State Bar Court of the State Bar of California
Hearing Department: ☐ Los Angeles ☒ San Francisco
PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Counsel for the State Bar	Case Number(s)	(for Court use)
Cydney Batchelor, #114637 State Bar of California 180 Howard St., #225 San Francisco, CA 94105 Tele: 415/538-2204	PUBLIC MATTER 99-O-13007 99-O-13008 00-O-14734 01-O-1890 01-O-2940	CONFIDENTIAL LODGED APR 28 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent Michael E. Wine, #58657 Attorney at Law 3218 E. Holt Ave., #100 West Covina, CA 91791 Tele: 626/858-0602	FILED JUL 3 1 2007 STATE BAR COURT CLERK'S OFFICE	
In the Matter of DAVID A. GROW Bar # 119218 A Member of the State Bar of California (Respondent)	Submitted to Pilot Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW kwiktag ® 031 977 504 ☐ PREVIOUS STIPULATION REJECTED	

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted 12/10/1985 (Date)

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.

(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." This stipulation consists of _____ pages.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts".
See attached

(5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
See attached

(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.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

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 _____

(b) ☐ Date prior discipline effective _____

(c) ☐ Rules of Professional Conduct/State Bar Action violations _____

_____

_____

(d) ☐ Degree of prior discipline _____

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.

(7) xxxx ☒ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing ~~or demonstrates a pattern of misconduct~~. See attached

(8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [standard 1.2(e)]. Facts supporting mitigating circumstances are required.

(1) xxx ☒ 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) xxx ☒ 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. See attached

(4) xxx ☒ 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. See attached

(5) xxx ☒ Restitution: Respondent paid $ _____ on _____ in restitution to _____ without the threat of force of disciplinary, civil or criminal proceedings. See attached

(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:

See attached

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

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot 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 Pilot 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.

12/28/2004 Date	Respondent's Signature	DAVID A. GROW Print Name
12/29/2004 Date	Respondent's Counsel Signature	MICHAEL E. WINE Print Name
12/30/04 Date	Deputy Trial Counsel's Signature	CYDNEY BATCHELOR Print Name

ATTACHMENT TO

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: DAVID ANDREW GROW

CASE NUMBER(S): 99-O-13007, et al.

DISMISSAL.

Case No. 01-O-1890 (Judicial Sanctions): Upon the execution of the pilot program contract by the Respondent and the State Bar Court, the State Bar respectfully requests the Court to dismiss case number 01-O-1890, in the interests of justice, without prejudice. This case arose from Respondent failing to appear at three case management conferences in Nevada County Superior Court. Respondent was sanctioned $1500.00, which he has now paid in full.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the State Bar Act and/or Rules of Professional Conduct:

Case No. 99-O-13007 (DiGiorgio)

Facts: In late 1994, Frank and Fortunate DiGiorgio ("the DiGiorgios") hired respondent on a contingency fee basis to represent them in a personal injury matter arising out of an injury to Mrs. DiGiorgio. Respondent thereafter filed a lawsuit on Ms. DiGiorgio's behalf. In late 1998, Respondent requested that the DiGiorgios remit $250.00 in order that Respondent could obtain a medical report, and they did so. Respondent did not thereafter provide any further legal services to them, nor did he respond to a letter or telephone calls from the DiGiorgio's asking about the status of their case. Respondent did make restitution to the DiGiorgio's for the money they had given him for the medical report, plus interest.

Conclusions of Law: By willfully failing to conclude the litigation as he had been employed to do, Respondent withdrew from representation without taking reasonable steps to avoid reasonably foreseeable prejudice to his client, in violation of Rule of

Professional Conduct 3-700(A)(2). By willfully failing to respond to the DiGiorgios' letter and telephone calls, Respondent failed to respond to his clients' reasonable status inquiries, in violation of Business and Professions Code section 6068(m).

Case No. 99-13008 (Lee)

Facts: In late 1994, Gary Lee hired respondent to represent him in a civil suit, Gary Lee v. Donald Lee, Sacramento County Municipal Court case number 94CO8923 ("the Lee case"), in which Gary Lee sued his brother, Donald, for the sum of $515. The parties agreed to binding judicial arbitration. In 1998, the arbitrator requested Respondent to brief the issue of attorney's fees; however, Respondent failed to do so. The arbitrator found in favor of Donald Lee, and his attorney filed a petition to confirm the award. Respondent failed to oppose the petition, and it was granted. In late 1998, Respondent wrote to Gary Lee and told him that he would look into overturning the award; however, after researching the issue, Respondent determined there was no legitimate basis for opposing the award. Respondent thereafter failed to inform Mr. Lee of his decision.

Conclusions of Law: By willfully failing to respond to Gary Lee's requests for status reports, or to inform him that he had decided not to oppose the attorney's fee motion, Respondent failed to respond to his clients' reasonable status inquiries, and also failed to inform his client of a significant matter in his case, in violation of Business and Professions Code section 6068(m).

Case No. 00-O-14734 (Valentine Matter)

Facts: In mid-1998 and mid-1999, Kimberley Valentine ("Ms. Valentine") contacted Respondent about a default judgment that had been entered against her. In August 1999, Ms. Valentine paid Respondent $1,600.00 in advanced attorney fees to file a motion to set aside the default judgment. Thereafter, Respondent failed to file the motion, or to respond to Ms. Valentine's numerous requests for information about the case. Respondent also failed to return the unearned attorney fees, until after Ms. Valentine obtained a small claims judgment against him.

