

(Do not write above this line.)

- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [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 95-0-10817/13304
- (b) Date prior discipline effective August 24, 1996
- (c) Rules of Professional Conduct/State Bar Action violations Fail. to Perform/Communicate
- (d) Degree of prior discipline Public Reproval
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (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 the victims of his/her misconduct or the State Bar during disciplinary investigation ~~or proceedings~~.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

(Do not write above this line.)

C. Mitigating Circumstances [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 to 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 of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs 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:

ATTACHMENT TO
ADP STIPULATION RE FACTS, CONCLUSIONS OF LAW

IN THE MATTER OF: **STEPHEN ROBERT KILSTOFTE** ("Respondent"), #79493

CASE NUMBERS: 98-O-03773; 02-O-11651; 02-O-11927; 03-O-03100;
and 04-O-11202 (Investigation matter).

Respondent waives objection to any variances between the facts and conclusions of law alleged in any Notice of Disciplinary Charges that may have been filed and the facts and conclusions of law stipulated to herein.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of the following violations:

Case No. 98-O-03773:

Facts:

On September 30, 1998, Respondent was sanctioned by the Orange County Superior Court in the amount of \$1,300.00 for filing a frivolous motion to vacate a previous order in case No. 785671. Respondent willfully failed to report this sanction to the State Bar in writing and within 30 days of the time he had knowledge its imposition.

On September 7, 1999, the Orange County Superior Court sanctioned Respondent in the amount of \$4,724.30 for opposing a motion to disqualify him as counsel in case No. 773251. Respondent willfully failed to report this sanction to the State Bar in writing and within 30 days of the time he had knowledge of its imposition.

Conclusions of Law

By failing to report the \$1300 judicial sanction of the Orange County Superior Court to the State Bar, as set forth above, Respondent wilfully violated Business and Professions Code section 6068(o)(3).

By failing to report the \$4,724.30 judicial sanction of the Orange County Superior Court to the State Bar, as set forth above, Respondent wilfully violated Business and Professions Code section 6068(o)(3).

Case No. 02-O-11651:

Facts:

In October 1999, Bryan Jackson ("Jackson") retained Respondent to represent him as the respondent in his dissolution of marriage action. A fee agreement was entered into and Jackson paid Respondent an advance of fees and costs of \$1,500.00.

A formal response was due to be filed in the action on behalf of Jackson, but Respondent did not file one. Instead Respondent worked with opposing counsel to reach a stipulation regarding the immediate issues of child support, custody and visitation. That stipulation was completed and filed with the court on or about December 7, 1999. Thereafter, Respondent and opposing counsel tried to negotiate a full settlement of all issues of the marital dissolution, but were ultimately unsuccessful.

On or about May 9, 2000, opposing counsel requested Respondent to file a formal response in the action by June 9, 2000, so that the remaining issues in the case could be litigated. Respondent did not prepare or file a response. Opposing counsel caused Jackson's default to be entered on June 22, 2000.

Respondent continued to negotiate settlement of the case with opposing counsel and to have opposing counsel stipulate to set aside the default. This opposing counsel was then substituted out of the case and in May 2001, Respondent filed a motion to set aside the default. The motion to set aside the default was granted in June 2001.

Thereafter, however, Respondent failed to take effective action to complete the dissolution or perform services on behalf of Jackson.

Between September 10 and October 19, 2001 Jackson sent three separate letters to Respondent requesting a report on the status of his case. Respondent did not respond to any of these three letters.

Jackson terminated Respondent's services and substituted new counsel for Respondent on January 3, 2002.

In April 2002 the State Bar opened an investigation pursuant to a complaint by Jackson. On May 22, 2002 and again on June 21, 2002, a State Bar investigator wrote to Respondent regarding Jackson's complaint. Both of these letters were mailed to Respondent's membership records address. Both letters requested Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar. Respondent did not respond to either of the letters.

Conclusions of Law:

By failing to file a response by the June 2000 deadline and failing to complete the dissolution after default was set aside, Respondent failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

By failing to respond to Jackson's three letters or otherwise communicate with Jackson about the status of his legal matter, Respondent failed to promptly respond to reasonable status inquiries of his client, in wilful violation of Business and Professions Code section 6068(m).

By failing to respond to the State Bar regarding the allegations of misconduct made by Jackson or otherwise communicating with the State Bar, Respondent failed to cooperate and participate in the disciplinary investigation pending against him, in wilful violation of Business and Professions Code section 6068(i).

Case No. 02-O-11927:

Facts:

Respondent was retained in March 1998, by Miles Thomas ("Thomas") to represent Thomas as plaintiff in a medical malpractice case. In May 1998, Respondent filed a suitable lawsuit on behalf of Thomas.

