

State Bar Court of California
Hearing Department
Los Angeles

<p>Counsel For The State Bar</p> <p>Djinna M. Gochis, Assistant Chief Trial Counsel 1149 South Hill Street Los Angeles, California 90015 (213) 765-1000</p> <p>Bar # 108360</p>	<p>Case Number (s) 07-0-11571</p> <p>(for Court's use)</p> <p>FILED MAY 27 2009 <i>AO</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Francis X. Hoffman 12291 South Harbor Boulevard, Suite 111 Garden Grove, California 92640</p> <p>Bar # 108399</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>
<p>In the Matter Of: Francis X. Hoffman</p> <p>Bar # 108399</p> <p>A Member of the State Bar of California (Respondent)</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 **June 3, 1983**.
- (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 **12** 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."



(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: **2010 and 2011**
(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
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

- (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. see page 8.
- (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. see page 8.
- (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) **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.

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 Reproof:

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

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 reprobation.
- (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 reprobation.
 No MPRE recommended. Reason:
- (11) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions Financial Conditions

F. Other Conditions Negotiated by the Parties:

(Do not write above this line.)

Attachment language (if any):

THIS PAGE LEFT INTENTIONALLY BLANK.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Francis X. Hoffman

CASE NUMBER(S): ET AL. 07-0-11571

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of wilfully violating sections 6103 and 6068(o)(3) of the California Business and Professions Code.

1. Francis X. Hoffman ("Respondent") was admitted to the practice of law in the State of California on June 3, 1983, was a member at all times pertinent to these charges and is currently a member of the State Bar of California.

COUNT ONE

2. Respondent was sanctioned on February 22, 2007 in the matter of *Zhang v. The Angeles Plaza et al.* Superior Court Case no. 05K17043 in the total sum of \$3,500.00 as follows:

- \$1,500.00 to Defendant Angelus Plaza
- \$1,000.00 to Defendant LA City
- \$1,000 to the Court

3. Respondent did not seek a motion to reconsider the sanctions, nor did he appeal the sanctions, nor, did he pay them, up to the time these charges were filed. The sanctions have now been paid as of January 14, 2009.

Conclusions of Law

4. By this conduct, Respondent disobeyed an order of the court requiring him to do or to forbear and act connected with his profession which he ought in good faith to do or forbear in willful violation of section 6103 of the California Business and Professions Code.

COUNT TWO

5. Respondent was required to report the sanctions imposed by the court within thirty (30) days of the time that Respondent had knowledge of them, in writing.

6. Respondent has no record of having reported the sanctions in writing to the State Bar within the time specified. The State Bar has no record of receiving a written report by the Respondent as required.

Conclusions of Law

7. Respondent failed to comply with the requirement to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of judicial sanctions in willful violation of section 6068(o) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was May 27, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 16, 2008, the prosecution costs in this matter are \$\$3,654. 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.

As previously noted, Respondent has been an attorney in California since 1983 and has had no prior discipline. While there is harm to the administration of justice when an attorney fails to abide by a court order or to seek relief from the court imposing the sanctions or to appeal them in a court of competent jurisdiction, no client was hurt.

Respondent has been cooperative in the conclusion of this matter at the pre-filing (of the Notice) stage.

Respondent subjectively believed, and continues to believe, that the sanctions were imposed improperly. Although Respondent has not provided any objective evidence of his claim, he is being credited, *for purposes of this stipulation only*, with having this subjective belief in good faith. He has believed and continues to believe that he has a right to recourse in either the court of public opinion and/or the electorate. While that may be true, Respondent understands that he also had an obligation under the California Business and Professions Code either to pay the

sanctions as ordered or to seek relief from them. (See, for example, *Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 289, where the Respondent raised an inability to pay, but had not sought relief from an order of the civil court). Appeal to a Board, to the Legislature, to the electorate, may be a proper adjunct to seeking court relief, but it is not a substitute.

Respondent has represented to the State Bar that he believes he reported the sanctions to it; however, in light of the fact that neither the State Bar nor Respondent has any written record of a report, Respondent understands that the clear and convincing evidence is that it was not reported as required by 6068(o)(3). Respondent has demonstrated to the State Bar his understanding of the requirement sufficient to conclude that this failure to properly report was an aberration and not likely to be repeated.

