



ORIGINAL

(Do not write above this line.)

State Bar Court of California  
Hearing Department  
Los Angeles

<p>Counsel For The State Bar</p> <p><b>Dane C. Dauphine</b> Supervising Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015-2299 (213) 765-1293</p> <p>Bar # 121606</p>	<p>Case Number (s) 08-O-12745</p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>OCT 27 2009 <i>LOC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Erica Tabachnick, A Law Corporation</b> 900 Wilshire Blvd., #1000 Los Angeles, CA 90017 (213) 895-4640</p>	<p><b>PUBLIC MATTER</b></p>	
<p>Bar # 94324</p>		
<p>In the Matter Of: <b>GORDON DAVID HAIGH,</b></p> <p>Bar # 50686</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>PUBLIC REPROVAL</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 **January 12, 1972.**
- (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."

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- (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
  - (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.
- (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:**

**Respondent's misconduct caused some harm to the client by delaying adjudication of the appeal on his client's federal habeas corpus proceeding from 1998 to 2004 when the appeal was reinstated by new counsel. The appeal was eventually decided against the client and dismissed by the court in 2006.**

**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. **The conduct at issue occurred during the period from 1998 to 2004, but the client's family did not complain about the matter until 2008 when Respondent's memory and access to documents was more limited.**
- (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. **In 1998, Respondent began experiencing chronic fatigue, but the illness was not diagnosed. He was initially prescribed prozac for depression which was not**

**a helpful treatment for chronic fatigue and delayed proper treatment. The symptoms experienced by Respondent were mostly resolved by 2004.**

- (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:**

**Respondent has no record of discipline since his admission to the practice of law in California on January 12, 1972.**

**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 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.

- (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 reproof.
- (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 reproof.
- 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 type="checkbox"/> Financial Conditions             |

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



within the time requested. Respondent was suffering from undiagnosed chronic fatigue syndrome and was not receiving the appropriate medical treatment for that condition.

5. On June 1, 1999, the Ninth Circuit, in response to Respondent's tenth motion for an extension of time to file the opening brief, issued an order granting Respondent's motion. In the order, the Ninth Circuit specifically required that any further motion for an extension of time to file the opening brief shall be accompanied by a showing why counsel should not be sanctioned for failure to prosecute the appeal and an explanation of the steps counsel had taken to associate new counsel to assist in completing the brief.

6. On October 13, 1999, Respondent filed another motion for extension of time to November 1, 1999, to file the opening brief in the Federal Appeal. On October 25, 1999, the Ninth Circuit issued an order imposing a sanction of \$500 on Respondent for failing to meet the requirements set forth in the June 1, 1999, order regarding any further motions to extend time to file the opening brief. Further, the Ninth Circuit specifically ordered that if Respondent did not file the opening brief by November 1, 1999, the clerk was to dismiss the appeal for want of prosecution regardless of any further filings.

7. Thereafter, Respondent did not file an opening brief in the Federal Appeal. On November 9, 1999, Respondent paid the \$500 sanction to the court. On November 17, 1999, the Ninth Circuit issued an order dismissing the Federal Appeal for want of prosecution.

8. Respondent decided that further action on the Federal Appeal was not likely to be successful and he took no action to reinstate it. Respondent recalls that he visited his client in prison and informed him that he would not pursue the Federal Appeal further but that he would pursue a state habeas corpus writ instead. Respondent did not obtain a written fee agreement with Phong for a state petition.

9. During the years 2000 and 2001, Respondent had regular communication with Yen and told her that he was working on her son's case. On November 12, 2001, Respondent wrote to his client informing him that the delay in filing the habeas corpus briefs was due to an infection which his doctors had been unable to cure since May 2001.

