



ORIGINAL

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State Bar Court of California Hearing Department San Francisco REPROVAL		
<p>Counsel For The State Bar</p> <p>Catherine Taylor Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2537</p> <p>Bar # 210540</p>	<p>Case Number(s): 14-O-03152-PEM</p>	<p>For Court use only</p> <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED </p> <p style="text-align: center;">AUG 12 2015</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Mogeeb Weiss Weiss Law 1151 Harbor Bay Parkway, Ste. 134 Alameda, CA 94502 (510) 581-1857</p> <p>Bar # 236087</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>	
<p>In the Matter of: MOGEEB WEISS</p> <p>Bar # 236087</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 **May 23, 2005**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective July 1, 2015)



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- (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
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".

(Do not write above this line.)

- (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. **See Attachment at p. 8.**
- (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.
- (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.
- (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.
- (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.

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- (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:

No prior discipline: see Attachment at p. 9.
Pro Bono/Community Service: see Attachment at p. 9.
Prefiling Stipulation: see Attachment at p. 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 Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **one year**.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (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 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:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

(Effective July 1, 2015)

Reprobation

temporary restraining order; ordered the trial stayed pending the Order to Show Cause hearing; and the Motion to Compel discovery was continued from October 2, 2013 to October 11, 2013. The original trial date of October 4, 2013, was vacated. All parties were present in court at the time the order was issued.

8. On October 4, 2013, plaintiffs filed their Opposition to Defendant's Order to Show Cause re: Preliminary Injunction; Temporary Restraining Order; and Motion to Consolidate.
9. On October 10, 2013, Judge Ortiz indicated a tentative ruling granting plaintiffs' Motion for Order Establishing Admission; Order to Compel Answers to Plaintiffs' Discovery; and for \$1,400.00 in Sanctions.
10. On October 11, 2013, the court heard argument regarding the tentative ruling, noted respondent's objections and overruled the objections. Judge Ortiz granted plaintiffs' Motion for Order Deeming Matters Admitted, Compelling Verified Responses to Plaintiff's Discovery Requests and for Monetary Sanctions. The court ordered "[s]anctions in the amount of \$1,400 are imposed against defendants' counsel." Defendants' Motion to Consolidate the unlawful detainer matter with defendants' ex parte application case no. 26-62555 was denied; and defendants' alternative request for preliminary injunction was denied.
11. The court's October 11, 2013 Minute Order reiterates that sanctions against respondent were imposed and specifically noted that respondent was present in court but left the courtroom before the matter was continued for court trial and did not return. The unlawful detainer trial was continued to October 25, 2013. Service of the minute order was effectuated by the court clerk and Wells.
12. On October 25, 2013, the plaintiffs and Wells appeared for trial and informed the court possession was no longer an issue. The court continued the case to November 15, 2013 for status conference and for review to allow counsel to file an amended complaint and stating "Counsel may submit an order to the Court regarding the ruling for sanctions from the 10/11/13 hearing."
13. On November 6, 2013, Wells wrote to respondent reminding him the sanctions were due by November 12, 2013. On November 7, 2013, Wells emailed respondent essentially the same information.
14. Respondent notified the State Bar of the sanctions in writing but indicated he would not pay the sanction until the matter was appealed.
15. At the status conference on November 15, 2013, the only remaining issue was respondent's failure to pay the sanctions ordered October 11, 2013. The court granted Wells' request for permission to obtain a writ of execution to enforce the court's sanction order issued October 11, 2013 against respondent. The court dismissed without prejudice the unlawful detainer because defendants had vacated the property.
16. Respondent was ordered to appear for examination on January 2, 2014, regarding the sanctions. The hearing was continued to February 7, 2014, but later taken off calendar at Wells' request when Wells wasn't able to serve respondent.
17. On April 15, 2014, the State Bar requested proof of payment or appeal.

18. On May 15, 2014, the State Bar again requested proof of payment and a response.
19. On May 19, 2014 and October 6, 2014, respondent wrote to the State Bar stating he refused to pay the sanctions.
20. On May 18, 2015, respondent paid the sanction.

