

State Bar Court of California
Hearing Department
San Francisco



Counsel For The State Bar Susan Kagan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2037 Bar # 214209	Case Number (s) 07-O-12794	(for Court's use) PUBLIC MATTER FILED <i>ADS</i> JAN 09 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Douglas B. Allen, Esq. Burnett, Burnett & Allen 333 West San Carlos St., 8th Floor San Jose, CA 95110 (408) 298-6540 Bar # 99239	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Ray W. Sowards 1289 S. Park Victoria Dr., #201 Milpitas, CA 95035 Bar # 139952 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 **June 6, 1989**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of

Law".

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ 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.
- (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. **See page 8.**
- (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 page 8.**
- (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

No Prior Discipline: Respondent has no prior record of discipline over many years of practice.
See page 8.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) years**.

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**, 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 **six (6) months**.

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 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) ☒ **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.
- (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:**

Attachment language begins here (if any):

FACTS AND CONCLUSIONS OF LAW

Facts

1. Respondent willfully underreported his income by \$58,057 in his 1995 United States Joint Income Tax Return filed on behalf of himself and his wife.
2. Respondent fraudulently underreported his income by \$128,000 in his 1996 United States Joint Income Tax Return filed on behalf of himself and his wife. In addition, respondent fraudulently reported that his wife had a Schedule C consulting business. In truth and in fact, respondent's wife had no such business.
3. Respondent fraudulently underreported his income by \$50,345 in his 1997 United States Joint Income Tax Return filed on behalf of himself and his wife.
4. On March 18, 1999, the Internal Revenue Service ("IRS") issued a statutory notice of deficiency regarding respondent and his wife's 1995 Joint Income Tax Return based on its determination that respondent underreported his income. The IRS assessed a penalty of \$19,738.
5. On May 28, 1999, respondent, on behalf of his wife and himself, filed a petition contesting the notice of deficiency for the 1995 taxable year in the matter, *Ray W. and Marilyn S. Sowards v. Commissioner of Internal Revenue*, U.S. Tax Court Case No. 10025-99.
6. On July 26, 2000, the IRS issued a statutory notice of deficiency regarding respondent and his wife's 1996 and 1997 Joint Income Tax Returns based on its determination that respondent underreported his income in 1996 and 1997. The IRS assessed penalties of \$42,918.73 and \$16,496.67, respectively.
7. On October 30, 2000, respondent, on behalf of himself and his wife, filed a petition contesting the notice of deficiency for the 1996 and 1997 taxable years, in the matter, *Ray W. and Marilyn S. Sowards v. Commissioner of Internal Revenue*, U.S. Tax Court Case No. 11144-00.
8. On December 10, 2003, a trial was held in U.S. Tax Court Case Nos. 10025-99 and 11144-00. At trial, respondent falsely testified about his income in 1995, 1996 and 1997. Specifically, respondent falsely testified about his wife's alleged consulting business, the creation of an alleged trust and payments related to an alleged business loan.
9. On June 19, 2003, the U.S. Tax Court issued a decision wherein it determined by clear and convincing evidence that respondent fraudulently underreported his income in 1995, 1996 and 1997, which resulted in underpayments for 1996 and 1997. The Court also determined respondent's testimony at trial regarding his wife's alleged consulting business, the creation of an alleged trust and payments related to an alleged business loan to be false.

Conclusions of Law

By fraudulently underreporting income in his 1995, 1996 and 1997 Joint Income Tax Returns which resulted in underpayments for 1996 and 1997, by fraudulently reporting that his wife had a Schedule C consulting business on his 1996 Joint Income Tax Return, and by falsely testifying at trial regarding his wife's consulting business, the creation of an alleged trust and payments related to an alleged business loan, respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106 of the Business and Professions Code.

PENDING PROCEEDINGS

The disclosure date referred to on page two, paragraph A (7) was December 4, 2008.

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.

FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES

AGGRAVATING CIRCUMSTANCES

There are no aggravating circumstances in this matter.

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(i). Respondent has been in practice since June 6, 1989. He has no prior record of discipline.

Standard 1.2(e)(iv). Respondent represents that he suffered from extreme problems in his personal life which expert testimony would establish were directly responsible for the misconduct and have since been resolved. From 1994 through 1997, respondent suffered extreme family problems in relation to a dissolution of marriage. He has since recovered from these problems.

Standard 1.2(e)(v). Respondent displayed spontaneous candor and cooperation to the State Bar during the investigation.

SUPPORTING AUTHORITY

Standard 2.3 requires an actual suspension or disbarment for a respondent that has committed an act of moral turpitude.

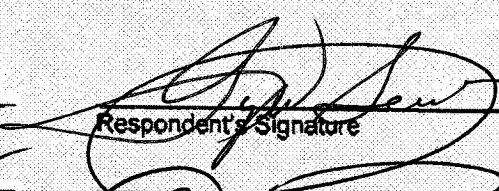


The proper level of discipline for respondent's fraudulent underreporting of income to the IRS is a period of actual suspension. (See, e.g., *In re Chira* (1986) 42 Cal.3d 904) [one year stayed suspension for a single incident of backdating documents which resulted in a conviction for tax fraud; 24 years' discipline-free practice]; *In re Chernick* (1989) 49 Cal.3d 467 [one year actual suspension for a single incident of backdating in a tax shelter scheme which resulted in a conviction for tax fraud; 20 years' discipline-free practice].) Although respondent was not convicted of tax fraud, his fraudulent underreporting of income in three separate tax returns and false testimony about his alleged income during those years evidence the commission of multiple acts of moral turpitude. Based on the foregoing, and in view of the mitigation and lack of aggravating circumstances in this matter, a six-month actual suspension is appropriate.

(Do not write above this line.)

In the Matter of Ray W. Sowards	Case number(s): 07-O-12794
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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.

12-9-09 Date	 Respondent's Signature	Ray W. Sowards Print Name
12-9-08 Date	 Respondent's Counsel Signature	Douglas B. Allen, Esq. Print Name
12/11/08 Date	 Deputy Trial Counsel's Signature	Susan I. Kagan Print Name

(Do not write above this line.)

In the Matter Of
Ray W. Sowards

Case Number(s):
07-O-12794

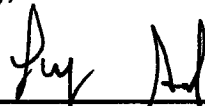
ORDER

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 9.18(a), California Rules of Court.)**

Jan. 6, 2009
Date


Judge of the State Bar Court
Lucy Armendariz

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 January 9, 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:

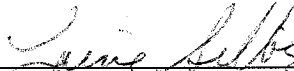
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DOUGLAS BLANCHARD ALLEN
BURNETT BURNETT & ALLEN
333 W SAN CARLOS ST 8FL
SAN JOSE, CA 95110

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

SUSAN KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 9, 2009.



Laine Silber
Case Administrator
State Bar Court