10. On or about March 29, 2002, Respondent filed a petition for writ of habeas corpus on behalf of Phong with the Orange County Superior Court. On or about April 12, 2002, the superior court filed an order denying the petition on the grounds that the petition did not provide any explanation or justification for the extensive delay in seeking habeas corpus relief. The superior court served the order on Respondent. Respondent received a copy of the order. Respondent did not inform his client directly of the denial of the petition but believes that he informed Yen. Respondent recalls that he began work on an appeal from the denial of a writ.

11. On or about February 22, 2004, Yen wrote to Respondent to request a meeting. On or about February 27, 2004, Respondent met with Yen and discussed the fact that the state habeas corpus petition had been denied. On or about March 31, 2004, Xuan and Yen employed new counsel to represent Phong in seeking to reopen the Federal Appeal. On or about September 30, 2004, Phong's new counsel filed a motion in the Ninth Circuit to reinstate the Federal Appeal, and on October 22, 2004, the Ninth Circuit granted the motion. Following briefing, the court dismissed the appeal on November 16, 2006.

12. On or about September 30, 2004, Yen wrote to Respondent on behalf of Phong and stated that Respondent had wasted her son's time and requested that he refund the \$25,000 paid in fees to Respondent for the Federal Appeal. Respondent did not respond to the letter and believed that he had

earned the \$25,000 for representation of Phong in the Federal Appeal and in filing a state habeas corpus proceeding. Although the first \$12,500 had been earned by the successful efforts to amend the notice of appeal and obtain a Certificate of Appealability in the Federal Appeal, Respondent had not earned the remaining \$12,500 paid to pursue the Federal Appeal notwithstanding his effort to file a late State habeas corpus petition. In or about August 2009, Respondent refunded \$12,500 to the Phong's parents.

#### CONCLUSIONS OF LAW:

13. By failing to file the opening brief or take steps to associate other counsel to assist with the brief or to seek to reinstate the Federal Appeal after it was dismissed, Respondent recklessly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

14. By failing to promptly refund the \$12,500 paid in advance that was not earned when requested in September 2004, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was September 29, 2009.

#### AUTHORITIES SUPPORTING DISCIPLINE.

According to the Standards for Attorney Discipline, the appropriate sanction is reproof or suspension.

Standard 1.6(a) provides that where two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanctions imposed shall be the more or most severe of the different applicable sanctions.

Standard 2.4 (Offenses involving willful failure to communicate/ perform services): Culpability in an individual matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.10 (Offenses involving other violations not specified in other standard): Culpability for other violations not covered by a specific standard shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

In mitigation, Respondent's has no record of no prior discipline since his admission in 1972 and the substantial delay in this matter being brought to the State Bar has impacted his ability to defend in this matter. Weighing these factors with the aggravating factor that his misconduct caused substantial delay in the adjudication of the client's habeas corpus appeal in the Ninth Circuit, the lesser sanction of reproof is an appropriate sanction for the misconduct here.



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In the Matter of Gordon David Haigh, #50686	Case number(s): 08-O-12746
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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.

10/14/09  
Date

10/14/09  
Date

10/19/09  
Date

  
Respondent's Signature

  
Respondent's Counsel Signature

  
Deputy Trial Counsel's Signature

G. David Haigh  
Print Name

Erica Tabachnick  
Print Name

Dane C. Dauphine  
Print Name

(Do not write above this line.)

In the Matter Of  
Gordon David Haigh, #50686

Case Number(s):  
08-O-12745

### 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.**

10-26-09  
Date

  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 27, 2009, I deposited a true copy of the following document(s):

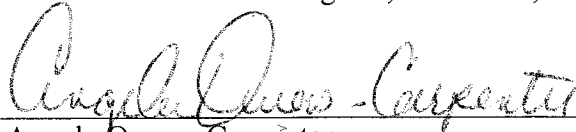
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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:  
  
ERICA TABACHNICK  
900 WILSHIRE BLVD #1000  
LOS ANGELES CA 90017
- 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:

DANE DAUPHINE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 27, 2009.

  
\_\_\_\_\_  
Angela Owens-Carpenter  
Case Administrator  
State Bar Court