AUTHORITY IN SUPPORT OF THE DISPOSITION

The starting point for the determination of appropriate discipline is the *Standards for Attorney Sanctions for Professional Misconduct*, and the purposes of discipline, that is, the protection of the public, the courts and the legal profession, the maintenance of high professional standards and the preservation of public confidence. A permissible object of the sanctions is the rehabilitation of the member as long as that object is consistent with the primary purposes. Standard 1.3. For violations under California Business and Professions Code section 2.6 provides that culpability "shall result in disbarment or suspension depending on the gravity of the offense or harm, if any, to the victim, with due regard to the purposes of imposing discipline".

Clearly, a public reproof is below the stated standard. However, it has been long recognized that the sanctions, while an important starting place, are not fixed guidelines and in the appropriate circumstances, there may be deviation from them. In this limited factual area,, the case law is not legion. There are cases with more substantive sanctions (e.g. *In the Matter of Varakin* (Review Department 1994) 3 Cal.State Bar Ct. Rptr. 179, one sanction was for \$25,000; failure to cooperate with Bar resulting in disbarment) or other misconduct intermixed (see for example, *In Re Maloney* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774). In *Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, a member who did not report sanctions and also did not pay them. The court let stand a private reproof recommendation of the Hearing Department for two apparent reasons. One was that, though misinformed, the Respondent's position was that he did not have to report the sanctions pending his appeal. It had been the State Bar's interpretation that the language of the statute did not except matters on appeal, but *Respondent Y* was the first public case that clarified this. The Court gave Respondent Y credit that his conduct in this regard was not in bad faith or dishonest. But they pointed out that they did not deem it appropriate to enhance the discipline solely for this violation. The second reason was that the State Bar, although having requested stayed suspension at hearing level, did not request an

level, did not request an enhancement at review.

Respondent Y is over ten years old and the membership has long been on notice of its findings in addition to the long extant California Business and Professions Code Sections 6068(o)(3) and 6103..

However, balancing the standards, the facts in this case and the case law, a public reproof serves both the primary and permissible objects of disciplinary sanctions.

In mitigation, Respondent has a long and distinguished record of public service, including the following:

~~Resume of Francis X. "Frank" Hoffman, State Bar # 108399~~

~~Admitted to Practice June, 1983~~

Elected Member, Orange County County Board of Education, 1984 through 1992

Democratic Candidate – State Senate (32nd District) 1986

Democratic Candidate – Congress, (39th District) 1990

Member, Orange County Democratic Central Committee, 1986 through 1992

Candidate, Garden Grove City Council 1997

Served Pro Bono 4 IRC 501(c)(3) nonprofit educational corporations

(Do not write above this line.)

In the Matter of Francis X. Hoffman	Case number(s): 07-O-11571
--	-------------------------------

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>May 27, 2009</u> Date	 Respondent's Signature	<u>Francis X. Hoffmann</u> Print Name
<u> </u> Date	<u> </u> Respondent's Counsel Signature	<u> </u> Print Name
<u>May 27, 2009</u> Date	 Deputy Trial Counsel's Signature	<u>Hugh G. Radigan</u> Print Name

(Do not write above this line.)

In the Matter Of Francis X. Hoffman	Case Number(s): 07-O-11571
---	--------------------------------------

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.

5/27/09
Date



Judge of the State Bar Court

DONALD F. MILES

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 May 28, 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:

FRANCIS X HOFFMAN
LAW OFC FRANK HOFFMAN & ASSOC
2225 W COMMONWEALTH STE 111
ALHAMBRA CA 91803

- 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:

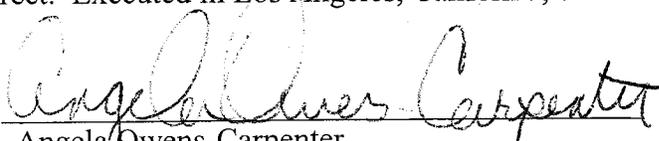
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

HUGH RADIGAN, Enforcement,

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 28, 2009.


Angela Owens-Carpenter
Case Administrator
State Bar Court