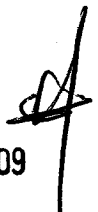




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**State Bar Court of California
Hearing Department
San Francisco**

<p>Counsel For The State Bar</p> <p>Susan Chan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 233229</p>	<p>Case Number (s)</p> <p>06-O-15339; 07-O-10805; 07-O-11639; 07-O-12708; 07-O-13843; 08-O-10119</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED </p> <p>DEC 0 1 2009</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Robert A. Young 130 Maple Street, Suite 102 Auburn, CA 95603</p> <p>Bar # 23018</p>	<p>Submitted to: Assigned Judge</p>	
<p>In the Matter Of: WENDELL PETERS</p> <p>Bar # 150132</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>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 4, 1990.
- (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 23 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):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - 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
 - (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.
- (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. See Stipulation Attachment.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

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 Stipulation Attachment.
- (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. See Stipulation Attachment.
- (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 Stipulation Attachment.
- (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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of two (2) years and/until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of ninety (90) days.
- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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 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.

- (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 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.
- (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 probation conditions.
- (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) The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" 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 during the period of actual suspension or within one year, whichever period is longer. **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:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(Do not write above this line.)

- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:** See attached.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: WENDELL PETERS

CASE NUMBER(S): **06-O-15339 (“Gilger”)**
 07-O-10805 (“Michel”)
 07-O-11639 (“Sherman”)
 07-O-12708 (“Porter”)
 07-O-13843 (“Durell”)
 08-O-10119 (“SBI”)

FACTS AND CONCLUSIONS OF LAW.

Facts: Case No. 06-O-15339 (“Gilger”): Count One:

1. On or about September 12, 2006, Steven Gilger hired respondent and paid him the sum of \$2,500 to represent him in a pending criminal matter, *People v. Gilger*, case no. 06TR 8420, filed in Superior Court, County of Shasta. Gilger met with respondent on this date and advised him of the arraignment scheduled for October 16, 2006 at eight-thirty a.m. The parties executed a Fee Agreement for a minimum fee of \$2,500 for representation in the Shasta County Criminal matter. Respondent advised Gilger that he would obtain the police reports from the District Attorney and contact Gilger before the arraignment to discuss the case.
2. Gilger made numerous attempts to reach respondent between September 12, 2006 and the arraignment date of October 16, 2006 but was unable to do so.
3. Respondent failed to appear at Gilger’s arraignment. Respondent did not contact Gilger and discuss the case with him, prior to the arraignment. Respondent did not obtain the police report on Gilger’s behalf.

Conclusions of Law: Case No. 06-O-15339 (“Gilger”): Count One:

By failing to appear at Gilger’s arraignment; by failing to obtain the police reports on Gilger’s behalf and discuss the case with Gilger prior to the arraignment, respondent failed to perform, in willful violation of the Rules of Professional Conduct, rule 3-110(A).

Facts: Case No. 06-O-15339 (“Gilger”): Count Two:

4. The allegations of Count One are hereby incorporated by reference.
5. On or between September 12, 2006 and October 16, 2006, Gilger left numerous messages for respondent at his telephone number, requesting the status of his case and to prepare for the scheduled arraignment. Gilger also sent faxes to respondent’s office.

6. Gigler also visited respondent's offices on Lincoln Way in Auburn, California. The first visit was the Thursday prior to the Monday of the Court appearance. At that time, the offices were closed. Gilger returned a second time, after the arraignment, seeking his fees, only to discover the office vacated.
7. Respondent received Gilger's messages and faxes and failed to respond or otherwise apprise Gilger of the status of the case.
8. Respondent failed to advise Gilger that he, respondent, would not be appearing at the October 16, 2009 arraignment.
9. Respondent failed to advise Gilger that he was vacating his Lincoln Street offices in Auburn, and failed to provide Gilger with a forwarding address.

Conclusions of Law: Case No. 06-O-15339 ("Gilger"): Count Two:

By failing to respond to Gilger's numerous phone calls and faxes, respondent failed to respond to the reasonable status inquiries of a client in a matter in which he agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

By failing to advise Gilger that he, respondent, would not be appearing at the arraignment, and by failing to advise Gilger that he was vacating his offices and by failing to provide Gilger with a forwarding address, respondent failed to keep his client reasonably informed of significant developments in the clients, case, in willful violation of Business and Professions Code, section 6068(m).

