

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

Counsel For The State Bar Robin Brune, Esq. Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 Bar # 149481	Case Number (s) 08-O-14126	(for Court's use) PUBLIC MATTER FILED AUG 25 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Clarence Livingston, Jr. One Kaiser Plaza, #2300 Oakland, California 94612 Bar # 85773		
In the Matter Of: Clarence Livingston Bar # 85773 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <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 **May 31, 1979**.
- (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.
☐ costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
- (b) ☐ Date prior discipline effective
- (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
- (d) ☐ Degree of prior discipline
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below 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. **see attachment.**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **See attachment.**
- (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

D. Discipline:

- (1) ☒ **Stayed Suspension:**
 - (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ 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.
- (3) ☒ 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.
- (4) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(Do not write above this line.)

- (7) ☒ 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 State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☐ 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.
- (9) ☐ 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:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☐ **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Clarence Livingston

CASE NUMBER(S): ET AL. 08-O-14126

FACTS AND CONCLUSIONS OF LAW.

On March, 2005 Carrie McGehee hired respondent to represent her in a personal injury action for an injury which occurred in October, 2004. Respondent and McGehee agreed to a contingency fee. McGehee paid no initial fee. On December 9, 2005, respondent filed a Petition for Relief from Requirements to File a Government Claim and supporting documents, on behalf of McGehee, entitled *McGeehee vs. City and County of San Francisco, case no. CPF05-505903*.¹ In his pleadings, respondent sought relief from having to file within the statutory appropriate Government Tort Claims Act, Government Code Section 946.6.

Respondent failed to pay the appropriate court fees for his initial petition. On January 9, 2006, the Court issued an order notifying respondent of a \$28.70 shortfall and ordered respondent to reimburse the amount within twenty days or prior to trial or other hearing date, whichever is earlier. The Court served respondent with notice of the order and respondent received the order regarding the \$28.70 shortfall. Respondent failed to timely reimburse the \$28.70. On January 31, 2006, due to respondent's failure to submit the appropriate fees, the Court voided the original Motion filed by respondent on behalf of McGeehee. On February 14, 2006, the Court granted respondent's request and authorized respondent to file suit. On March 6, 2006, the Court issued an Order Vacating Ruling, stating that the January 31, 2006 order striking the original motion stood, and that the Court's February 14, 2006 Order is vacated. The Court served respondent with the Orders and respondent received the Orders.

On March 16, 2006, respondent filed a petition for relief from the Court's January 31, 2006 order. On June 7, 2006, the Court granted respondent relief and reinstated the February 14, 2006 order which ordered that he could file a late government claim.

Thereafter, respondent again failed to timely file suit. Pursuant to Government Code section 946.6(f), respondent was obligated to file suit within thirty days from June 7, 2006, the date that the February 14, 2006 order was reinstated. On October 25, 2006, respondent filed his first complaint in the McGehee matter, *Carrie McGeehee v City and County of San Francisco, case no. CGC06-457307*. On January 5, 2007, respondent filed an amended complaint in the *McGehee* matter. On August 21, 2007, respondent first served his first amended complaint on the defendants.

On September 13, 2007, the defendant City and County of San Francisco filed a demurrer to respondent's complaint, based upon respondent's untimely filing of the complaint. On September 13, 2007, the defendants served respondent via United States Mail, postage pre-paid. Respondent received the pleadings. Respondent failed to timely file a response to the demurrer. Respondent did not serve an opposition until October 3, 2007. On October 11, 2007, the Court granted the demurrer to the first amended complaint. On December 10, 2007, respondent filed an appeal to the Court's October 11, 2007

¹ Respondent misspelled the client's name in the court proceedings.

order. Respondent failed to designate the record on appeal. On December 26, 2007, the Superior Court of California, Appeals Division, issued a Notice Re: Default, notifying respondent that he had failed to designate the record on appeal. The Court duly served respondent with the Notice Re: Default. Respondent received the Notice Re: Default. Respondent failed to seek relief from his failure to timely designate the record on appeal. On January 18, 2008, the Court of Appeal, First Appellate District, dismissed respondent's appeal, case no. A120241.

Respondent did not communicate with his client for three years, from March, 2004 through December, 2007. Respondent did not advise his client of his petition to file a late claim, the dismissal of the petition due to his failure to pay the filing fees; his motion to reinstate the claim, and his resultant failure to file a timely complaint, and his failure to timely respond to the demurrer. Respondent did not advise his client of his failure to designate the record on appeal and the resulting dismissal of the appeal.

On May 30, 2007, respondent entered into an Alternative in Lieu of Discipline (hereinafter, "ALD") with the State Bar, in case no. 05-O-03303. The terms of the ALD were for one year from the date it is executed by all parties. All parties executed the ALD by June 2, 2006. The term therefore ran from June 2, 2006 through June 2, 2007. One of the terms of the ALD was as follows: that during the effective period of this agreement, respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California.

