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State Bar Court of California Hearing Department Los Angeles REPROVAL		
<p>Counsel For The State Bar</p> <p>Lee Ann Kern Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 (213) 765-1272</p> <p>Bar # 156623</p>	<p>Case Number(s): 12-O-17048</p>	<p>For Court use only</p> <p style="text-align: center;">FILED</p> <p style="text-align: center;">OCT 24 2013 <i>MC</i></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>David Cameron Carr Law Office of David Cameron Carr 525 B Street, Suite 1500 San Diego, California 92101 (619) 696-0526</p> <p>Bar # 124510</p>	PUBLIC MATTER	
<p>In the Matter of: RICHARD D. HUFFMAN II</p> <p>Bar # 157740</p> <p>A Member of the State Bar of California (Respondent)</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>	

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 March 6, 1992.
- (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 10 pages, not including the order.



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- (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 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: The three billing cycles immediately following the effective date of the Supreme Court's order in this matter. (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:

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- (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. See Stipulation Attachment at p. 7.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct. See Stipulation Attachment at p. 7.
- (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.

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- (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. See Stipulation Attachment at p. 7.
- (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 Stipulation Attachment at p. 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 Reproval:

- (1) Respondent must comply with the conditions attached to the reproval for a period of one year.
- (2) During the condition period attached to the reproval, 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.

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- (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 reprobation. 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 reprobation 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:

Substance Abuse Conditions

Law Office Management Conditions

Medical Conditions

Financial Conditions

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: RICHARD D. HUFFMAN II

CASE NUMBER: 12-O-17048

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-17048 (Complainant: Jeff Burleson)

FACTS:

1. In December 2011, Jeffrey Burleson ("Burleson") hired a group of attorneys who were in process of creating a law firm to appeal his criminal conviction. The written fee agreement provided for a \$3,500 fee. Burleson paid a total of \$1,000. Respondent, who was a member of the ostensible law firm, was the attorney responsible for the representation. Burleson's sentencing was scheduled for February 28, 2012. The deadline for filing a notice of appeal was 60 days from February 28, 2012, or by April 28, 2012.

2. Between December 23, 2011 and February 28, 2012, Respondent received the transcripts of the preliminary hearing at which Burleson testified, reviewed the court file, and spoke with Burleson's trial counsel. On the basis of Respondent's evaluation of those documents and conversations, including Burleson's account of the incident, Respondent concluded that, in his professional judgment, there was no basis on which to appeal Burleson's conviction.

3. On February 28, 2012, Burleson, who was represented at his sentencing by his trial counsel, was sentenced to work furlough. Respondent attended the sentencing and spoke with Burleson at the courthouse. Respondent informed Burleson that, in his professional opinion, there was no valid basis on which to appeal Burleson's conviction.

4. On March 3, 2012, Respondent exchanged email with Burleson. Burleson asked Respondent to obtain the complete trial transcripts. Respondent informed Burleson again that an appeal was a "bad idea," but said that he would send someone to the courthouse to obtain the transcripts. Since Respondent continued to believe there was no basis on which to appeal the conviction, Respondent did not obtain the trial transcripts and did not inform Burleson that he did not obtain the trial transcripts.

5. On March 12, 2012, Burleson began work furlough. On March 23, 2012, Respondent ended his business relationship with the other attorneys in the ostensible law firm but did not inform Burleson. Burleson considered his attorney-client relationship with Respondent to have concluded in early to mid-April 2012.

6. On July 24, 2012, two months after Burleson completed his sentence, Burleson sent an email to Respondent in which Burleson asked whether Respondent had obtained the trial transcripts.

Respondent responded to Burleson's email on that date and informed him that the transcripts would cost between \$1,000 and \$2,000 and that Burleson had not paid Respondent for the transcripts or the remainder of the legal fees. In the email, Respondent informed Burleson that he would not discuss the matter with Burleson and asked that Burleson not contact him again.

7. Beginning in July 2012, Burleson asked Respondent for his client file. Respondent did not provide Burleson with his file until mid-July 2013.

8. In late May or early June 2013, other attorneys acting on behalf of Burleson prevailed on a motion enabling him to pursue his appeal on the basis that he gave constructive notice of the appeal. Burleson's appeal has since been filed by those attorneys and it is currently pending.

CONCLUSIONS OF LAW:

9. By failing to inform Burleson that he did not obtain the trial transcripts from Burleson's criminal trial and that he had ended his professional relationship with the other attorneys in the ostensible law firm, Respondent failed to inform Burleson of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

10. By failing to provide Burleson with his client file or otherwise make the file available to him until a year after it was first requested, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of rule 3-700(D)(1), Rules of Professional Conduct.