In preparing for trial, Respondent was unable to locate a suitable medical expert to testify that Thomas had received substandard medical care or that there was negligence in the medical care given.

Respondent contends that a surgeon who treated Thomas after the defendant doctor refused to testify on behalf of Thomas. After that, Respondent was not diligent in seeking other possible medical expert witnesses for Thomas.

Respondent contends that he then decided to go forward with the case on a *res ipsa loquitur* theory. However, Respondent did not inform Thomas of the problems there would be in proving his claim without an expert witness or of the new theory of the case.

The case was initially set for trial on August 30, 1999 but continued by the court upon request of the defendant to December 6, 1999. On December 2, 1999 upon an *ex parte* request on behalf of Thomas, executed by co-counsel Cortlen Hauge, trial was continued to February 22, 2000, based on Respondent's declaration that he had a trial conflict as he was engaged another trial. The Thomas trial was called on February 22, 2000, and the court ordered it trailed to February 24, 2000. Co-counsel C. Hauge appeared on behalf of Thomas on February 22, 2000. Nothing in the court record indicates any objection to the trailed date or further request for continuance. On February 23, 2000, Respondent requested the case be dismissed. This dismissal was without the knowledge, consent or authority of Thomas. The court granted the dismissal. Thomas appeared in the courtroom on February 24, 2000, unaware that his case had been dismissed. Thomas was told to contact his attorney.

Respondent represents that he was not able to proceed on the date of Thomas' trial because of another trial he was handling at the same time. However, Respondent provides no proof of this trial conflict and Respondent made no effort to inform the court, opposing counsel, or Thomas of this purported conflict. Instead of attempting to continue the Thomas trial, commence Respondent requested Thomas case be dismissed..

Respondent contends that he requested dismissal expecting that he would be able to immediately re-file it and that it would be re-set for trial despite the expiration of the limitations statute.

Respondent contends he re-filed the Thomas case but that it was dismissed by the court due to failure to file within the statute of limitations.

Thomas made repeated attempts to determine the status of this case after February 24, 2000. For about one and one-half years Respondent failed to fully inform Thomas of the situation and that due to the limitations statute his case would never be heard. It was not until after July 20, 2001 that Thomas found out that his case was dismissed.

In April 2002, the State Bar opened an investigation based on Thomas' complaint against Respondent. On June 6, 2002, a State Bar investigator wrote to Respondent regarding Thomas's complaint. On June 21, 2002, Respondent telephoned the investigator. In that conversation Respondent acknowledged receipt of the June 6, 2002 letter and requested an extension to June 26, 2002 to respond in writing to the investigation. However, Respondent did not respond.

Conclusions of Law:

By failing to diligently attempt to locate an expert witness and by failing to request a further continuance of the trial, Respondent failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

By failing to respond to inform Thomas that he had dismissed his case and by failing to keep Thomas reasonably informed regarding the status of his legal matter, Respondent failed to keep his client reasonably informed of significant developments in his case, in wilful violation of Business and Professions Code section 6068(m).

By failing to respond to the State Bar regarding the allegations of misconduct made by Taylor or otherwise communicating with the State Bar, Respondent failed to cooperate and participate in the disciplinary investigation pending against him, in wilful violation of Business and Professions Code section 6068(i).

Case No. 03-O-03100:

Facts:

In May 2003, John McKenna ("McKenna") retained Respondent to obtain modifications to court orders for child custody, child support and spousal support. The existing orders had been entered after default on April 11, 2003, and were based on false information submitted to the court by McKenna's ex-wife. No formal fee agreement was entered into, however, Respondent agreed to start work after receipt of a deposit of \$1,250.00, which he received by May 28, 2003.

Thereafter, Respondent had discussions with his client and opposing counsel seeking to resolve the dispute by stipulation, however, Respondent did not file any pleadings with the court and McKenna's wages were being garnished.

On July 15, 2003, McKenna sent Respondent written notice that his services were terminated and requested that Respondent refund the entire advance fee paid. Respondent had provided no services of value to for McKenna. Respondent failed to promptly refund the unearned advanced fee as McKenna requested.

On August 6, 2003, the State Bar opened an investigation based on McKenna's complaint against Respondent. On August 20, 2003 and September 8, 2003, a State Bar investigator wrote to Respondent's counsel regarding McKenna's complaint and requesting a written response. No response was received.

Conclusions of Law:

By failing to return to McKenna the 1,250.00 of advance fees he had received on May 28, 2003, but that he had not earned, Respondent committed a wilful violation of rule 3-700(D)(2).

By failing to respond to the State Bar regarding the allegations of misconduct made by McKenna, Respondent failed to cooperate and participate in the disciplinary investigation pending against him, in wilful violation of Business and Professions Code section 6068(i).