Conclusions of Law.

1. By failing to initially file a timely complaint within the government tort claims act; by failing to file the appropriate filing fees on the Petition to File a Late Claim; by failing to file the complaint in a timely fashion after he obtained relief in March, 2006; by failing to timely file a response to the demurrer, and by failing to designate the record on appeal, resulting in the dismissal of the appeal, respondent failed to perform, in willful violation of Rules of Professional Conduct, rule 3-110(A).
2. By failing to advise the client of the aforementioned matters, respondent failed to keep his client reasonably informed in a matter in which he agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).
3. By committing the misconduct as set forth in this Stipulation, respondent failed to abide by the terms of his ALD, in willful violation of Business and Professions Code, section 6068(l).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was July 21, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 16, 2009, the prosecution costs in this matter are \$2,103.00. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Case law for abandonments demonstrate a range of discipline from stayed suspension through actual suspension. In *Stuart v. State Bar* (1985) 40 Cal. 3d. 838, the attorney failed to answer defense interrogatories in one client matter, resulting in the dismissal of his client's case, and he received thirty days of actual suspension. Stuart had a prior private reproof. Furthermore, Stuart failed to cooperate with the client's follow-up counsel, failing to tell either the client or the counsel that the case had been dismissed.

In *Franklin v. State Bar* (1986) 41 Cal.3d. 700, the attorney abandoned two matters, resulting in a 45 day actual suspension.

In *Aguiluz*, the attorney was representing the clients in a Department of Social Services action to revoke the license for their residential care home. He obtained one continuance due to the fact that his son was murdered. Thereafter, the hearing was again postponed, the attorney left on some travels, and the court found his further inaction on the case was tantamount to a withdrawal. The Court imposed a stayed suspension. The Court took into account the attorney's emotional mitigation. In *the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

In *Harris*, the attorney neglected a personal injury matter for over four years, and the client died during the pendency of the action. Harris received a ninety day actual suspension. *Harris v. State Bar* (1990) 51 Cal. 3d.1082.

In *Wren*, the attorney had 22 years with no prior discipline. He nonetheless misrepresented to the client that his matter was proceeding when in fact the case had never been filed. He received two years stayed suspension and forty-five days of actual suspension. *Wren v. State Bar* (1983) 34 Cal.3d. 81.

Here, respondent's conduct differs from the above noted cases in that he did take action on the client's matter, although he repeatedly missed deadlines, resulting in the dismissal of the case, and then he did abandon the appeal.

AGGRAVATING CIRCUMSTANCES.

Standard 1.2(iv) significant harm

PRIOR DISCIPLINE.

Respondent has no prior discipline and was admitted in 1979.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

The client in this matter lost her cause of action on a personal injury claim due to respondent's malfeasance.

MITIGATING CIRCUMSTANCES.

Standard 1.2 (v) candor and cooperation

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Respondent has been cooperative in reaching a stipulation in this matter.

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.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

In the Matter of
Clarence Livingston

Case number(s):
08-O-14126

A Member of the State Bar

Law Office Management Conditions

- a. ☒ Within **90** days/ 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.

Respondent's 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 your misconduct in the current proceeding, including timely responses to pleadings and calendaring and making court appearances.

Respondent must obtain professional oversight/assistance with the preparation of his plan by **Rita DeAngelis, Law Office Management, 870 Market Street, Suite 782, San Francisco, California 94102. (415) 794 3328.**

(Do not write above this line.)

In the Matter of Clarence Livingston	Case number(s): 08-O-14126
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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.

7-29-09
Date

Rob Brune
Respondent's Signature

ROBIN BRUNE
Print Name

8/3/09
Date

Rob Brune
Respondent's Counsel Signature
Deputy Trial Counsel's Signature

CLARENCE LIVINGSTON
Print Name

(Do not write above this line.)

In the Matter Of Clarence Livingston	Case Number(s): 08-O-14126
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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.)**

Date

August 25, 2009

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 August 25, 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:

CLARENCE LIVINGSTON, JR.
LAW OFC CLARENCE LIVINGSTON JR
1 KAISER PLZ #2300
OAKLAND, CA 94612

- ☐ 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:

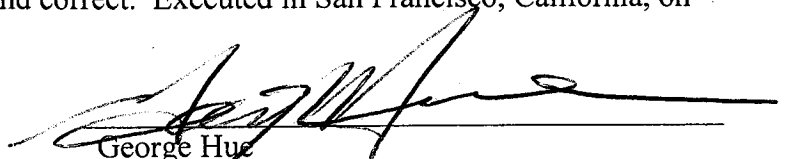
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ 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:

Robin Brune, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 25, 2009.


George Hue
Case Administrator
State Bar Court