

**PUBLIC MATTER**

**ORIGINAL**

(Do not write above this line.)

<b>State Bar Court of California</b> Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar <b>TERRIE GOLDADE</b> <b>Office of Probation</b> <b>1149 S. Hill Street</b> <b>Los Angeles, CA 90015-2299</b> <b>(213) 765-1494</b>  <b>155348</b> Bar #	Case number(s)  <p style="text-align: center;"><b>06-PM-12647-RAP</b></p> kwiktag®      022 606 584 	(for Court's use)  <p style="text-align: center;"><b>FILED</b></p> <p style="text-align: center;">AUG 09 2006</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent <b>DAVID A. CLARE</b> <b>4675 MacArthur Ct., #1250</b> <b>Newport Beach, CA 92660</b> <b>(949)417-5640</b> Bar # <b>44971</b>	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>PROBATION VIOLATION—"PM" PROCEEDING</b> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of <b>TIMOTHY LEE McCANDLESS</b>  Bar # <b>147715</b>  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 July 30, 1990 (date)
- (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 and order consist of 11 pages.
- (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.

(Do not write above this line.)

- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- (a)  costs added to membership fee for calendar year following effective date of discipline (no actual suspension)
  - (b)  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 (actual suspension)
  - (c)  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)
  - (d)  costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - (e)  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 96-0-07376 et al.
  - (b)  Date prior discipline effective 10/22/00
  - (c)  Rules of Professional Conduct/ State Bar Act violations: "RPC" "B&P" RPC 3-110(A) (two counts);  
4-200; B&P 6103 (two counts)
  - (d)  Degree of prior discipline 60 days actual suspension, 24 months stayed.
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or in a separate attachment entitled "Prior Discipline".  
See Attachment.
- (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.

(Do not write above this line.)

- (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 to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(Do not write above this line.)

- (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)  **No mitigating circumstances are involved.**

**Additional ~~mitigating~~ circumstances:**  
See Attachment.

**D. Discipline (choose only one):**

- (1)  **Probation Extended:** Respondent's probation in \_\_\_\_\_ is  
Supreme Court case # or State Bar Court case #  
extended for \_\_\_\_\_
- (2)  **Probation Revoked; Probation Reinstated; Actual Suspension:** Respondent's probation is revoked and  
reinstated for two years on the same terms and conditions as previously imposed in  
length of probation  
S120134/02-0-11346 et al. The terms of probation remain the same as in the prior  
Supreme Court case # or State Bar Court case #  
order except as indicated below. In addition, Respondent must be actually suspended from the practice  
of law for 90 days.
- (3)  **Probation Revoked; Probation Reinstated; No Actual Suspension:** Respondent's probation is  
revoked and reinstated for \_\_\_\_\_ on the same terms and conditions previously  
length of probation  
imposed in \_\_\_\_\_ The terms of probation remain the same  
Supreme Court case # or State Bar Court case #  
as in the prior order, except as indicated below.
- (4)  **Probation Revoked; Probation not Reinstated; Actual Suspension:** Respondent's probation is  
revoked. Respondent must be suspended from the practice of law for \_\_\_\_\_

(Do not write above this line.)

**E. In addition to conditions previously imposed by the Supreme Court in its prior order, the following new conditions are being recommended by this stipulation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (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 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 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 will 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 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 these 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 monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation of the State Bar of California 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 State Bar 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 required to be filed with the Office of Probation.

(Do not write above this line.)

---

(10)  The following conditions are attached hereto and incorporated:

- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

(1)  Probation Conditions Deleted or Modified:

- (2)  **Rule 955, California Rules of Court:** Respondent must comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- (3)  **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.

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

IN THE MATTER OF: Timothy Lee McCandless

CASE NUMBER: 06-PM-12647-RAP

**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.

1. On or about July 15, 2003, Respondent, who was represented by David Clare, executed a Stipulation re Facts, Conclusions of Law and Disposition with the State Bar in State Bar Court Case nos. 02-O-11346, 02-O-12805, 02-O-13411, 02-O-13430, and 02-O-15143 ("Stipulation"). The Hearing Department of the State Bar Court filed an order approving the Stipulation on or about July 30, 2003.

