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State Bar Court of California Hearing Department Los Angeles REPROVAL		
<p>Counsel For The State Bar</p> <p>Meredith A. McKittrick 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1204</p> <p>Bar # 234484</p>	<p>Case Number(s): 12-O-14388</p>	<p>For Court use only</p> <div style="text-align: center;"> <p>FILED</p> <p>JAN 15 2013</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>
<p>In Pro Per Respondent</p> <p>Roger J. Plasse 16152 Beach Blvd. #250 Huntington Beach, CA 92647</p> <p>Bar # 231797</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Roger J. Plasse</p> <p>Bar # 231797</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted July 7, 2004.
- (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."

(Effective January 1, 2011)

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- (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 are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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."

(Effective January 1, 2011)

Reproof

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- (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. See Attachment page 7.
- (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. See Attachment page 7.
- (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.

(Effective January 1, 2011)

Reproval

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- (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:

See Attachment page 7.

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 Reproof:

- (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

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less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproof.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproof.
- No MPRE recommended. Reason: .
- (11) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Roger J. Plasse

CASE NUMBER(S): 12-O-14388

FACTS AND CONCLUSIONS OF LAW.

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.

Case No. 12-O-14388 (Complainant: Dave Van Houten, Jr.)

FACTS:

1. On August 13, 2008, Dave Van Houten, Jr. ("Van Houten") employed Respondent, and paid Respondent \$2,000.00 in advanced fees, for the purpose of preparing and filing a motion to reduce Van Houten's felony convictions to misdemeanors pursuant to Penal Code section 17(b) and for the purpose of preparing and filing a motion for expungement of Van Houten's felony convictions pursuant to Penal Code section 1203.4.
2. Between August 13, 2008, and May 6, 2012, Respondent failed to file a motion to reduce Van Houten's felony convictions to misdemeanors pursuant to Penal Code section 17(b), and failed to file a motion for expungement of Van Houten's felony convictions pursuant to Penal Code section 1203.4.
3. In December 2009, Respondent refunded Van Houten \$500.00 of the advanced fees that had been paid to Respondent by Van Houten.
4. On May 6, 2012, Van Houten sent Respondent a letter requesting the return of his file and terminating the attorney client relationship. Respondent received the May 6, 2012 letter.
5. On May 11, 2012, Van Houten sent Respondent a second letter requesting the return of his file and terminating the attorney client relationship. Respondent received the May 11, 2012 letter.
6. On May 30, 2012, Respondent returned Van Houten's file and refunded Van Houten \$1,500.00, the remainder of the advanced fees that had been paid to Respondent by Van Houten.
7. Between in or about July 2010, and May 2012, Van Houten called, visited, or e-mailed Respondent's office multiple times. On each of these occasions Van Houten left messages for Respondent inquiring into the status of his case. Respondent received these messages.
8. Respondent did not contact Van Houten in response to these messages, although he sent one e-mail on September 27, 2010, not in response to any recent inquiry by Van Houten, in which Respondent provided some information about the status of Van Houten's matter.

9. On June 20, 2011, Van Houten sent an e-mail to Respondent in which Van Houten inquired into the status of his case. Respondent received the June 20, 2011 e-mail from Van Houten.

10. Respondent did not respond to the June 20, 2011 e-mail from Van Houten.

CONCLUSIONS OF LAW:

11. By failing to file the motions to reduce and expunge from August 13, 2008, until May 6, 2012, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

12. By failing to promptly respond to Van Houten's messages, calls and e-mails inquiring into the status of his case, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple/Pattern of Misconduct: Respondent's current misconduct involves both the failure to prepare and file the motions for which he was hired for a period of nearly four years, and the failure to respond to his client's reasonable status inquiries. Respondent has engaged in multiple acts of misconduct.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has no prior record of discipline.

Additional Mitigating Circumstances: Respondent has entered into a stipulation before a Notice of Disciplinary Charges has been filed thereby saving the time and resources of the State Bar Court, and is receiving slight mitigation for doing so. (See *In the matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr 151,156; *In the Matter of Johnson* (Review Dept. 2000) 4.Cal. State Bar Ct. Rptr. 179, 190; see also *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney

misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 2.4(b) provides that the resulting level of discipline in a matter where culpability is found for willfully failing to perform services not amounting to a pattern of misconduct, or willfully failing to communicate with a client, shall range from reproof to suspension. The level of discipline in such a matter is dependent on the extent of the misconduct, and the degree of harm to the client.