CONCLUSIONS OF LAW:

21. By failing to comply with the October 11, 2013, Order for Monetary Sanctions in the amount of \$1,400 in *B. Gu, et al. vs. T. Medina, et al. 1161a*, in Napa County Superior Court case no. 13UD00213, respondent disobeyed and violated an order of the court requiring respondent to do or forbear an act connected with or the course of respondent's profession which respondent ought in good faith to do or forbear in willful violation of Business and Professions Code section 6103.

AGGRAVATING CIRCUMSTANCES.

Indifference (Std. 1.5(g)): Respondent unilaterally determined the court's sanction order to be "frivolous" but made no effort to appeal the order or pay the sanction in over 18 months (until the State Bar initiated disciplinary proceedings). (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774 [Respondents went beyond tenacity to truculence when they continued to claim in the face of overwhelming facts and legal authority that their conduct was justified which demonstrates an indifference toward rectification of or atonement for the consequences of their misconduct]).

MITIGATING CIRCUMSTANCES.

No prior discipline: Respondent has 10 years in practice without prior discipline. (*In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 [full credit in mitigation for 10 years discipline-free practice in California]).

Pro Bono/Community Service: Since 2006, respondent has provided pro-bono legal services for the members of the Bay Area Afghan Refugee Islamic Community (ARIC). The organization is a religious non-profit which provides services to the one of the largest Afghan populations outside of Afghanistan. A former client also writes in support of respondent's work on a case the client brought for fire damage to his business caused by a neighboring property owner. The client reports that respondent negotiated a settlement in 2010 and waived his fees so the client was able to keep the whole settlement amount and rebuild his business. (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737 [testimonials from clients regarding respondent's service on their behalf, in some instances on a pro bono basis, constituted mitigating evidence]).

Prefiling Stipulation: Respondent has agreed to stipulate as to facts and discipline to fully resolve this matter without necessity of a trial, thereby saving the State Bar time and resources. (*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 “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 Silverton* (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).)

Std. 2.8(a) applies to violations of Business and Professions Code §6103. Std. 2.8(a) provides: Disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member’s practice of law, the attorney’s oath, or the duties required of an attorney under Business and Professions Code section 6068(a)-(h). Here, respondent failed to obey a court order by failing to pay discovery sanctions in a single client matter.

In aggravation, respondent ignored the sanction for over 18 months and never formally appealed the sanction. It is noted that the discovery sanction against respondent was based on respondent’s misguided attempt to thwart his clients’ eviction. However, it does not excuse or mitigate his misconduct. Respondent’s misconduct is serious and directly related to the practice of law.

In mitigation, respondent has 10 years of discipline-free practice, has performed pro bono services for the community, and accepted responsibility for his actions by entering into a pre-filing stipulation and has paid the sanction.

Based on the standard, respondent’s misconduct and the mitigation, disbarment or actual suspension is not necessary. Discipline consisting of a public reproof and one year probation, to include Ethics School and MPRE, protects the courts and the integrity of the profession.

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COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 28, 2015, the prosecution costs in this matter are \$3,066. 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

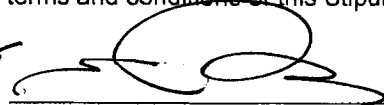
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of **State Bar Ethics School, the MPRE, and/or any other educational course(s) to be ordered as a condition of reproof or suspension.** (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: MOGEEB WEISS	Case number(s): 14-O-03152-PEM
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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.

8-6-2015  Mogeeb Weiss
Date Respondent's Signature Print Name

8-10-15  Catherine Taylor
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: MOGEEB WEISS	Case Number(s): 14-O-03152-PEM
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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

Aug. 17, 2015


LUCY ARMENDARIZ
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 San Francisco, on August 12, 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 San Francisco, California, addressed as follows:

MOGEEB WEISS
WEISS LAW PC
1151 HARBOR BAY PKWY STE 134
ALAMEDA, CA 94502

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

CATHERINE E. TAYLOR, Enforcement, San Francisco
TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 12, 2015.



Mazie Yip
Case Administrator
State Bar Court