Conclusions of Law: By recklessly failing to file the motion to set aside Ms. Valentine's default, Respondent failed to perform legal services competently, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to respond to Ms. Valentine's requests for information about the case, Respondent failed to respond to his client's reasonable status inquiries, in violation of Business and Professions Code section 6068(m).

Case No. 01-O-02940 (Caperton)

Facts: Beginning in or about 1992, Edward Caperton ("Mr. Caperton") employed Respondent to represent him in various criminal matters. Mr. Caperton has been and continues to remain in custody since that time. In December 1998, Mr. Caperton gave Respondent a durable power of attorney with broad powers over Caperton's real and personal property. In July 2000, Respondent hired someone to repair/maintain Mr. Caperton's house. By letter dated August 1, 2000, Respondent told Mr. Caperton that he had taken it "upon myself to fix up and rent" the house. By letter dated May 23, 2001, Mr. Caperton terminated Respondent's services, and subsequently decided to sell the house. Just before the close of escrow, in October 2001, Respondent submitted a "mechanics' lien" to the escrow company in the amount of $5066.95 for materials and labor used to repair Caperton's house, plus 10% interest per annum from July 31, 2001. The mechanics' lien, which respondent signed under penalty of perjury, recited that the "Claimant furnished the work and materials at the request of, or under contract with Edward M. Caperton." Respondent was subsequently paid out of the proceeds of the escrow. Mr. Caperton demanded an accounting; however, Respondent failed to provide it in a timely manner.

Conclusions of Law: By willfully failing to account to Mr. Caperton for the basis for the $5066.95 that was paid to him out of escrow, Respondent failed to account to his client, in violation of Rule of Professional Conduct 4-100(B)(3).

PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A.(6), was December 21, 2004.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing: Respondent has stipulated to misconduct in four client matters.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent practiced law for over ten years before any of the stipulated misconduct occurred.

Remorse: Respondent has paid the following restitution: $1500.00 to Gary Lee; $352.08 to the DiGiorgios; $1600.00 to Ms. Valentine; and $1500.00 to the Nevada County Superior Court. In addition, in the Caperton matter, although Respondent is able to substantiate at least half of the expenses underlying the mechanic's lien, he has agreed to make full restitution to his client anyway to further demonstrate his remorse.

Family problems: In 1999, the health of Respondent's father began to deteriorate, and he was in and out of the hospital every week for heart failure and breathing problems until his death in mid 2000. During this time, Respondent was the sole source of care and comfort for both his parents; Respondent continued that responsibility for his mother for some time after his father died.

Candor and Cooperation: Respondent has been completely candid and cooperative with the State Bar in the investigation and resolution of these cases.

FACTS SUPPORTING ADDITIONAL MITIGATING CIRCUMSTANCES.

Participation in State Bar Lawyer Assistance Program: In May 2002, Respondent voluntarily contacted the State Bar Lawyer Assistance Program ("LAP"), and immediately thereafter signed an application agreement to be assessed by the Lawyer's Assistance Program and fully cooperated in that assessment process. Respondent also cooperated in an evaluation by a LAP-selected mental health professional, and then met with the LAP Evaluation Committee to discuss full participation the LAP program. In September 2002, Respondent signed the participation agreement with LAP that memorialized his long-term commitment to the program. He has been in continuous compliance with LAP since his initial contact.

No further client complaints since initial contact with LAP: There have been no additional client complaints since Respondent first contacted the LAP.

Delay in Finalizing Stipulation: Through no fault of Respondent, through a lack of resources, the State Bar delayed finalizing the stipulation that would have resulted in Respondent being enrolled in the State Bar Court program for respondents with substance abuse or mental health issues in a timely manner. As a result, Respondent has already been enrolled in LAP for over two years at the time this stipulation was executed.

RESTITUTION.

Respondent waives any objection to immediate payment by the State Bar Client Security Fund upon a claim or claims for the principal amounts of restitution set forth below.

In accordance with the timetable set forth in the in the "Pilot Program Contract" to be executed between the State Bar Court and Respondent on the captioned cases, Respondent must make restitution as follows:

> Edward Caperton, or the Client Security Fund if it has paid, in the principal amount of $5066.95, plus interest at the rate of 10% per annum from November 1, 2001, until paid in full, and furnish satisfactory evidence of restitution to the State Bar Court.

ORDER

Finding this stipulation to be fair to the parties, 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.

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; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

April 28, 2005
Date

Carl McElroy
Judge of the 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. 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 San Francisco, on April 28, 2005 , I deposited a true copy of the following document(s):

DECISION RE ALTERNATIVE RECOMMENDATIONS FOR DEGREE OF DISCIPLINE

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

[X] by personal delivery as follows:

CYDNEY BATCHELOR
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

MICHAEL E. WINE
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **April 28, 2005**

George Hue
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 San Francisco, on August 1, 2007, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DAVID ANDREW GROW
845 UNIVERSITY AVE
SACRAMENTO CA 95825-6724

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

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 1, 2007**.

George Hue
Case Administrator
State Bar Court