

State Bar Court of California
Hearing Department
San Francisco



Counsel For The State Bar Donald R. Steedman Supervising Trial Counsel 180 Howard Street San Francisco, CA 94105 Bar # 104927	Case Number (s) 08-O-13720, 09-O-12716, 10-O-09343	(for Court's use) PUBLIC MATTER FILED NOV 18 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent David W. Washington 1741 Verna Test Court Stockton, CA 95206 Bar # 146292	Submitted to: Assigned Judge	
In the Matter Of: David W. Washington Bar # 146292 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <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 12, 1990.
- (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 11 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. Respondent has suffered physical ailments, including but not limited to strokes that occurred in 2008---at or about the time of instant misconduct.
- (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:

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 reproval.
- (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 reproval.
- ☐ No MPRE recommended. Reason: .
- (11) ☒ The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

Within six months of the imposition of discipline, respondent must satisfy all sanction orders in the matter of Steven Jackson v. City of Menlo Park and must provide satisfactory proof thereof to the Office of Probation.

Attachment language (if any):

SUPPORTING AUTHORITY

Discipline is being imposed for three separate matters, which amply support the imposition of a public reproof (see Standard 2.4(b), 2.6(b), Standards for Attorney Sanctions).

DISCLOSURE OF PENDING INVESTIGATIONS:

The date of disclosure mentioned in Part A(7) of the stipulation was November 2, 2010.

STATEMENT OF FACTS AND CONCLUSIONS OF LAW

COUNT ONE

Case No. 08-O-13720

Rules of Professional Conduct, rule 3-110(A)

[Failure to Perform with Competence]

Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

Beginning in or about 2003 and continuing at all times mentioned thereafter, respondent represented Christine McCollough Davis, Brent Davis, and the Estate of Mark Edward Davis in a wrongful death case called Christine McCollough Davis et al. v. County of San Joaquin, case number CV 020812. According to the complaint, the county jail failed to properly care for Mark Edward Davis when he was incarcerated following an arrest, leading to Davis's suicide. Respondents' clients were the decedent's mother (named Christine McCollough) and the decedent's son (named Brent Davis).

On or about October 30, 2007, the opposing party served and filed a motion for summary judgment. The pleading provided respondent with notice that the motion would be heard on January 17, 2008. Respondent received the motion shortly after it was served. The response was due on or about January 3, 2008.

On or about January 3, 2008, respondent requested a two week extension of time to respond to the motion. On January 4, 2008, opposing counsel notified respondent by voicemail that he was not adverse to the extension of time, but that he expected respondent to notify the court concerning the delay and circulate appropriate paper work allowing for the new hearing date. Respondent received this voicemail. Thereafter, respondent did not contact the court about the delay, and he did not circulate a stipulation for continuance of the motion hearing (as he had done to continue a hearing the previous year). However, on January 7, 2008, opposing counsel told the court's research attorney about the offer he had made in his January 4, 2008 voicemail.

Respondent never filed an opposition to the summary judgment motion.

Shortly before January 17, 2008, the court issued a tentative ruling granting the motion. Pursuant to the procedures applicable in that court, respondent was required to request a hearing if he wished to contest the tentative ruling. Respondent did not do so.

On or about January 17, 2008, even though respondent had not requested that the matter be heard, opposing counsel appeared at the hearing. Respondent did not appear. At that time, the court granted the motion to dismiss and awarded costs to the opposing party.

On or about March 8, 2008, opposing counsel served respondent with notice of the order and a memorandum of costs in the amount of \$5,669.37.

Respondent never took any steps to set aside the dismissal or the cost award.

By failing to file a response to the motion for summary judgment, failing to notify the court about the two-week extension to file a response to the motion, failing to request a hearing on the motion, failing to appear at the hearing on the motion, and failing to take any steps to set aside the dismissal or the cost award, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence.

COUNT TWO

Case No. 08-O-13720

Business and Professions Code, section 6068(m)

[Failure to Inform Client of Significant Development]

Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

The allegations contained in Count One are hereby incorporated by this reference.

Respondent failed to inform either Christine McCollough Davis or Brent Davis of the following significant developments in the legal matter:

That the motion for summary judgment had been filed;
That respondent had failed to file an opposition to the motion;
That the tentative ruling had been issued granting the dismissal;
That respondent had failed to request a hearing on the motion following the tentative ruling;
That the motion had been heard and that respondent had failed to appear;
That respondent had received notice of the judgment or dismissal and the cost award; and
That respondent was taking no steps to set aside the dismissal and the cost award.

The clients did not learn about the dismissal until on or about May 22, 2008. On that date, the decedent's brother visited the courthouse, reviewed the court file and thereby learned about the dismissal.

By failing to advise his clients of the above-mentioned significant developments, respondent failed to keep a client reasonably informed of significant developments in a matter in which he had agreed to provide legal services.

