of a defendant for purposes of disclosure pursuant to Penal Code section 1051.1.

9. Without prior notice to respondent and in an unusual turn of events at gang murder trials generally and in respondent's experience specifically, Le took the stand in his own defense in July 2003. Among other subjects, Le testified that he was with Vondeng at the time of the shooting. During cross-examination by Respondent, Le denied discussing his alibi with Vongdeng and asserted he did not tell her what to say if and when she testified. Realizing he had undisclosed letters that would impeach Le's alibi testimony, respondent sought a bench conference to discuss with defense counsel and the judge the propriety of introducing the previously undisclosed letters to impeach Le. Le's defense counsel objected to respondent's use of Le's statements to Vondeng on the ground that respondent did not disclose the statements in pre-trial discovery as required by Penal Code section 1054.1. The Court sustained defense counsel's objection to respondent's use of the statements Le made to Vondeng. Respondent abided by the Court's ruling and did not introduce, offer or otherwise mention the letters.

10. In his rebuttal closing argument, respondent referred, among other things, to Le's failure to do everything in his power to establish his alibi defense. Respondent criticized Le's counsel for his failure to call the alibi witnesses Le's counsel told the jury in opening statement he would call.

11. All three of the defendants, including Le, were found guilty of *inter alia* first degree murder with special circumstances and Le was sentenced to life in prison without possibility of parole.

12. Le appealed his conviction. On October 16, 2006, Le's conviction was overturned by the California District Court of Appeal, Third Appellate District ("Court of Appeal"). The Court of Appeal overturned Le's murder conviction finding that *inter alia* respondent engaged in prosecutorial misconduct that prejudiced Le and deprived him of a fair trial when respondent failed to disclose the letters to Le's defense counsel and that Respondent took advantage in his closing argument of his failure to disclose Le's statements to Vondeng. The Court of Appeal sent to the State Bar a copy of its decision overturning Le's conviction.

CONCLUSION OF LAW.

By failing to disclose to the defense all of Le's statements to Vongdeng, respondent suppressed evidence respondent had a legal obligation to produce, in willful violation of Rules of Professional Conduct, rule 5-220.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was January 23, 2009.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violation in the interest of justice:

| Case No. | Count | Alleged Violation |
|---|---|---|
| 06-O-15162 | One | Bus. & Pro. Code, section 6068 [Failure to Comply with Laws] |

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 23, 2009, the costs in this matter are $ $3,848.32. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.6, Rules of Procedure of the State Bar of California; and
*In re Silverton* (2005) 36 Cal.4th 81.

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| In the Matter of<br>**MICHAEL J. FREEMAN** | Case number(s):<br>**06-O-15162-PEM** |
|---|---|

## 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.

| | | |
|---|---|---|
| 2/9/09<br>Date | Respondent's Signature | Michael J. Freeman<br>Print Name |
| 2/14/09<br>Date | Respondent's Counsel Signature | Albert M. Ellis<br>Print Name |
| 2/17/09<br>Date | Deputy Trial Counsel's Signature<br>WONDER J. LIAWLT | FOR Tammy M. Albertsen-Murray<br>Print Name |

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| In the Matter Of<br>**MICHAEL J. FREEMAN** | Case Number(s):<br>**06-O-15162-PEM** |
|---|---|

## ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

☐ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.

☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

☐ All court dates in the Hearing Department are vacated.

P.2, Box 8 "the Supreme Court order herein" should be deleted and insert "this Stipulation".

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

**Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

February 25, 2009
Date

Lucy Armendariz
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on February 25, 2009, 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:

**ALBERT MARIO ELLIS**
**HAKEEM ELLIS & MARENGO**
**3414 BROOKSIDE RD #100**
**STOCKTON, CA 95219**

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

**WONDER LIANG,** Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 25, 2009.

Lauretta Cramer
Case Administrator
State Bar Court