In *Van Sloten v. State Bar* (1989) 48 Cal. 3d 921, the California Supreme Court ordered a six-month stayed suspension and a one-year probationary period for Van Sloten's failure to perform in a single client matter. (*Id.* at p. 933-934.) Van Sloten was hired in June 1982 to represent his client in a marital dissolution matter. Between June 1982 and October 1982, Van Sloten made efforts to obtain an uncontested dissolution for his client. After October 1982, Van Sloten made no further efforts on behalf of his client. Van Sloten informed his client he would take no further action on her matter without the cooperation of the other party, and that she would be required to obtain another attorney. From October 1982 to October 1983 the client repeatedly attempted to learn the status of her matter from Van Sloten. Van Sloten communicated with his client once or twice more, after that Van Sloten failed to respond to the client's communications. The client eventually abandoned any attempts to contact Van Sloten after October 1983, and hired another attorney, eventually obtaining a dissolution in 1985. (*Id.* at p. 926-927.) In aggravation, the Court considered Van Sloten's failure to appear before the review department as a reflection of his attitude toward the disciplinary process. (*Id.* at p. 933.)

In the instant case, the nature of Respondent's misconduct is similar to that in *Van Sloten*, suggesting a similar level of discipline may be appropriate. While the *Van Sloten* decision was silent as to mitigation, Respondent here is entitled to some credit in mitigation in that he has no prior record of discipline and is entering into a stipulation before the filing of a Notice of Disciplinary Charges. Finally, unlike Van Sloten, Respondent here is participating in the disciplinary process. In light of the nature of Respondent's misconduct here, as well as the presence of both factors in mitigation and the single factor in aggravation, the appropriate discipline in this matter is a public reproof.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was December 20, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 20, 2012, the prosecution costs in this matter are \$2,865.00. 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.

EXCLUSION FROM MCLE CREDIT

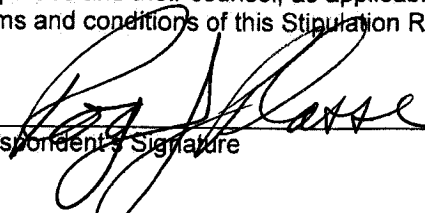
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and / or any other educational course(s) to be ordered as a condition of reproof. (Rules Proc. of State Bar, rule 3201.)

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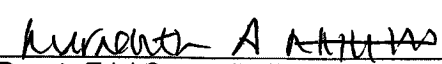
In the Matter of: Roger J. Plasse	Case number(s): 12-O-14388
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SIGNATURE OF THE PARTIES

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 Facts, Conclusions of Law, and Disposition.

12/21/2012  Roger J. Plasse
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name

December 21, 2012  Meredith A. McKittrick
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: Roger J. Plasse	Case Number(s): 12-O-14388
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REPROVAL 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.


1. Numbered paragraph 11 under Conclusions of Law on page 7 is modified to add at the end of the sentence: "in willful violation of Rules of Professional Conduct, rule 3-110(A)."
2. Numbered paragraph 12 under Conclusions of Law on page 7 is modified to add at the end of the sentence: "in willful violation of Business and Professions Code section 6068, subdivision (m)."

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 5.58(E) & (F), 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.

Date

1-7-13


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 Los Angeles, on January 15, 2013, 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:

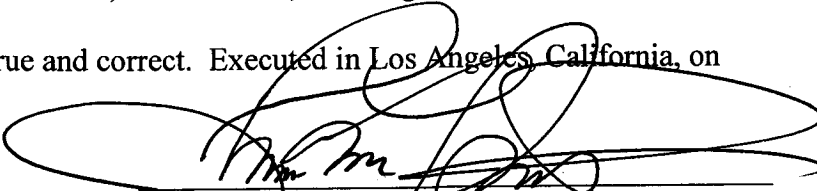
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ROGER J. PLASSE
LAW OFC JEFFREY T OSBORN
16152 BEACH BLVD #250
HUNTINGTON BEACH, CA 92647

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

Meredith A. McKittrick, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 15, 2013.



Johnnie Lee Smith
Case Administrator
State Bar Court