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.2(e)(i)): Respondent has no prior record of discipline in 21 years of practice.

No Harm (Std. 1.2(e)(iii)): Burleson was not foreclosed from appealing his conviction as a result of Respondent's misconduct.

Family Problems: Beginning in 2009, Respondent's wife began to suffer from serious medical issues that are ongoing to the present day. These medical issues placed enormous financial and emotional pressure on Respondent during the time period of the misconduct, distracted Respondent from his professional obligations and thus contributed to the misconduct.

Additional Mitigating Circumstances:

Pretrial Stipulation: Respondent stipulated to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible. (*Silva-Vidor v. State Bar* (1989) 49 Cal. 3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

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.)

Respondent admits to two violations of professional misconduct arising out of the handling of a single client matter. Standard 1.6(a) requires that where a Respondent acknowledges two or more acts of misconduct and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards. Standards 2.6 and 2.10 are the standards that govern the misconduct in this matter. The most severe sanction prescribed by the applicable standards is Standard 2.6, which applies to Respondent’s violation of Business and Professions Code section 6068(m). That standard provides that culpability of a member of a violation of that Business and Professions Code section shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Notwithstanding, Business and Professions Code section 6068(m) was enacted effective January 1, 1987, one year after the adoption of standard 2.6. Prior to the enactment of Business and Professions Code section 6068(m), a violation of the attorney’s duty to communicate fell under Standard 2.4 which applies to offenses involving willful failure to communicate and perform services. Under the circumstances, it is appropriate to deviate from standard 2.6 and apply standard 2.4(b). Standard 2.4(b) provides for a sanction in the range of reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Respondent’s misconduct is limited to one client matter over a period of approximately 17 months, which includes five months of representation, December 2011 through April 2012, and the 12 months in which it took Respondent to return the client’s file. Although Respondent failed to properly communicate with Burleson, his misconduct delayed but did not bar Burleson from appealing his conviction. Respondent’s misconduct is further mitigated by his 21 years of discipline-free practice and his willingness to enter into a stipulation as to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible. There are no factors in aggravation. Considering the lack of significant harm and the mitigating factors, a public reproof is sufficient to meet the goals of discipline.

The recommended discipline is consistent with case law. In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, six months stayed suspension and one year probation was imposed when an attorney, in a single client matter, failed to perform legal services with competence which did not result in serious consequences to the client. In mitigation, Van Sloten had no prior discipline in the five years after he was admitted to practice and the date of the misconduct. In addition, the Court determined that he had an honest, but mistaken belief in his innocence. In aggravation, he failed to appreciate the seriousness of the charges against him when he failed to appear before the Review Department. A lesser sanction than that imposed in *Van Sloten* is appropriate given Respondent's compelling mitigation and the absence of aggravating circumstances surrounding his misconduct.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 18, 2013, the prosecution costs in this matter are \$3,419. 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

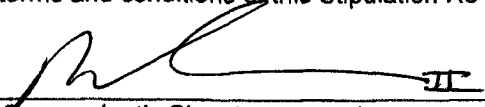
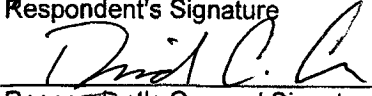

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension]. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: Richard D. Huffman II	Case number(s): 12-O-17048
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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.

<u>10/18/2013</u> Date	 Respondent's Signature	<u>Richard D. Huffman II</u> Print Name
<u>10/18/13</u> Date	 Respondent's Counsel Signature	<u>David Cameron Carr</u> Print Name
<u>10/23/13</u> Date	 Deputy Trial Counsel's Signature	<u>Lee Ann Kern</u> Print Name

(Do not write above this line.)

In the Matter of: Richard D. Huffman II	Case Number(s): 12-O-17048
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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.

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

10/24/13


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 October 24, 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:

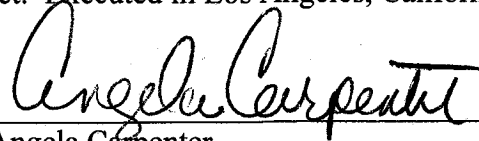
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID C. CARR
LAW OFFICE OF DAVID CAMERON CARR PLC
525 B ST STE 1500
SAN DIEGO, CA 92101

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

LEE ANN KERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 24, 2013.



Angela Carpenter
Case Administrator
State Bar Court