Facts: Case No. 06-O-15339 ("Gilger"): Count Three:

10. The allegations of Count One and Two are hereby incorporated by reference.
11. Gilger obtained another attorney to represent him in his criminal matter.
12. Respondent provided no services of any value to Gilger. Respondent's fee of \$2,500 was not earned.
13. Gilger sought to obtain the return of his funds. He attempted to visit respondent's offices in Auburn, California only to find the offices shut down (vacated).
14. Respondent failed to refund the \$2,500 to Gilger.

Conclusions of Law: Case No. 06-O-15339 ("Gilger"): Count Three:

By failing to refund the \$2,500 to Gilger, respondent failed to refund promptly the fee paid in advance that had not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Facts: Case No. 07-O-10805 ("Michel"): Count Four:

15. On or about August, 2004, and at all times pertinent to the Notice of Disciplinary Charges, respondent represented Timothy Michel in his ongoing divorce proceedings, *Kara T. Michel vs. Timothy Michel*, case no. S-DR-002867, filed in Superior Court, County of Placer.
16. On or about September 1, 2004, Kara Michel brought an ex-parte request to address how to maintain the proceeds of the sale of the family home, pending the dissolution. In response to the ex-parte request, the parties agreed that respondent would hold the funds in his attorney-client trust account.
17. On or about September 3, 2004, respondent received the sum of \$220,697.23 from Financial Title Company, representing the proceeds of the sale of the marital home in the Michel divorce. These funds belonged to respondent's client and Kara Michel.
18. Respondent deposited these funds in an attorney-client trust account, account number 290582XXX at Placer Sierra Bank.
19. On or about May 19, 2006, respondent issued a check to Kara Michel, check no. 1003, for \$7,211.50 from his personal account at Auburn Community Bank, account number 20123XXX, representing a portion of the distribution of the funds of the marital home. This check was not honored by the bank due to insufficient funds. Respondent later provided Kara Michel with a cashier's check for this amount.

Conclusions of Law: Case No. 07-O-10805 ("Michel"): Count Four:

By failing to maintain the Michel funds in an attorney-client trust account, respondent failed to maintain funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in violation of Rules of Professional Conduct, rule 4-100(A).

Facts: Case No. 07-O-10805 ("Michel"): Count Five:

20. The allegations of Count Four are hereby incorporated by reference.
21. On or about May 17, 2006, the Court ordered that respondent provide an accounting within thirty days to opposing party, Kara Michel, through her counsel, Sharon Huddle. Respondent was not present in Court when the order was made, (counsel "D. Oldziewski" made a special appearance for respondent). However, respondent was aware of the Court's order.
22. Respondent failed to provide the accounting within thirty days or at anytime thereafter.

Conclusions of Law: Case No. 07-O-10805 ("Michel"): Count Five:

By failing to provide an accounting of the \$220,697.23 he received on behalf of the Michels, respondent failed to render appropriate accounts to a client, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

Facts: Case No. 07-O-10805 ("Michel"): Count Six:

23. The allegations of Count Four and Five are hereby incorporated by reference.

Conclusions of Law: Case No. 07-O-10805 ("Michel"): Count Six

By failing to provide the accounting as ordered by the Court on May 17, 2006, respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

Facts: Case No. 07-O-11639 ("Sherman"): Count Seven:

24. On or about July 7, 2006, Barbara Sherman (hereinafter "Sherman") retained respondent to represent her in a family law matter, *COP vs. Roberto Bielmas Lopaz*, case no. S-FS-0018572, filed in Superior Court, Placer County. Sherman was the "Other Parent" in the proceeding. She retained respondent to modify a court order in the proceedings. She paid respondent the sum of \$2,500 by way of check no. 2204 dated July 8, 2006. Respondent received the \$2,500 in funds from Sherman.

25. Thereafter, respondent took no action on behalf of Sherman. He did not meet with her, and he did not file any pleadings on her behalf.

Conclusions of Law: Case No. 07-O-11639 ("Sherman"): Count Seven:

By failing to take action on Sherman's account, respondent failed to perform, in willful violation of Rules of Professional Conduct, rule 3-110(A).

Facts: Case No. 07-O-11639 ("Sherman"): Count Eight:

26. The allegations of Count Seven are hereby incorporated by reference.

27. On or between June, 2006 and June, 2007, Sherman made repeated efforts to communicate with respondent regarding the status of her case. She telephoned him on several occasions. However, the message she received was that the voicemail was full.

28. When Sherman first retained respondent's services in June, 2006, respondent's offices were on Lincoln Way, in Auburn, California. Thereafter, in or about December, 2006, respondent vacated the Lincoln Way offices.

