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**State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM**

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| Counsel For The State Bar Rebecca Thompson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2346 Bar # 173202 | Case Number (s) 07-O-14773 08-O-14437 11-O-10784 | (for Court's use) PUBLIC MATTER FILED <i>SP</i> JUL 09 2012 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO |
| Counsel For Respondent Jonathan I. Arons Attorney at Law 221 Main Street, Suite 740 San Francisco, CA 94105 (415) 957-1818 Bar # 111257 | Submitted to: Program Judge FIRST AMENDED STIPULATION RE FACTS AND CONCLUSIONS OF LAW | |
| In the Matter Of: ALLAN CARROLL MILES Bar # 118191 A Member of the State Bar of California (Respondent) | <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 June 13, 1985.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 10 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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 01-O-05017
 - (b) Date prior discipline effective January 10, 2003
 - (c) Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6068(m); Rules of Professional Conduct, rule 3-700(D)(2).
 - (d) Degree of prior discipline Public Reprimand
 - (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. Ms. Hunt was harmed because she did not know the status of her matter with respect to the ability to discharge her student loan debt.
- (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:

6. Between October 13, 2006 and November 22, 2006, respondent responded to Anastasio's request for a status update on her legal matter twice, the last time on November 22, 2006.
7. Between November 23, 2006 and January 1, 2007, respondent failed to respond to any of Anastasio's sixteen messages, requesting a status update.
8. On January 1, 2007, Anastasio wrote respondent a letter. The letter was sent to respondent, at respondent's official membership records address. In her letter Anastasio requested a status update by January 10, 2007. Respondent received this letter but did not provide Anastasio with a status update on her matter. Respondent did not reply in any way.

Conclusions of Law: Count One (B) (Case No. 07-O-14773)

9. By failing to respond to Anastasio's telephone calls and letters, respondent failed to respond to a client's reasonable status inquiries, in willful violation of Business and Professions Code, § 6068(m).

Statement of Facts: Count One (C) (Case No. 07-O-14773)

10. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:
 11. The allegations contained in Count One (B) are hereby incorporated by reference, as if they were set forth in full.
 12. On February 26, 2007, Anastasio wrote respondent a letter. The letter was sent to respondent, at respondent's official membership records address. In her letter Anastasio terminated respondent's services as her attorney and requested a refund of her \$750 advanced fee. Respondent received this letter, but did not provide Anastasio with a refund. Respondent did not reply in any way.
 13. On October 7, 2007, Anastasio wrote respondent a letter. The letter was sent to respondent, at respondent's official membership records address. In her letter Anastasio once again requested a refund of her \$750 advanced fee. Respondent received this letter, but did not provide Anastasio with a refund. Respondent did not reply in any way.
 14. In April 2009, respondent refunded the \$750 advanced fee to Anastasio.

Conclusions of Law: Count One (C) (Case No. 07-O-14773)

15. By failing to refund the \$750 in advanced fees to Anastasio until April 2009, respondent willfully failed to refund unearned fees in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Statement of Facts: Count One (D) (Case No. 07-O-14773)

16. Respondent wilfully violated Business and Professions Code, § 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against respondent, as follows:
 17. The allegations contained in Count One (B) and (C) are hereby incorporated by reference, as if they were set forth in full.
 18. On October 23, 2007, the State Bar opened an investigation, case no. 07-O-14773, concerning respondent's representation of Anastasio.
 19. On January 23, 2008, State Bar Investigator Francoise Jacobs wrote to respondent regarding the Anastasio matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

20. The investigator's January 23, 2008, letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Anastasio matter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

21. On February 15, 2008, State Bar Investigator Francoise Jacobs wrote to respondent regarding the Anastasio matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

22. The investigator's February 15, 2008, letter enclosed a copy of the January 23, 2008 letter, advised respondent of his obligation to cooperate in a State Bar investigation and requested that respondent respond in writing. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

Conclusions of Law: Count One (D) (Case No. 07-O-14773)

23. By not providing a written response to the allegations in the Anastasio matter or otherwise cooperating in the investigation of the Anastasio matter, respondent failed to cooperate in a disciplinary investigation, a willful violation of Business and Professions Code § 6068(i).

Case No. 11-O-10784 (Complainant: PATRICIA HUNT)

Statement of Facts: Count Two (B) (Case No. 08-O-14437)

24. Respondent wilfully violated Business and Professions Code, § 6068(m), by failing to respond promptly to reasonable status inquiries of a client, in a matter in which respondent had agreed to provide legal services, as follows:

25. On April 14, 2008, Patricia Hunt ("Hunt") hired respondent to prepare and file a personal bankruptcy action on her behalf, including an attempt to discharge her student loans. On April 14, 2008, Hunt paid respondent \$1,850 in advanced legal fees.

26. On April 23, 2008, respondent prepared and filed a Chapter 7 Bankruptcy Petition for Hunt. On April 23, 2008, respondent failed to file an adversarial proceeding to attempt to discharge Hunt's student loans. Subsequent to this date respondent never filed an adversarial proceeding on Hunt's behalf in an attempt to discharge Hunt's student loans.

27. On July 15, 2008, Hunt received her discharge of debt in the Chapter 7 Bankruptcy proceeding. The discharge did not affect her student loans. Hunt remained obligated to pay 100% of her outstanding student loans.

28. On July 22, 2008, Hunt's Chapter 7 Bankruptcy proceeding was closed.

29. Beginning in July 2008 and continuing thereafter once every two weeks Hunt would call respondent's office regarding the discharge of her student loans. Hunt left messages on respondent's voice mail asking for information about the discharge of her student loans. Respondent received these messages, but did not return the call or reply in any other way.

