

ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles
REPROVAL

<p>Counsel For The State Bar</p> <p>Adriana M. Burger Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1229</p> <p>Bar # 92534</p>	<p>Case Number(s): 14-J-05674</p>	<p>For Court use only</p> <p>FILED</p> <p>NOV 05 2015 </p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Amy Lousie Butters 101 North Fort Lane Suite 104 Layton, Utah 84041 (801) 513-3328</p> <p>Bar # 212072</p>	<p>Submitted to: Assigned 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: Amy Lousie Butters</p> <p>Bar # 212072</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 **December 29, 2000**.
- (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.



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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: (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (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) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. Please see attachment, page 8.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur. **Please see attachment, pages 8-9.**
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.

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- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial Stipulation: Please see attachment, page 9.

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 year**.

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- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the 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: **Respondent resides in another jurisdiction. A comparable alternative to Ethics School is provided in Section (F) below.**
- (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:

(Effective July 1, 2015)

Reproof

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Substance Abuse Conditions

Law Office Management Conditions

Medical Conditions

Financial Conditions

F. Other Conditions Negotiated by the Parties:

Other Probation Conditions.

As a further condition of probation, because respondent resides out of state, respondent must either 1.) attend a session of State Bar Ethics School, pass the test given at the end of that session and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of discipline herein; or 2.) complete six (6) hours of live, in person, or live-online-webinar Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in Utah or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of discipline.

7. Between June 11, 2012, and June 15, 2012, the client telephoned respondent's office and sent several text messages to respondent, in order to obtain a status report on the client's case. The client left phone messages for respondent to contact the client regarding the status of her case. Respondent received the text messages and phone messages, but did not reply to the client.

8. On June 15, 2012, in the early morning, the client sent an email to respondent, stating that she was terminating respondent because she was dissatisfied with respondent and wanted a refund of the \$3,000 in attorney fees. Respondent received the email.

9. On June 22, 2012, respondent filed an answer, on behalf of the client, in the client's marital dissolution matter.

10. On July 6, 2012, a new attorney substituted in as counsel for the client in the client's marital dissolution matter.

11. At no time did respondent provide the client with an accounting of the advanced fees of \$3,000 paid to respondent on May 25, 2012.

12. In August 2012, the Utah Office of Professional Conduct requested that respondent provide a written response to the client's allegations of misconduct against respondent in the client's marital dissolution matter. Respondent did not respond or provide a written response as requested.

13. The client subsequently filed a lawsuit against respondent in Small Claims Court for return of her fees. After the hearing, the Small Claims Court found that respondent owed the former client a refund of \$1,400. Respondent paid the \$1,400 to the client and received a satisfaction of judgment dated April 29, 2015.

CONCLUSIONS OF LAW:

14. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Utah warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed multiple acts of misconduct including, failure to render accounts of client funds, failure to cooperate in a State Bar investigation, failure to promptly respond to reasonable status inquiries of clients, and failure to return unearned fees. These multiple acts of misconduct constitute an aggravating factor.

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Respondent has been in practice since December 29, 2000, approximately 14 years. Respondent was in practice for 11 years prior to the misconduct in this matter. Respondent has no prior record of discipline. Given respondent's past history of many years in practice with no prior discipline, it would appear that respondent's misconduct is aberrational and not likely to occur again in the future. In the case entitled *Hawes v. State Bar* (1990) 51 Cal.3d 587, Hawes was

entitled to receive significant mitigation after Hawes had been practicing for over 10 years without any prior discipline. Respondent's 11 years of discipline-free practice prior to the present misconduct entitles respondent to significant mitigation.

Prefiling Stipulation: By entering into this disciplinary stipulation, respondent is entitled to some mitigating credit, for saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigating credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521). However, this mitigation would be tempered by respondent's failure to cooperate in the investigation of the Utah disciplinary matter.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, respondent's misconduct in the other jurisdiction demonstrates a violation of California Rules of Professional conduct, rule 4-100(B)(3) [failure to render accounts of client funds]; California Business and Professions Code section 6068(i) [failure to cooperate in the State Bar investigation]; California Business and Professions Code section 6068(m) [failure to promptly respond to reasonable status inquiries of clients]; and, California Rules of Professional Conduct rule 3-700(D)(2) [failure to return unearned fees to the client upon termination].

Standard 1.7(a) provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. In this reciprocal jurisdiction matter, respondent committed four violations. Standard 2.2(b), the most severe sanction, applies to respondent's violation of Rules of Professional Conduct Rule 4-100(B)(3), failing to provide the client with an accounting of the client's funds. Standard 2.2(b) states that suspension or reproof is the presumed sanction.

Respondent has committed multiple acts of wrongdoing in this matter by failing to respond promptly to reasonable status inquiries of the client, failing to provide an accounting of the client's advanced fees after the respondent had been terminated, failing to return unearned fees to the client upon termination, and failing to cooperate in the Utah disciplinary investigation of the matter.

Respondent is entitled to receive significant mitigation for her 11 years of discipline free practice prior to the present misconduct (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596). Respondent has saved the State Bar considerable resources by stipulating to the misconduct. Respondent also acknowledges her misconduct by entering into this stipulation. Considering respondent's prior blemish free years of practice, it would appear that this misconduct was aberrational, and unlikely to be repeated in the future. Given all these factors, the lower range of discipline provided in Standard 2.2(b), a public reproof, is the most appropriate sanction for respondent's misconduct.

Case law also supports the imposition of a low level range of discipline in this matter. In a case involving more serious misconduct than the misconduct engaged in by respondent, *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the court recommended that the attorney receive a six-month stayed suspension, in one client matter, after he failed to perform competently, failed to obey two Supreme Court orders, and failed to report judicial sanctions. Riordan committed multiple acts of misconduct and harmed the administration of justice. Riordan was afforded mitigation for his 17-year discipline-free career, cooperation, and nominal good character. Here, respondent's misconduct also involves one client matter. But, in this matter, respondent's misconduct is limited in time and much less serious than the misconduct in *Riordan*. Accordingly, a lesser discipline than the six-month stayed suspension is appropriate in this matter.

Based upon the facts and circumstances surrounding respondent's misconduct the Standards and case law, a public reproof with conditions, will adequately protect the public and preserve the integrity of the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 25, 2015, the prosecution costs in this matter are \$3,066.00. 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 or suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: Amy Louise Butters	Case No. 14-J-05674
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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.

10/27/15 *Amy A Butters* Amy Louise Butters
Date Respondent's Signature Print Name

10/28/15 *Adriana Burger* Adriana Burger
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: Amy Lousie Butters	Case Number(s): 14-J-05674
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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 reprovial, 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 reprovial may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

November 3, 2015
Date


Judge of the State Bar Court
Yvette D. Roland

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 November 5, 2015, 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:

AMY L. BUTTERS
BUTTERS LAW, P.C.
PO BOX 150830
OGDEN, UT 84415

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

Adriana Margaret Burger, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 5, 2015.



Angela Carpenter
Case Administrator
State Bar Court