29. Respondent failed to advise Sherman that he relocated his Lincoln Way office. Respondent failed to provide Sherman with updated contact information for respondent.

30. On or about June 1, 2007 Sherman wrote a letter to respondent advising him that she was trying to contact him about her case. She advised him that he had moved without notifying her and that she was unable to locate or speak to him. Sherman mailed the letter to respondent at his new address, on Atwood Road in Auburn.

31. Respondent received Sherman's June 1, 2007 letter.

32. A person who identified herself as "Jennifer" called Sherman on or about June 21, 2007, and left her a message to call, leaving a telephone number.
33. Sherman called the telephone number provided by Jennifer on several occasions. As to each occasion, she left messages.
34. Respondent received Sherman's messages to the phone number provided by Jennifer, and failed to return the call or otherwise respond to Sherman's request for the status of her case.

Conclusions of Law: Case No. 07-O-11639 ("Sherman"): Count Eight:

By failing to respond to Sherman's numerous telephone calls left on the number Jennifer provided, respondent failed to respond to the reasonable status inquiries of a client in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code, section 6068(m).

By failing to advise Sherman that he was relocating from the Lincoln Way address, and by failing to provide her information as to how to reach him after he relocated, respondent failed to keep his client informed of significant developments in a matter in which he agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

Facts: Case No. 07-O-11639 ("Sherman"): Count Nine:

35. The allegations of Counts Seven and Eight are hereby incorporated by reference.
36. By failing to respond to Sherman's phone calls and letters regarding the status of the case, and by failing to take action on her behalf, respondent in effect withdrew from representing Sherman.
37. When respondent withdrew from representing Sherman, he failed to advise her that he was withdrawing.

Conclusions of Law: Case No. 07-O-11639 ("Sherman"): Count Nine:

By failing to advise Sherman that he would no longer take her case, respondent failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

Facts: Case No. 07-O-11639 ("Sherman"): Count Ten:

38. The allegations of Counts Seven through Nine are hereby incorporated by reference.
39. Respondent did not earn the \$2,500 fee in the Sherman matter. Respondent failed to provide any benefit to Sherman.
40. Respondent did not refund the \$2,500 in fees to Sherman.

Conclusions of Law: Case No. 07-O-11639 ("Sherman"): Count Ten:

By failing to refund the \$2,500 in fees to Sherman, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Facts: Case No. 07-O-12708 ("Porter"): Count Eleven:

41. On or about November 10, 2006, Noretta Porter (hereinafter, "Porter") hired respondent to resolve a custody dispute regarding her grandchild, Tiffany. She sought to obtain visitation with Tiffany and arrange for Stephanie, Tiffany's sister, to be able to visit Tiffany. (Stephanie resided with Porter). Porter paid respondent the sum of \$2,500 by way of check dated November 17, 2006. Respondent received the funds.
42. Respondent took no action on the case for four months. In or about March, 2007, respondent drafted some pleadings but never filed them with Court or provided them to the client to review and sign.
43. Other than drafting the (preliminary) pleadings that were not filed, respondent advised Porter of two court calendared matters on the case. This information was false, as the matters were not calendared at all.
44. Respondent performed no action on the case that was of any benefit to Porter.

Conclusions of Law: Case No. 07-O-12708 ("Porter"): Count Eleven:

By failing to take action on behalf of Porter, to obtain visitation with Tiffany, and to arrange for visitation between Stephanie and Tiffany, and by giving Porter false information regarding court calendared matters in the case, respondent failed to perform, in willful violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 07-O-12708 ("Porter"): Count Twelve:

The parties request a dismissal of Count Twelve. (*See Dismissals*, pg. 16).

Facts: Case No. 07-O-12708 ("Porter"): Count Thirteen:

45. The allegations of Counts Eleven are hereby incorporated by reference.
46. The last time Porter spoke to respondent was on or about June 5, 2007, at a Starbucks. At that time, respondent advised Porter that he would be opening an office in Colfax.
47. On or about March 6, 2007, respondent changed his official membership records address, maintained by the State Bar pursuant to Business and Professions Code section 6002.1, from 11768 Atwood Road in Auburn, California, to an address in Colfax, California.
48. Respondent did not advise Porter of his new address.

49. On or about July 22, 2007, respondent's telephone lines to his Atwood Road address were disconnected. Porter tried to reach respondent via telephone but was unable to do so.
50. Respondent failed to provide Porter with an updated telephone number when he terminated the phone lines for the office address at Atwood Road in Auburn, California.
51. Porter was unable to locate respondent.
52. Thereafter, Porter had no contact with respondent.