30. On August 28, 2008, Hunt telephoned respondent regarding her student loans. Hunt left a message on respondent's voice mail asking for information about the discharge of her student loans. Respondent received this message, but did not return the call or reply in any other way.

31. On August 30, 2008, Hunt telephoned respondent regarding her student loans. Hunt left a message with respondent's receptionist asking for information about the discharge of her student loans. The receptionist stated that respondent would return her call. Respondent received this message, but did not return the call or reply in any other way.

32. On September 8, 2008, Hunt telephoned respondent regarding her student loans. Hunt left a message with respondent's receptionist asking for information about the discharge of her student loans. The receptionist stated that respondent had stepped out, but that he would return her call. Respondent received this message, but did not return the call or reply in any other way.

Conclusions of Law: Count Two (B) (Case No. 08-O-14437)

33. By failing to respond to Hunt's telephone calls, respondent failed to respond to a client's reasonable status inquiries, in willful violation of Business and Professions Code, § 6068(m).

Statement of Facts: Count Two (C) (Case No. 08-O-14437)

34. Respondent wilfully violated Business and Professions Code, § 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against respondent, as follows:

35. The allegations contained in Count Two (B) are hereby incorporated by reference, as if they were set forth in full.

36. On November 13, 2008, the State Bar opened an investigation, case no. 08-O-14437, concerning respondent's representation of Hunt.

37. On January 15, 2009, State Bar Investigator Francoise Jacobs wrote to respondent regarding the Hunt matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

38. The investigator's January 15, 2009, letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Hunt matter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

39. On January 30, 2009, State Bar Investigator Francoise Jacobs wrote to respondent regarding the Hunt matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

40. The investigator's January 30, 2009, letter enclosed a copy of the January 15, 2009 letter, advised respondent of his obligation to cooperate in a State Bar investigation and requested that respondent respond in writing. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

Conclusions of Law: Count Two (C) (Case No. 08-O-14437)

41. By not providing a written response to the allegations in the Hunt matter or otherwise cooperating in the investigation of the Hunt matter, respondent failed to cooperate in a disciplinary investigation, a willful violation of Business and Professions Code §6068(i).

Case No. 11-O-10784 (Complainant: SANDIE PRICE)

FACTS:

42. In July, 2006, Sandie Price ("Price") hired Respondent to advise her regarding the potential filing of a bankruptcy petition on her behalf and on behalf of two companies that she owned, Mr. Pickwick's British Pub and Restaurant, Ltd. ("Mr. Pickwick's") and Alta Specialty Contracting, Inc. ("Alta").
43. Based on Price's discussions with Respondent, Price believed that Respondent would attempt to negotiate and resolve her individual debts and those of Mr. Pickwick's and Alta and, if he was unsuccessful, that he would file a bankruptcy petition on her behalf and on behalf of Mr. Pickwick and Alta.
44. There was no written fee agreement. Price paid Respondent \$6,500.00 in attorney fees. On August 10, 2007, Respondent sent Price a correspondence seeking to clarify his representation of Price.
45. Between August, 2006 and March, 2010, Price forwarded to Respondent notices from unsecured creditors regarding Price's delinquent accounts and Price inquired into the status of Respondent's negotiations to settle Price's debts. Based on Respondent's response to her inquiries, Price believed that Respondent was negotiating settlements with her unsecured creditors. Respondent did not advise Price that he would not negotiate settlements with her unsecured creditors.
46. In 2009, Respondent negotiated payment terms on behalf of Price with both the Internal Revenue Service and the Employment Development Department.
47. Respondent did not negotiate the debts with Price's unsecured creditors, including American Express and CalPly.

CONCLUSIONS OF LAW:

48. By not communicating to Price that he would not negotiate her unsecured debts, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was June 22, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 22, 2012, the prosecution costs in this matter are \$4279.00. 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.

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.

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| In the Matter of: ALLAN CARROLL MILES | Case number(s): 07-O-14773; 08-O-14437; 11-O-10784 |
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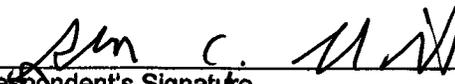
SIGNATURE OF THE PARTIES

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 Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

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| <u>July 2, 2012</u> Date | <u></u> Respondent's Signature | <u>Allan C. Miles</u> Print Name |
| <u>July 2, 2012</u> Date | <u></u> Respondent's Counsel Signature | <u>Jonathan I. Arons</u> Print Name |
| <u>July 2, 2012</u> Date | <u></u> Deputy Trial Counsel's Signature | <u>Rebecca Thompson</u> Print Name |

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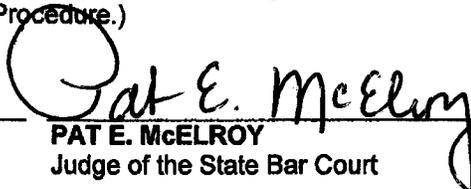
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| In the Matter of: ALLAN CARROLL MILES | Case Number(s): 07-O-14773; 08-O-14437; 11-O-10784 |
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ALTERNATIVE DISCIPLINE PROGRAM ORDER

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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date July 9, 2012 
PAT E. McELROY
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. 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 July 9, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

- by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

JONATHAN I. ARONS, ESQ.
REBECCA M. THOMPSON, ESQ.

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 9, 2012**


Laurretta Cramer
Case Administrator
State Bar Court