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**State Bar Court of California
Hearing Department**

Counsel For The State Bar Mark Hartman Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2558 Bar # 114925	Case Number (s) 05-O-04144-PEM 06-O-15160-PEM (Consolidated)	(for Court's use) PUBLIC MATTER FILED  JUL 14 2008 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Phyllis J. Bryan In propria persona 468 N. Camden Drive, #200 Beverly Hills, CA 90201 Telephone: (310) 860-7401 650 Cardinal Way Reno, Nevada 89509 Telephone: (775) 323-4033 Bar # 145472	Submitted to: STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: PHYLLIS J. BRIAN Bar # 145472 A Member of the State Bar of California (Respondent)		

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 11, 1989.**
- (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 **16 pages**, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." **See pages 8 to 12.**



- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". See pages 9, 12, and 13.
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority.". See pages 14 to 15.
- (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. See page 14.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure. See page 14.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (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. See page 13.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See page 13.**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances: None.

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. **See page 13.**
- (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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

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- (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: None.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one (1) year**.
- I. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

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(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **ninety (90) days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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 period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (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 to the monitor 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 probation 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 probation conditions.
- (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. **See page 13.**
- 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) 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 |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** 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 during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions: None.**

Attachment language begins here (if any): **See pages 8 to 15.**

<p>In the Matter of</p> <p>PHYLLIS J. BRYAN, No. 145472,</p> <p>A Member of the State Bar.</p>	<p>Case Nos.: 05-O-04144-PEM 06-O-15160-PEM (Consolidated)</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p>
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DISMISSALS

The State Bar dismisses Counts Two and Four in the Notice of Disciplinary Charges filed in State Bar case number 05-O-04144.

WAIVER OF VARIANCE BETWEEN NOTICES OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notices of Disciplinary Charges filed in State Bar case numbers 05-O-04144 and 06-O-15160 (“the current cases”) and the facts and/or conclusions of law contained in this stipulation. Additionally the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of an Amended Notice of Disciplinary Charges and to a formal hearing on any charge not included in the current Notices of Disciplinary Charges.

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that she is culpable of violating the specified provisions of the State Bar Act and the Rules of Professional Conduct.

State Bar Case Number 05-O-04144

Facts

1. Respondent represented two minors and four adults in a personal injury case against Ford and Bridgestone entitled *Maria D. Elena, Felix Jose Elena, Rocio Elena, Clara Elena-Quezada, Julio Elena-Quezada, Antonio Flores v. Bridgestone/Firestone, Inc., an Ohio Corporation, Ford Motor Company, a Delaware Corporation, Budget Car Sales, an Illinois Corporation, and Does 1-100*. San Bernardino County Superior Court case number BCV06208 (“the Elena case”).

2. In 2003, the Elena case settled. Pursuant to the settlement, Ford and Bridgestone were each required to pay \$82,500 to the adults and \$5,000 to the minors.

3. Ford paid \$82,500 to the adults and nothing to the minors.

4. Bridgestone paid nothing to the adults and nothing to the minors.

5. In December 2003, respondent took attorney fees of \$64,262.50 out of the \$82,500 paid by Ford.

6. In July 2004, respondent prepared an initial preliminary accounting, which showed that she had reimbursed herself \$11,000 for unspecified costs.

7. In November 2004, respondent paid \$32,000 to the adults from her personal account.

8. In May 2005, respondent prepared a revised preliminary accounting, which showed that she had reimbursed herself \$12,302.30 for unspecified costs.

9. In March 2006, respondent filed, but did not serve, a motion to enforce the settlement agreement against Bridgestone.

10. In April 2006, she took the enforcement motion off calendar.

Conclusions of Law

11. Respondent wilfully violated rule 3-110(A) of the Rules of Professional Conduct by recklessly and repeatedly failing to perform legal services with competence insofar as she did not take timely steps to make Bridgestone pay the \$82,500 which it owes to the adults and to make both defendants pay the \$10,000 which they owe to the minors.

12. Respondent wilfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to render appropriate accounts to clients insofar as she did not itemize her costs in the initial and revised preliminary accountings.

State Bar Case Number 06-O-15160

Facts

1. Respondent represented Shea Elder ("Elder") in a case against Dr. Lawrence Reich entitled *Shea Elder vs. Laurence A. Reich, D.O., et al.*, Los Angeles County Superior Court case number LC053829 ("the Elder case").

2. On July 28, 2006, the Los Angeles County Superior Court ("the court") properly served respondent with a Notice of Case Management Conference. The Notice ordered respondent to appear at a Case Management Conference on September 29, 2006. The Notice also ordered respondent to file a Case Management Conference Statement at least 15 days prior to the Case Management Conference.

3. Respondent failed to file a Case Management Conference Statement within 15 days of the September 29, 2006, Case Management Conference, or at all.

4. On September 29, 2006, respondent failed to appear at the Case Management Conference.

5. Because respondent failed to appear at the Case Management Conference, the court continued the Case Management Conference to October 11, 2006. The Court also set for October 11, 2006, an Order to Show Cause ("OSC") re: Dismissal and re: Why Sanctions of \$500 should not be paid for respondent's failure to appear at the September 29, 2006, Case Management Conference.

6. On September 29, 2006, the court clerk properly served respondent with the September 29, 2006, OSC and Notice of Continuance.

7. On October 11, 2006, respondent failed to appear at the continued Case Management Conference. As a result, the Court dismissed Elder's case. It also issued an OSC why respondent should not pay \$1,000 for her failure to respond to the court's earlier Order to Show Cause and possible client abandonment. The court set the OSC hearing for October 25, 2006.