Conclusions of Law: Case No. 07-O-12708 ("Porter"): Count Thirteen:

By giving Porter false information that there were court dates in her legal matter, when, in fact, he had filed no pleadings and there were no court dates; and by failing to advise Porter of his new contact information when he vacated the Atwood Road address in Auburn, respondent failed to keep the client reasonably informed of significant developments in a case in which he agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

Facts: Case No. 07-O-12708 ("Porter"): Count Fourteen:

53. The allegations of Counts Eleven and Thirteen are hereby incorporated by reference.
54. By taking no action on Porter's legal matter, and by relocating without advising her of his new contact information, respondent in effect withdrew from representing Porter.
55. Respondent did not advise Porter that he was withdrawing from representing her, nor did he return her funds to her.

Conclusions of Law: Case No. 07-O-12708 ("Porter"): Count Fourteen:

By failing to advise Porter that he was withdrawing from representing her, and by failing to return her funds to her, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

Facts: Case No. 07-O-12708 ("Porter"): Count Fifteen:

56. The allegations of Counts Eleven, Thirteen and Fourteen are hereby incorporated by reference.
57. Respondent did not earn any of the \$2,500 he received from Porter. His drafting of pleadings were preliminary in nature and provided no benefit to Porter.
58. Respondent failed to refund the \$2,500 to Porter.

Conclusions of Law: Case No. 07-O-12708 ("Porter"): Count Fifteen:

By failing to refund Porter the \$2,500, respondent failed refund promptly any part of a fee paid

in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Facts: Case No. 07-O-13843 ("Durell"): Count Sixteen:

59. On or about September, 2006, James Durell (hereinafter, "Durell") hired respondent to address modifications in his probationary case, related to *People v. Durell*, case no. 04-F-04279, filed in Sacramento Superior Court. Durell paid respondent the sum of \$3,500 and respondent received the funds.
60. Thereafter, respondent took no action on behalf of Durell. Respondent did not bring a motion to modify the terms of probation for Durell.

Conclusions of Law: Case No. 07-O-13843 ("Durell"): Count Sixteen:

By failing to take action on behalf of Durell, respondent failed to perform, in willful violation of Rules of Professional Conduct, rule 3-110(A).

Facts: Case No. 07-O-13843 ("Durell"): Count Seventeen:

61. The allegations of Count Sixteen are hereby incorporated by reference.
62. From September 2006 through March, 2007, Durell made repeated attempts to contact respondent at his offices on Lincoln Way in Auburn, California. Several times, respondent's legal assistant, Jennifer Moore, assured Durell that "everything was going good."
63. Thereafter, on or about November 20, 2006, Durell received a notice that respondent had moved to Atwood Road, in Auburn, California. Durell left several messages for respondent via telephone and email. Respondent received the messages from Durell and failed to respond.
64. On or about March 21, 2007, Durell located respondent at his offices at Secret Town Road in Colfax, California and made an appointment to see respondent the afternoon of March 22, 2007. Durell arrived for the appointment and waited for an hour but respondent never appeared.

Conclusions of Law: Case No. 07-O-13843 ("Durell"): Count Seventeen:

By failing to respond to Durell's phone call and messages, and by otherwise failing to apprise him of the status of his case, respondent failed to respond to the reasonable status inquiries of a client in a matter in which he agreed to provide legal representation, in willful violation of Business and Professions Code, section 6068(m).

Facts: Case No. 07-O-13843 ("Durell"): Count Eighteen:

65. The allegations of Counts Sixteen and Seventeen are hereby incorporated by reference.
66. By failing to take action on Durell's legal matter, and by failing to respond to Durell's phone calls and email messages, respondent in effect withdrew from representing Durell.

67. When respondent withdrew, respondent failed to notify Durell or return his monies to him.

Conclusions of Law: Case No. 07-O-13843 ("Durell"): Count Eighteen:

By failing to notify Durell that he was withdrawing from representing Durell, and by failing to refund Durell's fees to him, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

Facts: Case No. 07-O-13843 ("Durell"): Count Nineteen:

68. The allegations of Counts Sixteen through Eighteen are hereby incorporated by reference.

69. Respondent failed to perform any services for Durell that were any value to him.
Respondent's fees were not earned in the Durell matter.

