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State Bar Court of California Hearing Department Los Angeles REPROVAL		
Counsel For The State Bar Timothy G. Byer Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1325 Bar # 172472	Case Number(s): 12-O-16873-DFM, 12-O-17550	For Court use only PUBLIC MATTER FILED SEP 06 2013  STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent James P. Stoneman II 100 West Foothill Blvd. Claremont, CA 91711 (909) 621-4987 Bar # 94523	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: JAMES PATRICK STONEMAN II Bar # 94523 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 16, 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 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."

(Effective January 1, 2011)



- (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

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- (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. See Attachment, page 8, "Aggravating Circumstances"
- (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

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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:

No prior discipline, pretrial stipulation, family/emotional problems. see page 8.

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of one year.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent

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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:

9. At the time Respondent constructively withdrew from Fonches's employment, he had earned no portion of her advanced fee. Respondent provided Fonches a complete refund on July 18, 2013.

10. On October 24, 2012, and again on November 8, 2012, a State Bar investigator sent letters to Respondent, both of which he received, in which the investigator requested a written response by Respondent to the allegations of misconduct by Fonches, by November 7, 2012, and November 20, 2012, respectively. Respondent did not respond to either letter, in writing or otherwise.

CONCLUSIONS OF LAW:

11. By not responding to Fonches's numerous emails, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

12. By performing no legal services of any value to Fonches in connection with her claims against the County of Riverside, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

13. By constructively withdrawing from Fonches's employment without taking steps to avoid reasonably foreseeable prejudice to her, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

14. By not providing Fonches a refund of her advanced fee, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

15. By not responding to the State Bar investigator's letters, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code section 6068(i).

Case No. 12-O-17550 (Complainant: Anthony Vieyra)

FACTS:

16. On December 10, 2012, and again on December 28, 2012, a State Bar investigator sent letters to Respondent, both of which he received, in which the investigator requested a written response by Respondent to allegations of misconduct made by Respondent's client, Anthony Vieyra, by December 28, 2012, and January 11, 2013, respectively. Respondent did not respond to either letter, in writing or otherwise.

CONCLUSIONS OF LAW:

17. By not responding to the State Bar investigator's letters, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code section 6068(i).

FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple Acts (Std. 1.2(b)(ii)): Respondent failed to perform for Fonches, repeatedly failed to communicate with her, abandoned her employment, and failed to promptly refund her unearned advanced fees. In addition, Respondent failed to cooperate with the State Bar's investigation of Fonches's and Vieyra's allegations of misconduct. Respondent's multiple acts of misconduct are an aggravating circumstance.

ADDITIONAL FACTS RE ADDITIONAL MITIGATING CIRCUMSTANCES.

No Prior Disciplinary Record: Although the misconduct is serious, Respondent has no record of prior discipline in the nearly 33 years since his admission. The Review Department and Supreme Court have found respondents entitled to mitigation where the present misconduct was clearly serious. (See, e.g. *In the Matter of Riordan* (Review 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 12.) (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn.13.)

Pre-trial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.) The weight of this mitigating factor must be tempered given Respondent's failure to cooperate in the State Bar's investigation, despite that his failure to cooperate was explained to some degree by the health emergency concerning his wife, as described below.

Family Problems/Emotional Difficulties: Beginning in November 2012 and until late January 2013, Respondent's wife suffered sudden and intense abdominal pain which an MRI result led her physician to describe as a "mass located near the pancreas" which the physician could not rule out as malignant. Respondent accompanied his wife to many hospital and doctor appointments, during which time he and his wife were preparing to deal with the prospect of her demise. It was during this period that Respondent received the State Bar investigator's letters but did not respond to them. Family problems are a mitigating factor. (See *Sugarman v. State Bar* (1990) 51 Cal.3d 609, 619.)

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 2.6 is the most severe standard applicable to Respondent's misconduct, applies to violations of Business and Professions Code section 6068, and calls for a range of discipline from suspension to disbarment. Standard 2.4(b), however, is more specific and more applicable to Respondent's violation of 6068(m), which provides that the appropriate level of discipline for "wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct ... or ... 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."

