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State Bar Court of California
Hearing Department
San Francisco

Counsel For The State Bar Wonder J. Liang Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 (415) 538-2372 Bar # 184357	Case Number (s) 08-O-14535-LMA	(for Court's use) <p align="center">PUBLIC MATTER</p> <p align="center">FILED</p> <p align="center">SEP 08 2009</p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
In Pro Per Respondent Burton C. Allyn, IV Johns & Allyn, A.P.C. 1010 B Street, Suite 350 San Rafael, California 94901 (415) 459-5223 Bar # 96273	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Burton C. Allyn IV Bar # 96273 A Member of the State Bar of California (Respondent)		

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 23, 1980**.
- (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. **Respondent has no prior record of discipline since his admission into the State Bar on December 23, 1980.**
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

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 (1) 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 reprobation.
- (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 reprobation.
- ☐ 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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Burton C. Allyn IV, SBN 96273

CASE NUMBER(S): ET AL. 08-O-14535

FACTS AND CONCLUSIONS OF LAW.

Facts: Count One: Case Number 08-O-14535

1. On or about September 21, 2007, client Scott K. Wilder (hereinafter "Wilder") retained respondent for legal services concerning Wilder's claim against the prior owner of his real property, located at 204 B Cazneau Avenue, Sausalito, California. Wilder claimed that the prior owner had added on two rooms and a bathroom without proper construction or proper permits. Wilder was seeking reimbursement from the seller for non-disclosure of potentially unsafe modifications.
2. On or about September 30, 2007, Wilder executed respondent's Attorney-Client fee agreement for the representation, agreeing to an hourly rate of \$250. Wilder did not provide an initial advanced fee, as this was not required by the terms of the Attorney-Client fee agreement.
3. On or about September 2007, Wilder provided respondent with approximately fifty pages of documents related to his legal claim. Wilder provided respondent with some original, irreplaceable photographs of the home prior to, and after, the construction completed by the prior owner, that was at issue in the legal dispute. Wilder originally obtained these photos from the contractor. Wilder also provided respondent with the papers related to his purchase of the home, including engineering reports and inspections.
4. Respondent and Wilder met several times in September 2007 regarding the case. On September 22, 2007, respondent met with Wilder and a contractor that Wilder retained to complete repairs on the home.
5. After September 2007, respondent did not respond to Wilder's inquiries.
6. On or about December 17, 2007, Wilder terminated respondent's services due to his inaction on the case.

Conclusions of Law: Count One: Case Number 08-O-14535

By failing to take action on Wilder's case between October 1, 2007 and December 17, 2007, respondent recklessly failed to perform, in violation of Rules of Professional Conduct, rule 3-110(A).

Facts: Count Two: Case Number: 08-O-14535

7. The allegations of Count One are hereby incorporated by reference.

8. On or about December 17, 2007, Wilder sent respondent an email, to respondent's email address of skip@johnsandallyn.com . Respondent received Wilder's December 17, 2007 email and was aware of its contents.

9. In his December 17, 2007 email, Wilder terminated respondent's services and requested the return of his papers. He stated, "Can you take the documents I sent you and please pop them in the mail to me and send them asap to: Wilder 204 B Cazneau Avenue, Sausalito, California 94965."

10. Respondent failed to send Wilder his documents, in response to Wilder's December 17, 2007 email. Respondent did not respond at all to the email.

11. On or about January 8, 2008, Wilder sent a second email to respondent at skip@johnsandallyn.com. Respondent received Wilder's January 8, 2008 email and was aware of its contents.

12. In his January 8, 2008 email, Wilder again requested the return of his original documents. He stated, "Please mail any documents you have relating to my situation asap."

13. Respondent failed to send Wilder his documents, in response to Wilder's January 8, 2008 email. Respondent did not respond at all to the email.

14. In or about July 2008, Wilder telephoned respondent's law office and asked for the return of his documents. In or about July 2008, Respondent returned Wilder's documents, photographs, and papers by Federal Express.

Conclusions of Law: Count Two: Case Number: 08-O-14535

By failing to return Wilder's documents, photographs, and papers from on or about December 17, 2008, until July 2008, a period of approximately seven months, respondent recklessly failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in violation of the Rules of Professional Conduct, rule 3-700(D)(1).

Facts: Count Three: Case Number: 08-O-14535

15. The allegations of Counts One and Two are hereby incorporated by reference.

16. On or about December 17, 2008, State Bar Investigator Syed Majid (hereinafter "Investigator Majid") sent a letter via United States mail, first class, postage pre-paid, to respondent at 101 B Street, Suite 350, San Rafael, California 94901, which is respondent's official membership records address, maintained by the State Bar pursuant to Business & Professions Code § 6002.1. In his December 17, 2007 letter, Investigator Majid advised respondent of Wilder's State Bar complaint, and requested that respondent respond to the investigation.

17. Respondent received Investigator Majid's December 17, 2008 letter and was aware of its contents. Respondent did not respond to the December 17, 2008 letter or otherwise respond to the State Bar investigation of this matter.

18. On or about January 2, 2009, Investigator Majid sent a second letter via United States mail, first class, postage pre-paid, to respondent at 101 B Street, Suite 350, San Rafael, California 94901,

which is respondent's official membership records address, maintained by the State Bar pursuant to Business & Professions Code § 6002.1. In his January 8, 2008 letter, Investigator Majid again advised respondent of Wilder's State Bar complaint, and requested that respondent respond to the investigation.

19. Respondent received Investigator Majid's January 2, 2009 letter and was aware of its contents. Respondent did not respond to the January 2, 2009 letter or otherwise respond to the State Bar investigation of this matter.

Conclusions of Law: Count Three: Case Number: 08-O-14535

By failing to respond to Investigator Majid's letters of December 17, 2008 and January 2, 2009, and by otherwise failing to respond to the State Bar investigation of the Wilder complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business & Professions Code § 6068(i).

PENDING PROCEEDINGS.

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

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 6, 2009, the prosecution costs in this matter are \$2,296.00. 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.

Standard 1.6(1) provides, in part, that if 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 sanction imposed shall be the more or most severe of the different applicable sanctions.

Standard 2.4(b) provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or 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.

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

(Do not write above this line.)

In the Matter of Burton C. Allyn, IV SBN 96273	Case number(s): 08-O-14535
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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>8/18/2009</u> Date	<u>Burton C. Allyn, IV</u> Respondent's Signature	<u>Burton C. Allyn, IV</u> Print Name
<u>8/24/09</u> Date	<u>[Signature]</u> Respondent's Counsel Signature	<u>N/A</u> Print Name
	<u>[Signature]</u> Deputy Trial Counsel's Signature	<u>Wonder J. Liang</u> Print Name

(Do not write above this line.)

In the Matter Of Burton C. Allyn IV SBN 96273	Case Number(s): 08-O-14535
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ORDER

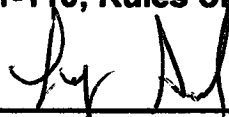
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ 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 reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Aug 31, 2009
Date


Judge of the State Bar Court
Lucy Armen 2012

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 September 8, 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:

BURTON CHARLES ALLYN IV
JOHNS & ALLYN
1010 B ST #350
SAN RAFAEL, CA 94901 - 2919

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

WONDER LIANG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 8, 2009.



Laine Silber
Case Administrator
State Bar Court