70. Respondent failed to refund Durell's \$3,500 to him.

Conclusions of Law: Case No. 07-O-13843 ("Durell"): Count Nineteen:

By failing to return Durell's \$3,500 to him, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Facts: Case No. 08-O-10119 ("SBI"): Count Twenty:

71. At all times pertinent to Count Twenty, respondent maintained an Attorney-Client Trust Account, account number 711-4961XXX at Wells Fargo Bank.

72. On or between September, 2007 and January, 2009, respondent issued numerous checks for personal, non-client matters. These checks include, but are not limited, to the following:

<u>Date</u>	<u>Check</u>	<u>Amount</u>	<u>Payee</u>
11/30/07	1008	\$71.00	Valet Cleaners
12/12/07	1001	\$92.25	Valet Cleaners
12/19/07	2004	\$35.41	Valet Cleaners
12/12/07	1021	\$229.61	COSTCO
12/20/07	1001	\$1,806.77	COSTCO
10/26/07	2008	\$145.79	College Market
11/19/07	1002	\$35.97	Worton's Market
11/28/07	1007	\$94.52	Worton's Market
12/12/07	1025	\$53.00	Round Table Pizza

Conclusions of Law: Case No. 08-O-10119 ("SBI"): Count Twenty:

By repeatedly issuing funds from his attorney client trust account for personal, and not client matters, respondent deposited or commingled funds belonging to respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

Facts: Case No. 08-O-10119 ("SBI"): Count Twenty One:

73. The allegations of Count Twenty are hereby incorporated by reference.
74. On or about December 12, 2007, respondent issued check number 1025 from his attorney-client trust account (hereinafter, "CTA") for the sum of \$53.00. There were insufficient funds in respondents CTA account to cover this check. The balance in respondent's CTA account on 12/12/07 was \$-65.11. This check was nonetheless honored by Wells Fargo Bank as issued against insufficient funds.
75. On or about December 28, 2007, respondent issued check number 1006 for the sum of \$385.84. There were insufficient funds in respondent's CTA account to cover this check. The balance in respondent's CTA account on 12/28/07 was \$-258.72. This check was nonetheless honored by Wells Fargo Bank as issued against insufficient funds.

Conclusions of Law: Case No. 08-O-10119 ("SBI"): Count Twenty One:

By failing to maintain sufficient funds to cover his checks written on his CTA account, respondent willfully violated Rules of Professional Conduct, rule 4-100(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was October 20, 2009.

DISMISSALS.

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
07-O-13843	Twelve	Business and Profession Code section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 20, 2009, the prosecution costs in this matter are \$5,632.28. 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 2.2(b) specifies that culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Standard 2.4(b): specifies culpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Lydon v. State Bar (1988) 45 Cal.3d 1181, wilfulness does not require actual knowledge of the provision violated.”

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309, “Thus, the term wilful does not require a showing that respondent intended the consequences of his acts or omissions, it simply requires proof that he intended the act or omission itself.”

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459 (respondent received two years stayed suspension, two years probation conditioned on six months actual suspension and until restitution completed, compliance with rule 955 of the California Rules of Court, Multistate Professional Responsibility Examination, and other probation conditions for misconduct involving one client matter: failure to perform legal services [rule 3-110(A)]; failure to respond to client’s status inquiries [section 6068(m)]; failure to refund \$7,000 in advanced legal fees [rule 3-700(D)(2)]; failure to cooperate [section 6068(i)]; failure to return client papers [rule 3-700(D)(1)].

In the Matter of Sullivan, II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608 (respondent received one year suspension stayed, three years probation including 60 days actual suspension, Multistate Professional Responsibility Examination, and other probation conditions for misconduct involving four client matters: failure to perform legal services, failure to respond to client inquiries and to keep clients informed of significant development in their cases).

AGGRAVATING CIRCUMSTANCES.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Standard 1.2(b)(ii): The current misconduct found or acknowledged by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Respondent’s failure to perform, failure to respond to client inquiries and failure to return unearned fees in four separate client matters demonstrates multiple acts of misconduct. (*Young v. State Bar* (1990) 50 Cal.3d. 1204, 1217; *Bledsoe v. State Bar* (1991) 52 Cal.3d. 1074, 1079-1080).

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Standard 1.2(e)(i): Respondent was admitted in 1990 and has no prior discipline.

Standard 1.2(e)(iv): Respondent represents that he suffered extreme difficulties in his personal life which expert testimony would establish were directly responsible for the misconduct and have since been resolved. Respondent has taken objective steps to control his family related situation.