During his representation of Fonches, Respondent committed multiple violations of the Rules of Professional Conduct and the State Bar Act: he failed to perform on her behalf in violation of rule 3-110(A), he failed to communicate with her in violation of section 6068(m), he abandoned her representation in violation of rule 3-700(A)(2), and he failed to promptly refund her unearned advanced fee in violation of rule 3-700(D)(2). In both the Fonches and Vieyra matters, Respondent failed to cooperate with the State Bar's investigations, in violation of section 6068(i).

Respondent's failure to perform was a failure to complete a particular task on Fonches's behalf only two months into his representation of her, and his failure to communicate was for approximately five weeks. Respondent's abandonment of her representation is found in his withdrawal from her matter after she had filed a State Bar complaint less than three months after she employed him. There was no irreparable harm to Fonches, since she retains the option of challenging her employment classification. And, although it not a mitigating factor, it is important to the analysis to note that Respondent provided Fonches with a complete refund, albeit after the initiation of these proceedings. (See *Doyle v. State Bar* (1982) 32 Cal.3d 12, 24.)

Although it does not excuse the misconduct, Respondent's failure to cooperate with the State Bar's investigations is mitigated by the fact that, concurrent with the unanswered letters from the State Bar investigator, Respondent's wife was misdiagnosed with potential pancreatic cancer, which diverted his attention, time and energy. Respondent also has no prior discipline in his nearly 33 years of practice, a significant and compelling mitigating factor which suggests that the misconduct addressed here is aberrational. Moreover, his willingness to enter into this stipulation indicates a recognition of wrongdoing and further supports the conclusion that his misconduct is aberrational.

The applicable standard (Std. 2.6) for Respondent's failure to cooperate calls for "suspension to disbarment." Standard 1.6(b)(ii) permits deviation from Std. 2.6 and the imposition of a lesser degree of sanction where, as here, the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a lesser degree of sanction is imposed. Given the mitigating factors applicable to Respondent's failure to cooperate, as well as the mitigating and other factors underlying the other misconduct, it is appropriate under the circumstances to deviate from the requirements of Standard 2.6. A public reproof under these facts serves the purposes of attorney discipline.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
12-O-16873	4	Rule 4-100(B)(3)
12-O-17550	7	Rule 3-110(A)
12-O-17550	8	Section 6106
12-O-17550	9	Section 6068(m)
12-O-17550	10	Rule 3-700(A)(2)
12-O-17550	11	Rule 4-100(B)(3)
12-O-17550	12	Rule 3-700(D)(2)

COSTS OF DISCIPLINARY PROCEEDINGS.


Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 30, 2013, the prosecution costs in this matter are approximately \$5,308. 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.

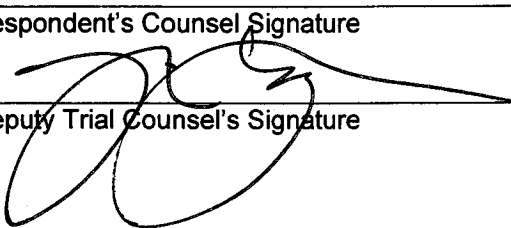
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In the Matter of: JAMES PATRICK STONEMAN II	Case number(s): 12-O-16873, 12-O-17550
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SIGNATURE OF THE PARTIES

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.

9.3.13  James P. Stoneman II
Date Respondent's Signature Print Name

9.3.13  Timothy G. Byer
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: JAMES PATRICK STONEMAN II	Case Number(s): 12-O-16873-DFM, 12-O-17550
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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 reapproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

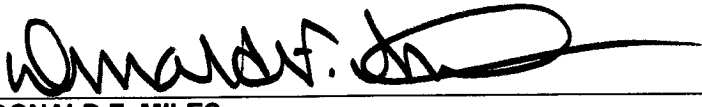
- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

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

9/5/13

Date



DONALD F. MILES
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 September 6, 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:

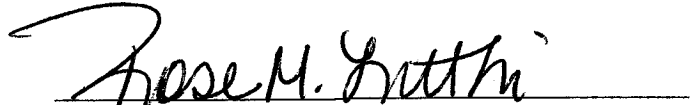
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES PATRICK STONEMAN, II
100 W FOOTHILL BLVD
CLAREMONT, CA 91711

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 6, 2013.



Rose M. Luthi
Case Administrator
State Bar Court