

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

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Counsel For The State Bar

**Tammy M. Albertsen-Murray**  
180 Howard Street  
San Francisco, CA 94105  
(415) 538-2527

Bar # **154248**

In Pro Per Respondent

**Burton C. Allyn, IV.**  
1010 'B' Street, #350  
San Rafael, CA 94901  
(415) 459-5223

Bar # **96273**

In the Matter Of:  
**BURTON CHARLES ALLYN, IV.**

Bar # **96273**

A Member of the State Bar of California  
(Respondent)

Case Number (s)  
**10-H-00399-LMA**

(for Court's use)

**PUBLIC MATTER**

**FILED** *R*

JUL 14 2010

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

Submitted to: **Settlement Judge**

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

**STAYED SUSPENSION; NO ACTUAL SUSPENSION**

☐ 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 **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 **8** 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."

- (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 **08-O-14535**
- (b) ☒ Date prior discipline effective **September 28, 2009**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 3-110(A) and rule 3-700(D)(1); Business and Professions Code section 6068(i).**
- (d) ☒ Degree of prior discipline **Public reproof**
- (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.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

**Respondent stipulated to the imposition of discipline, thus relieving the State Bar and State Bar Court of the expense of further proceedings.**

**Respondent suffered serious physical injuries in January, 2010. He has since recovered from his injuries, but was away from work and his office for approximately seven (7) weeks in and around January and February, 2010 - a period which was encompassed by probationary compliance deadlines. Respondent's physical injuries did not, however, prevent his compliance.**

## D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **six (6) months**.

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 **one (1) year**, 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.

(Do not write above this line.)

- (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.
- (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 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:**
- Respondent has previously been ordered to take and pass the MPRE and Ethics school in conjunction with case number 08-O-14535. If respondent takes and passes the MPRE and Ethics School within the time allowed in case number 08-O-14535, such successful passages will satisfy the same requirements in this Stipulation; he need not repeat either the MPRE or Ethics School. However, if he fails to timely comply with the MPRE and Ethics School requirements in case number 08-O-14535, then respondent must take and pass both the MPRE and Ethics School within the time set forth in the instant Stipulation.**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:           BURTON C. ALLYN, IV

CASE NUMBER:               10-H-00399-LMA

Respondent pleads nolo contendere to the following facts and violations. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified herein.

**FACTS AND CONCLUSIONS OF LAW.**

**Facts.**

On August 18, 2009, respondent signed a stipulation in case number 08-O-14535 in which he agreed to receive a public reproof and promised to comply with conditions attached to the reproof for a period of one year. The conditions attached to the reproof were specified in the stipulation that respondent signed.

On August 31, 2009, the State Bar Court of California issued an order imposing a reproof upon respondent in case number 08-O-14535. Pursuant to California Rule of Court 9.19, the State Bar Court order required respondent to comply with the stipulated conditions attached to the reproof. The Court found that the stipulation "... protects the public and that the interests of Respondent will be served by any conditions attached to the reproof..."

On September 8, 2009, the stipulation and order were filed with the State Bar Court Clerk's office. Soon after September 8, 2009, respondent received notice of the reproof order and reproof conditions and had actual knowledge thereof. The reproof order and reproof conditions became effective on or about September 28, 2009 and have remained in full force at all times thereafter.

One of the conditions of the reproof required respondent to contact and meet with the Office of Probation within thirty (30) days from the effective date of the discipline. Respondent violated this condition because, during the thirty day period beginning on or about September 28, 2009, he both failed to contact the Office of Probation to schedule the meeting and failed to participate in such a meeting. To date, respondent has neither scheduled nor participated in the required meeting.

One of the conditions of the reproof required respondent to submit reports to the Office of Probation on a quarterly basis and in those reports, to state whether he had complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent was also required, in addition to the quarterly reports, to submit to the Office of Probation a final report, containing the same information, 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. Respondent violated this condition because he failed to timely submit the report due on or before January 10, 2010 to the Office of Probation. Respondent has since submitted his January 2010 report.

**Conclusion of Law.**

By failing to comply with the conditions attached to the public reproof, respondent violated Rules of Professional Conduct, rule 1-110(A).

## **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(6), was June 15, 2010.

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 15, 2010, 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.**

Standards for Attorney Discipline, standards 1.7(a) and 2.9;

*In the Matter of Gorman* (Rev. Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567 [Attorney in *Gorman* received 30 days actual suspension for misconduct associated with probation conditions, including failing to timely make restitution payments. Respondent in the instant case had less severe misconduct, in that the instant respondent was not untimely in restitution payments, but rather has misconduct focused on untimely filing of quarterly reports.]

(Do not write above this line.)

In the Matter of <b>BURTON C. ALLYN, IV.</b>	Case number(s): <b>10-H-00399-LMA</b>
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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>6/22/2010</u> Date	<u>Burton C. Allyn, IV.</u> Respondent's Signature	<u>Burton C. Allyn, IV.</u> Print Name
<u>6/29/2010</u> Date	<u>[Signature]</u> Respondent's Counsel Signature	<u>Tammy M. Albertsen-Murray</u> Print Name
	<u>[Signature]</u> Deputy Trial Counsel's Signature	

(Do not write above this line.)

In the Matter Of  BURTON C. ALLYN, IV	Case Number(s):  10-H-00399-LMA
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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.

1. On page 5 of the stipulation, the "X" in the box next to paragraph E.(7) is deleted, and an "X" is inserted in the box stating "No Ethics School recommended. Reason:". In addition, the following language is inserted after the word "Reason:" Respondent has already been ordered to attend the State Bar Ethics School in State Bar Court Case No. 08-O-14535.

2. On page 5 of the stipulation, the "X" in the box next to paragraph F.(1) is deleted, and an "X" is inserted in the box stating "No MPRE recommended. Reason:". In addition, the following language is inserted after the word "Reason:" Respondent has already been ordered to take and pass the MPRE in State Bar Court Case No. 08-O-14535.

3. On page 5 of the stipulation, the "X" in the box next to paragraph F.(2) is deleted, and the paragraph listed under "Other Conditions:" is deleted.

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

July 13, 2010

PATRICE E. 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 July 14, 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:

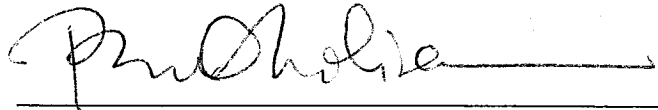
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**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:

**TAMMY A. ALBERTSEN-MURRAY**, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 14, 2010.



Bernadette C.O. Molina  
Case Administrator  
State Bar Court