Standard 1.2(e)(vi): Respondent received letters of reference from attorneys attesting to his good character and a letter of acknowledgment for his pro bono activities.

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.

FINANCIAL CONDITIONS, RESTITUTION.

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

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.

In the Matter of
WENDELL PETERS,
No. 150132

Case number(s):
06-O-15339 [07-O-10805; 07-O-11639; 07-O-12708;
07-O-13843; 08-O-10119]

A Member of the State Bar

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Steven Gilger	\$2,500	September 12, 2006
Barbara Sherman	\$2,500	July 8, 2006
Norell Porter	\$2,500	November 17, 2006
James Durell	\$3,500	September 2006

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Steven Gilger	\$25.00	First day of the month
Barbara Sherman	\$25.00	First day of the month
Norell Porter	\$25.00	First day of the month
James Durell	\$25.00	First day of the month

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

In the Matter of
WENDELL PETERS,
No. 150132

Case number(s):
06-O-15339 [07-O-10805; 07-O-11639; 07-O-12708;
07-O-13843; 08-O-10119]

Substance Abuse Conditions

- a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least **four (4)** meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program **Respondent shall attend at least four (4) meetings per month of an abstinence-based self-help group of his own choosing, including inter alia, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S. Other self-help maintenance programs are acceptable if they include: (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program].) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol.**

Before respondent attends the first self help group meeting, he shall contact the Office of Probation and obtain approval for the program that he has selected. Thereafter, on a quarterly basis with his quarterly and final written reports, respondent shall provide documentary proof of attendance at the meetings of the approved program to the Office of Probation, in a form acceptable to the Office of Probation.

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within

(Substance Abuse Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.


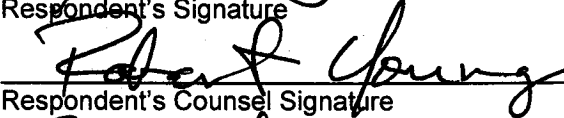
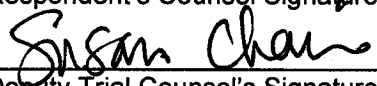
- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

(Do not write above this line.)

In the Matter of WENDELL PETERS, No. 150132	Case number(s): 06-O-15339 [07-O-10805; 07-O-11639; 07-O-12708; 07-O-13843; 08-O-10119]
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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.

<u>11-16-09</u> Date	 Respondent's Signature	<u>Wendell Peters</u> Print Name
<u>11-16-09</u> Date	 Respondent's Counsel Signature	<u>Robert Young</u> Print Name
<u>11/18/09</u> Date	 Deputy Trial Counsel's Signature	<u>Susan Chan</u> Print Name

(Do not write above this line.)

In the Matter Of WENDELL PETERS No. 150132	Case Number(s): 06-O-15339 [07-O-10805; 07-O-11639; 07-O-12708; 07-O-13843; 08-O-10119]
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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:

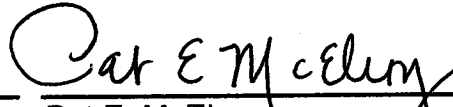
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

See attachment A for modifications to the parties' 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 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.)**

December 1, 2009

Date



Pat E. McElroy
Judge of the State Bar Court

Attachment A

Modifications to the Parties' Stipulation

1. On page 4 of the stipulation, paragraph D.(2), "for a period of two (2) years and/until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation" is deleted, and in its place is inserted "for a period of five years."
2. On page 4 of the stipulation, at the end of paragraph D.(2), the following sentence is inserted: "After at least two years following the effective date of discipline, if respondent has paid the full amount of restitution, including interest, respondent may move for modification or termination of his probation."
3. On page 19 of the stipulation, paragraph b., the following sentence is inserted above the payment table schedule: "Payment schedule for the first six months following the effective date of discipline:"
4. On page 19 of the stipulation, paragraph b., the following sentence and table are inserted below the existing payment table schedule:
"Payment schedule after the first six months following the effective date of discipline:

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Steven Gilger	\$75.00	First day of the month
Barbara Sherman	\$75.00	First day of the month
Norell Porter	\$75.00	First day of the month
James Durell	\$75.00	First day of the month

If respondent is unable to pay the aforementioned minimum payment amounts, he must move for modification of probation."

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 December 1, 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:

ROBERT ANDREW YOUNG
130 MAPLE ST #102
AUBURN, CA 95603

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 Chan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 1, 2009.


George Hui
Case Administrator
State Bar Court