

State Bar Court of California
Hearing Department
Los Angeles

ORIGINAL

PUBLIC MATTER

Counsel For The State Bar Djinna M. Gochis, Assistant Chief Trial Counsel 1149 South Hill Street Los Angeles, California 90015 (213) 765-1000 Bar # 108360	Case Number (s) 07-0-10009	(for Court's use) FILED JUN 17 2009 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent Frank Edward Miller 6245 Bristol Parkway, No. 421 Culver City, California 90230 Bar # 162270	Submitted to: Assigned Judge	
In the Matter Of: Frank Edward Miller Bar # 162270 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 14, 1992**.
- (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 **10** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☒ costs added to membership fee for calendar year following effective date of discipline (public reproof)
- ☐ case ineligible for costs (private reproof)
- ☐ costs to be paid in equal amounts for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- ☐ costs entirely waived

- (9) The parties understand that:

- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☒ State Bar Court case # of prior case **05-0-1664 and 05-0-4646**
- (b) ☒ Date prior discipline effective **November 21, 2005**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **failure to refund fees**
- (d) ☒ Degree of prior discipline **Private reproof, restricted.**
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (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:

see page 8-9. Respondent then employed a staff person who took several of his files, including this one.

D. Discipline:

- (1) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of **two years**.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the 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: .
- (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:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions p. 9 |

F. Other Conditions Negotiated by the Parties:

(Do not write above this line.)

Attachment language (if any):

THIS SECTION INTENTIONALLY LEFT BLANK.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: FRANK EDWARD MILLER

CASE NUMBER(S): ET AL. 07-0-10009

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 February 10, 2006, Respondent was employed by Raymond Wang ("Wang") to substitute into his already pending divorce case.
2. Wang paid the Respondent \$5,000.00.
3. In February 2006, after he was employed, Respondent prepared and served responses to Interrogatories and Production of Documents to opposing counsel, Raymond Nadel. ("Nadel").
4. The responses were not adequate and thereafter, Nadel sought to obtain further answers. He was unable to contact the Respondent by telephone or letter.
5. Nadel served a motion to compel, which was properly served on Respondent's law office, and which was heard on May 23, 2006. Respondent did not appear. Respondent and his client were jointly sanctioned in the sum of \$1,840.00. Respondent was properly served with notice of the sanction. Respondent was also ordered to respond without objection. He did not pay nor did he seek to modify or set aside the sanction, nor was any further response made. Respondent has not done so, to date.
6. In July 2006, Nadel filed a motion for evidentiary, terminating and further monetary sanctions. Respondent appeared on July 26, 2006. He was sanctioned an additional \$1,415.00. The case was not terminated, and the balance of the motion was continued to September 15, 2006. Thereafter, Wang substituted the Respondent out of the case.
7. Between the time that he was employed in February 2006 and September 2006, Wang was unable to contact the Respondent with regard to the status of his case, either by telephone or by letter.
8. On October 2, 2006, Wang requested a refund of the unearned fees. Respondent has not refunded any portion of the unearned fees since that time.
9. Respondent has neither appealed, nor paid, the sanctions against him.

Conclusions of Law

By his conduct

- Respondent failed to competently complete performance of the matter for which he was employed in willful violation of rule 3-110(A) of the Rules of Professional Conduct;
- Respondent failed to provide status updates to his client though requested to do so in willful violation of 6068(m) of the California Business and Professions Code.
- Respondent failed to refund any portion of the unearned fee in willful violation of rule 3-700 (D)(2) of the Rules of Professional Conduct.
- Respondent failed either to appeal the sanctions against him or to pay them in willful violation of section 6103 of the California Business and Professions Code.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was May 28, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 15, 2009, the prosecution costs in this matter are \$1,983. 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.

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

During the time frame in which this misconduct occurred, Respondent was requested to hire, and did hire a criminal probationer, CL, in an effort to assist her in her rehabilitation. Respondent's bookkeeper had an extended conversation with CL's probation officer before they mutually decided to take the chance in employing her. They agreed she should not be allowed to handle any money. She did not handle any money. She seemed to be doing well at the job; however, she did fail to advise Respondent of contacts from Mr. Wang and other clients or opposing counsel. Respondent advises that he was thus unaware of the problem with the responses to interrogatories and production of documents until July 2006, when he made the appearance on the motion for terminating sanctions and was sanctioned the second time. He did not receive the prior motion for sanctions, for the hearing of May 2006, and therefore did not appear. This employee also took original files from Respondent's office. Some were retrieved. Some were not, among them Mr. Wang's file.