Case No. 04-O-11202 (Adrian Caraballo) – Investigation Matter:

Facts:

On June 11, 2003, Adrian Caraballo ("Caraballo") retained Respondent to represent Caraballo in his pending family law matter [Orange County Superior Court Case No. 01 D005928] and paid Respondent \$500.00 for these legal services. Respondent prepared and presented to Caraballo a Substitution of Attorney form to substitute Respondent in as Caraballo's attorney. Caraballo executed the Substitution of Attorney form and left the original, executed form with Respondent.

From June 11, 2003, to August 4, 2003, Caraballo attempted several times to contact Respondent by telephone and left messages requesting Respondent return his calls. Respondent failed to return those calls.

On August 4, 2003, Respondent returned a call to Caraballo. They discussed the status of the case. Respondent did not inform Caraballo that Respondent had not filed or served the Substitution of Attorney form, or the legal effect of not filing that form.

From August 4, 2003, to November 24, 2003, Caraballo again attempted several times to contact Respondent and left messages requesting Respondent return his calls. Respondent did return Caraballo's calls or otherwise communicate with him.

On November 24, 2003, Caraballo sent Respondent a letter by certified mail, return receipt requested, in which Caraballo requested Respondent inform him of the status of his case and provide an accounting of services rendered. Respondent never responded to these requests.

On January 21, 2004, Caraballo checked the court file in this matter and discovered that Respondent had never filed the Substitution of Attorney form nor any other pleadings.

Respondent contends that he performed some preliminary services for Caraballo such as contacting opposing counsel, however he performed no services of value to Caraballo.

Conclusions of Law:

By failing to file the Substitution of Attorney form or to prepare and file any other relevant pleadings in this matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal service with competence in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

By failing to return Caraballo's telephone calls as described above, and by failing to otherwise communicate with Caraballo regarding the status of the legal matter for which he had been hired, Respondent failed to respond promptly to reasonable inquires of his client and keep his client reasonably informed of significant developments in a matter he had agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

RESTITUTION:

McKenna:

Respondent should pay John McKenna the principal sum of \$1250 plus interest at 10% per annum from May 28, 2003. Respondent represents he paid the sum of \$1,250 to McKenna in March 2005, and if he provides satisfactory proof of that payment he should receive credit for that amount.

Caraballo:

Respondent should pay Adrian Caraballo the principal sum of \$500 plus interest at 10% per annum from June 11, 2003.

(Do not write above this line.)

In the Matter of STEPHEN R. KILSTOFTE	Case number(s): 98-0-03773, et al.
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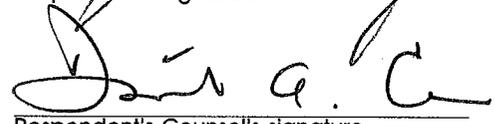
SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date	<u>1/4/06</u>		STEPHEN R. KILSTOFTE Print name
Date	<u>1/4/06</u>		DAVID A. CLARE Print name
Date	<u>1-4-06</u>		CHARLES A. MURRAY Print name

(Do not write above this line.)

In the Matter of STEPHEN R. KILSTOFTE	Case number(s): 98-0-03773, et al.
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
 - The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
 - All court dates in the Hearing Department are vacated.
1. On page 1 of the stipulation, paragraph A.(3), "10" is inserted in the space provided.
 2. On page 6 of the stipulation, last paragraph on the page, second line, "Taylor" is deleted, and in its place is inserted "Thomas."

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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

6/17/06
Date



Judge of the State Bar Court

RICHARD A. HONN

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 21, 2006, I deposited a true copy of the following document(s):

CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS;

STIPULATION RE FACTS AND CONCLUSIONS OF LAW; and,

CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM

in a sealed envelope for collection and mailing on that date as follows:

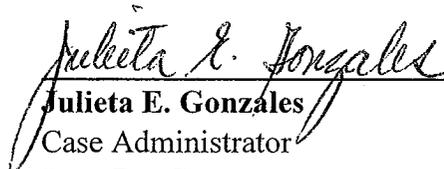
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID A CLARE ESQ
4675 MACARTHUR CT #1250
NEWPORT BEACH, CA 92660

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

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 21, 2006**.



Julieta E. Gonzales
Case Administrator
State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 8, 2008, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS and
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

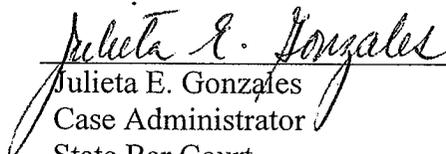
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ALAN CLARE ESQ
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

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

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 8, 2008.



Julieta E. Gonzales
Case Administrator
State Bar Court