

**State Bar Court of California
Hearing Department
San Francisco**

<p>Counsel For The State Bar</p> <p>Sherrie B. McLetchie 180 Howard, 7th Floor San Francisco CA 94105 (415) 538-2297</p> <p>Bar # 85447</p>	<p>Case Number (s) 08-O-13494; 08-O-13495-LMA</p>	<p>(for Court's use)</p> <p style="text-align: center;">FILED <i>SS</i></p> <p style="text-align: center;">DEC 23 2009</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> <p style="text-align: center;">PUBLIC MATTER</p>
<p>Counsel For Respondent</p> <p>Kurt W. Melchior 50 California, 34th Floor San Francisco CA 94111 (415) 398-3600</p> <p>Bar # 27677</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: Waukeen McCoy</p> <p>Bar # 168228</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 December 14, 1993.
- (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):

- 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:

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. Respondent's brother was murdered on May 4, 2007.
- (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:

D. Discipline:

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

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of 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:

3. On September 21, 2006, respondent sent a letter to the JPLRC advising that he represented Womack and stating, in part: "Mr. Womack seeks an accommodation which will prevent him from being asked or required to perform the tasks of "lashing" on the ship, placing cones on the dock, or any task which may expose him to elevated risk of contracting infectious diseases. Mr. Womack also seeks payment of back wages (calculated based on full-time pay) due him dating from March 2005...it would be appropriate to settle this matter in its entirety...for the sum of \$500,000. . . I will calendar this matter for one week."

4. Thereafter, respondent never spoke to Womack, never met with Womack, and never corresponded with Womack during respondent's representation of Womack.

5. On October 12, 2006, counsel for the PMA faxed a letter to respondent ("PMA letter"). In the PMA letter, counsel for the PMA advised that Womack's request for accommodations had already been granted, as follows: 1) Womack's request for a waiver from performing all lashing work and dock work was accommodated on October 27, 2004; and 2) Womack's request to only perform semi-tractor work was granted on or about May 3, 2005. The October 12, 2006 letter further advised: "Both waivers appear to cover the 'accommodation' described in your September 21 letter. If Mr. Womack believes he needs anything else, he should submit a Request for Reasonable Accommodation to the JPLRC. Any request should specify what tasks, if any, related to semi-tractor work may expose him to elevated risk of contracting infectious diseases." The PMA letter further stated that "Mr. McCoy [sic] is not entitled to any 'back pay,' and \$500,000 far exceeds any reasonable approximation of what he could have earned since any time in 2005, if he had gone to the Dispatch Hall and sought work within his waivers. His half-a-million dollar demand is rejected."

6. Respondent's office received the PMA letter on October 12, 2006, but respondent failed to respond to it.

7. Respondent's brother was murdered May 7, 2007.

8. From June 2007 through October 2007, Womack began calling respondent's office and leaving messages requesting an update on the status of his matter. Respondent received Womack's messages, but failed to personally respond to him. Womack received a telephone reply from a junior attorney in respondent's office advising Womack about some action the office was about to undertake,

but no such action was ever taken. However, Womack was never informed of the contents of the PMA letter by respondent or any lawyer in respondent's office.

9. On October 9, 2007, respondent sent a letter to Womack withdrawing from representation and enclosing a copy of Womack's client file.

10. On October 7, 2008, respondent refunded the \$7,500 fee to Womack.

Conclusion of Law

By failing to inform Womack that the PMA rejected respondent's demand as set forth in the PMA letter, and by failing to advise Womack about the next steps to take as set forth in the PMA letter, respondent wilfully failed to inform a client of significant developments in a matter in which respondent had agreed to provide legal services. By failing to respond to Womack's requests for an update on the status of his matter from June 2007 through October 2007, respondent failed to respond promptly to reasonable status inquiries of a client.

AUTHORITIES SUPPORTING DISCIPLINE.

Subdivision (b) of Standard 2.4 of the Standards for Attorney Sanctions for Professional Misconduct provides in pertinent part that: "Culpability of a member of wilfully failing to . . . communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client."

In *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716, the attorney's failure to communicate with two clients and failure to relinquish their files promptly resulted in a stayed suspension. Kopinski had no prior discipline in five years of practice. Here, respondent's failure to communicate involved one client, and has had no prior discipline over the almost 13 years prior to the misconduct in this matter. Thus, respondent's misconduct warrants a less severe degree of discipline than Kopinski's

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.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(6), was December 7, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS

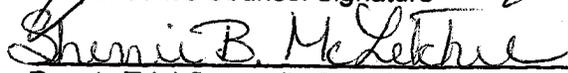
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 11, 2009, the costs in this matter are \$6,975.15. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

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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.

<u>12/15/09</u> Date	 Respondent's Signature	<u>Waukeen McCoy</u> Print Name
<u>12/15/09</u> Date	 Respondent's Counsel Signature	<u>Kurt W. Melchior</u> Print Name
<u>12-15-09</u> Date	 Deputy Trial Counsel's Signature	<u>Sherrie B. McLetchie</u> Print Name

(Do not write above this line.)

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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.)**

Dec. 23, 2009
Date

Pat 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 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 December 23, 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:

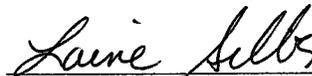
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KURT W. MELCHIOR
NOSSAMAN LLP
50 CALIFORNIA ST 34TH FL
SAN FRANCISCO, CA 94111

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

SHERRIE MCLETCHE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 23, 2009.



Laine Silber
Case Administrator
State Bar Court