Although Respondent is being given mitigation credit as a result of the conduct of this employee, Respondent understands first, that it was his choice to hire someone who had questionable credentials to work in a law office and secondly, he should have been taking affirmative steps to assess the status of the case he took on behalf of Wang, and, when there was no apparent action in the file, he should have followed up. Had he done so, he

would likely have discovered the problem, and been able to rectify it, rather than being sanctioned twice.

Respondent terminated the employee and her probation officer was made aware of the additional conduct.

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.

Within one (1) year from the effective date of discipline in this matter, respondent must make restitution to Raymond Wang or the Client Security Fund if it has paid, in the principal amount of \$ \$5,000 plus interest plus interest at the rate of 10% per annum from February 10, 2006 and furnish satisfactory evidence of restitution to the Office of Probation. Respondent shall include, in each quarterly report required herein, satisfactory evidence of all restitution payments made by him or her during that reporting period.

Within one (1) year of the effective date of the discipline in this matter, Respondent shall either pay the two pending sanctions against him for \$1,840 and \$1,450 respectively, or he must have them modified or set aside. Respondent shall provide proof of the payment or the order setting aside the sanctions within thirty (30) days after the payment or the order to set aside.

AUTHORITIES SUPPORTING DISCIPLINE.

Several of the standards in the *Standards for Attorney Sanctions for Professional Misconduct* apply in analyzing the best disposition to satisfy the protection of the public, the courts, the legal profession, as well as the maintenance of high professional standards and the preservation of public confidence as required by 1.3. Respondent has a prior, also in the area of performance and refund of fees. That was a private reproof. The prior was not remote in time nor, was it so minimal in severity that a higher level of discipline is unjust. (Standard 1.7). There was a communication breakdown between Respondent and his client as well as opposing counsel over several months. Such conduct may result in either reproof or suspension depending on the extent of harm. While Respondent will be addressing the sanctions, such that the client will never be responsible for them, Respondent should have been or readily become aware of the problem in his client's case, and did not. (Standard 2.4). Conduct, which results in sanctions or a failure to obey a court order can lead to suspension or disbarment depending on the harm (Standard 2.6).

Balancing the facts of the case, as mitigated by the conduct of an employee that was not discovered for nearly nine months, a public reproof with the conditions as outlined above seems appropriate to address the willful failures in this case.

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In the Matter of Frank Edward Miller	Case number(s): 07-0-10009
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SIGNATURE OF THE PARTIES

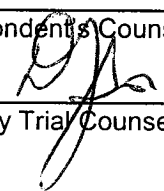
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

6-9-09
Date


Respondent's Signature

Frank Edward Miller
Print Name

6/9/09
Date


Respondent's Counsel Signature

Print Name
Djinna M. Gochis
Print Name

(Do not write above this line.)

In the Matter Of
Frank Edward Miller

Case Number(s):
07-0-10009

ORDER

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

- ☒ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ All court dates in the Hearing Department are vacated.

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

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

6-16-09
Date


Judge of the State Bar Court

RICHARD A. PLATEL

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 17, 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:

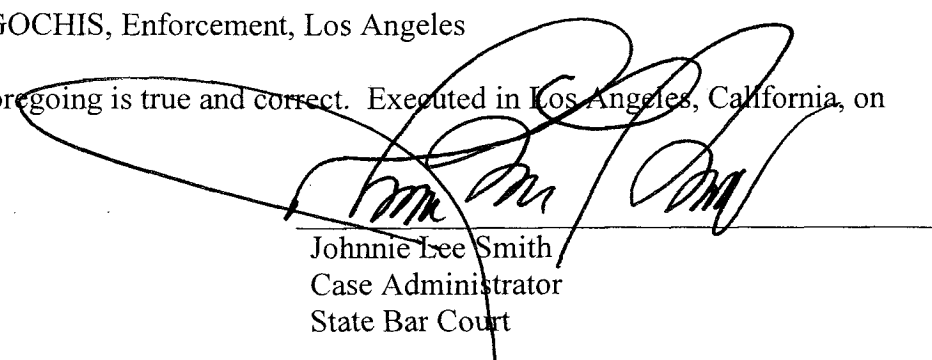
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

FRANK E. MILLER
LAW OFFICE OF FRANK MILLER
6245 BRISTOL PKWY #421
CULVER CITY, CA 90230

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

DJINNA GOCHIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 17, 2009.



Johnnie Lee Smith
Case Administrator
State Bar Court