2. On or about January 12, 2004, the California Supreme Court filed an Order in Case no. S120134 (State Bar Court Case nos. 02-O-11346, et al.) that Respondent be suspended from the practice of law for a period of 36 months, that execution of suspension be stayed and that Respondent be placed on probation for a period of 60 months subject to the conditions of probation, including actual suspension for 6 months as recommended by the Hearing Department of the State Bar Court in its order approving the Stipulation filed on July 30, 2003. Respondent was ordered to comply with the following terms and conditions of probation, among others:

A. As a condition of probation, Respondent was ordered to submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of his probation period and to state under penalty of perjury whether he had complied with the State Bar Act and the Rules of Professional Conduct. Respondent has not complied in that Respondent filed all of his Quarterly Reports due from April 10, 2004 through April 10, 2006 late, as follows:

<b><u>DUE</u></b>	<b><u>FILED</u></b>
4/10/04	7/2/04
7/10/04	7/13/04
10/10/04	11/2/04
1/10/05	5/31/05
4/10/05	5/31/05

7/10/05	7/19/05
10/10/05	7/3/06
1/10/06	7/3/06
4/10/06	7/3/06

B. As a condition of probation, Respondent was ordered to report to the Membership Records Office and the Office of Probation all changes of information including current office address and telephone number or other address for State Bar purposes within 10 days of any change. Respondent has not complied in that a document mailed to Respondent's membership records address on May 20, 2005 was returned as undeliverable by the United States Postal Service on March 28, 2006.

By failing to timely file his Quarterly Reports from April 10, 2004 through April 10, 2006, and by failing to timely update his contact information, Respondent wilfully violated Business and Professions Code, section 6068(k).

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was July 26, 2006.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Probation has informed respondent that as of July 26, 2006, the estimated prosecution costs in this matter are approximately \$1,546. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.**

The greatest amount of discipline would be warranted by probation violations which show a breach of a condition significantly related to the misconduct for which probation was given. *In the Matter of Potack*, (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 537.

**AGGRAVATING CIRCUMSTANCES. (CONTINUED from p. 2)**

**Prior Discipline (cont.)**

State Bar Court Case Nos. 93-O-10364, et al. (S046335)

effective: 8/12/95

violations: RPC 4-100(A), 4-100(B)(4) (two counts); B&P 6068(o)

degree of prior discipline: 30 days actual, 12 months stayed suspension

State Bar Court case no. 95-O-11810, et al. (S072495)

effective: 11/14/98

violations: B&P 6068(c), 6068(d)

degree of prior discipline: 30 days actual suspension, 18 months stayed

**ADDITIONAL CIRCUMSTANCES.**

On July 3, 2006, Respondent filed his quarterly reports due October 10, 2005; January 10, 2006; and April 10, 2006.

On August 1, 2006, Respondent updated his address with the Membership Records Office of the State Bar.

**OTHER CONDITIONS NEGOTIATED BY THE PARTIES.**

The parties stipulate to waive any variance in the language, allegations, and conclusions of law between this stipulation and the Notice of Motion and Motion to Revoke Probation filed on June 5, 2006. Respondent acknowledges that this stipulation contains language, allegations, and conclusion of law which differ from the language, allegations, and conclusions of law contained in the Notice of Motion and Motion to Revoke Probation filed on June 5, 2006. The parties further stipulate to waive the right to have an Amended Notice of Motion and Motion to Revoke Probation.

///

///

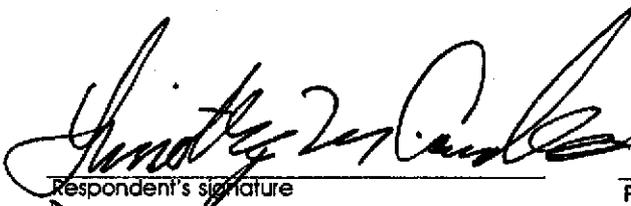
///

(Do not write above this line.)

In the Matter of <b>TIMOTHY LEE McCANDLESS</b>	Case number(s): <b>06-PM-12647-RAP</b>
---	---

### 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 Facts, Conclusions of Law and Disposition.

<u>7/31/06</u> Date	 Respondent's signature	<u>Timothy L. McCandless</u> Print Name
<u>7/31/06</u> Date	 Respondent Counsel's signature	<u>David A. Clare</u> Print Name
<u>8/2/06</u> Date	 Supervising Attorney, Office of Probation signature	<u>Terrie Goldade</u> Print Name

(Do not write above this line.)

In the Matter of  <b>TIMOTHY LEE McCANDLESS</b>	Case number(s):  <b>06-PM-12647-RAP</b>
---	---

### 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 953(a), California Rules of Court.)

08-07-06  
Date

  
\_\_\_\_\_

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 Los Angeles, on August 9, 2006, 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:

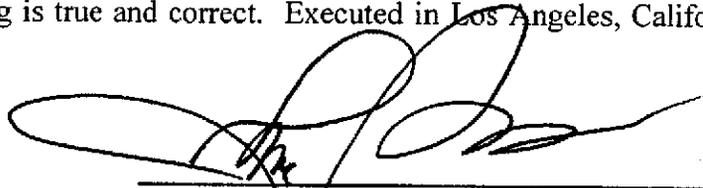
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID ALAN CLARE  
4675 MACARTHUR COURT STE 1250  
NEW PORT BEACH CA 92660**

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

**TERRIE GOLDADE , Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 9, 2006.



**Johnnie Lee Smith**  
Case Administrator  
State Bar Court