COUNT THREE

Case No. 08-O-13720

Rules of Professional Conduct, rule 3-700(D)(1)

[Failure to Release File]

Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(1), by failing to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, as follows:

The allegations contained in Counts One and Two are hereby incorporated by this reference.

In a conversation that occurred on or about May 22, 2008, Joseph Davis asked respondent to return the client files and papers. As respondent was aware, Joseph Washington was the decedent's brother and was authorized by Christine McCollough Davis and Brent Davis to make that request.

Respondent failed to release the client file until in or about November 2008, when he caused it to be delivered to Joseph Washington.

By failing to release the client file until November 2008, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property.

COUNT FOUR

Case No. 09-O-12716

Rules of Professional Conduct, rule 3-110(A)

[Failure to Perform with Competence]

Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

On or about February 7, 2006, Denise Bennett employed respondent to represent her in a real estate matter, i.e., to obtain compensation or other relief for Bennett arising out her sale of her half interest in a piece of real property.

Respondent did not file the lawsuit until on or about August 1, 2007 (Denise Bennett, Sonya Alexander v. Debbie Sorrel et al., case no. RG07338558, Alameda County Superior Court). Thereafter, respondent failed to perform competent legal services in the following ways:

(1) Respondent failed to timely and properly serve the named defendants with the summons and complaint and failed to timely file proofs of service;

(2) Respondent failed to file timely case management statements for conferences of December 8, 2007, April 15, 2008, November 10, 2008, January 13, 2009, and March 2, 2009 as required by the court's orders;

(3) Respondent failed to appear at the May 28, 2008 and January 13, 2009 case management conferences even though he had advance notice of them;

(4) Respondent failed to actively pursue the matter;

After a second demurrer was sustained, respondent failed to file a timely second amended complaint.

As a result of these incompetent actions and inactions: (1) by orders filed September 17, 2008, the case was dismissed as to defendants Interfirst Escrow Inc. Budget Finance Company, Debbie A. Sara (erroneously sued as Debbie Sorrel); and (2) by order entered in the court minutes on March 2, 2009, the remainder of the case was dismissed.

By failing to perform competent legal services as stated above, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence.

COUNT FIVE

Case number 10-O-9343

Business and Professions Code section 6103

[Violation of Court Order]

On or about February 19, 2009, March 19, 2009, April 29, 2009, and June 24, 2009, the Superior Court of San Mateo County ordered respondent to pay sanctions in the amounts of \$500, \$250, \$750, and \$750, respectively. These orders arose out of a case that respondent was handling on behalf of a client (Steven Jackson v. City of Menlo Park, case number CIV477108).

Respondent received prompt notice of the sanction orders, and the orders have remained in full force and effect at all times after they were issued.

To date, respondent has not satisfied the sanction orders.

By failing to pay the sanction orders, respondent willfully violated an order of the court requiring him to do an act connected with or the course of his profession, which he ought in good faith to do. Respondent thereby violated Business and Professions Code section 6103.

In the Matter of
David W. Washington

Case number(s):
08-O-13720

A Member of the State Bar

Law Office Management Conditions

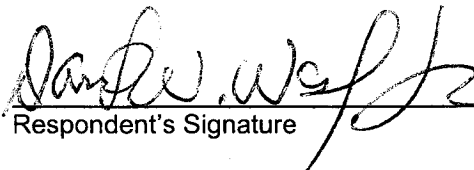
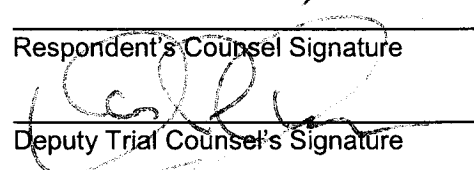
- a. ☒ Within ~~three~~ **six** months/ ~~years~~ of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☐ Within days/ months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

(Do not write above this line.)

In the Matter of David W. Washington	Case number(s): 08-O-13720
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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>10/12/2010</u> Date	 Respondent's Signature	<u>David W. Washington</u> Print Name
<u>11/15/2010</u> Date	 Respondent's Counsel Signature	<u>Donald R. Steedman</u> Print Name
	<u>Deputy Trial Counsel's Signature</u>	<u>Print Name</u>

(Do not write above this line.)

In the Matter Of
David W. Washington

Case Number(s):
08-O-13720

ORDER

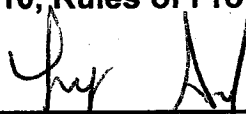
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ 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.

Nov. 18, 2010
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 November 18, 2010, 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:

DAVID W. WASHINGTON
1741 VERNA TEST CT
STOCKTON, CA 95206

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

DONALD STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 18, 2010.



Laine Silber
Case Administrator
State Bar Court