8. On October 11, 2006, the court clerk properly served respondent with the October 11, 2006, OSC.

9. On October 25, 2006, respondent failed to appear for the OSC. The court found that respondent had failed to appear for the Case Management Conference on September 29, 2006; had failed to appear for the continued Case Management Conference on October 11, 2006; and had failed to appear at the October 25, 2006 OSC.

10. The court imposed sanctions of \$1,000 for respondent's failure to respond to the Case Management Conference orders and OSC hearings.

11. The court clerk properly served the State Bar and respondent with a copy of the October 25, 2006, sanctions order.

12. Respondent failed to pay the \$1,000 sanctions.

13. Respondent failed to inform Elder that respondent had failed to appear at the September 29, 2006, Case Management Conference; the October 11, 2006, continued Case Management Conference and OSC hearing; and at the October 25, 2006, OSC hearing.

14. Respondent also failed to inform Elder that her case had been dismissed because respondent had failed to appear at the September 29, 2006, Case Management Conference and the October 11, 2006, continued Case Management Conference.

15. Respondent violated the court's July 28, 2006, Notice of Case Management Conference by failing to file a case management conference statement within 15 days of the case management conference, or at all, and by failing to appear at the September 29, 2006 Case Management Conference.

16. Respondent violated the court's September 29, 2006, OSC and Notice of Continuance by failing to appear at the continued Case Management Conference on October 11, 2006.

17. Respondent violated the court's October 11, 2006, OSC by failing to appear at the hearing on October 25, 2006.

18. Respondent violated the court's October 25, 2006, sanctions order by failing to pay the \$1,000 sanctions.

19. On February 16, 2007, Elder wrote respondent a letter requesting a status update on the Elder case. Elder properly sent this letter by first-class mail, postage prepaid.

20. Respondent failed to respond to Elder's February 16, 2007, letter and failed to provide Elder with a status update on the Elder case.

21. On February 24, 2007, Elder wrote respondent a letter terminating respondent. The letter requested that respondent provide Elder with her client file. Elder properly sent this letter by first-class mail, postage prepaid.

22. Respondent failed to respond to the February 24, 2007, letter and failed to provide Elder with her client file.

23. On October 25, 2006, the Los Angeles County Superior Court ordered respondent to pay \$1,000 in sanctions for failure to respond to the Order to Show Cause and Case Management Conferences orders.

24. On October 25, 2006, the court clerk properly served respondent with the \$1,000 sanctions order.

25. Respondent eventually had knowledge of the October 25, 2006, order.

26. Respondent failed to notify the State Bar that the sanctions were imposed within 30 days of the time she had knowledge, or at all.

27. On November 15, 2006, the State Bar of California opened an investigation regarding respondent's conduct in case number 06-O-15160.

28. On February 1, 2007, State Bar investigator Amanda Gormley ("Gormley") wrote to respondent regarding respondent's conduct in the Elder case by placing the letter in a sealed envelope correctly addressed to respondent at her address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

29. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by February 16, 2007. Respondent did not respond to Gormley's letter of February 1, 2007.

30. On February 20, 2007, Gormley wrote another letter to respondent regarding respondent's conduct in the Elder matter by placing the letter in a sealed envelope correctly addressed to respondent at her address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1, subdivision (a). The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date on the letter. The United States Postal Service did not return the letter as undeliverable or for any other reason.

31. The February 20, 2007, letter enclosed a copy of the February 1, 2007, letter and requested that respondent respond in writing by March 2, 2007. Respondent did not respond to Gormley's letter February 20, 2007.

Conclusions of Law

32. Respondent wilfully violated rule 3-110(A) of the Rules of Professional Conduct by recklessly and repeatedly failing to perform legal services with competence insofar as she did not appear at (1) the September 29, 2006, Case Management Conference and (2) the October 11, 2006, continued Case Management Conference.

33. Respondent wilfully violated section 6103 of the Business and Professions Code by violating a court order requiring her to do or forbear an act connected with or in the course of her profession which she ought in good faith to do or forbear insofar as she violated (1) the court's July 28, 2006, Notice of Case Management Conference; (2) the court's September 29, 2006, OSC and Notice of Continuance; (3) the court's October 11, 2006, OSC; and (4) the court's October 25, 2006, sanctions order.

34. Respondent wilfully violated section 6068, subdivision (m) of the Business and Professions Code by failing to keep a client reasonably informed of significant developments insofar as she did not inform Elder about (1) her failure to appear at the Case Management Conference, (2) her failure to appear at the Continued Case Management Conference, and (3) the subsequent dismissal of Elder's case.

35. Respondent wilfully violated section 6068, subdivision (m) of the Business and Professions Code by failing to respond promptly to a client's reasonable status inquiry insofar as she did not respond to Elder's February 16, 2007, letter requesting a status update.

36. Respondent wilfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing, upon termination of employment, to release promptly to a client, at the client's request, all the client's papers and property insofar as she did not promptly release Elder's client file upon Elder's request after Elder had terminated her employment.

37. Respondent wilfully violated section 6068, subdivision (o)(3) of the Business and Professions Code by failing to report to the State Bar in writing about judicial sanctions of \$1,000 or more within 30 days of the time she had knowledge of the sanctions order insofar as she did not report the \$1,000 judicial sanctions ordered by the court on October 25, 2006.

38. Respondent wilfully violated section 6068, subdivision (i) of the Business and Professions Code by failing to cooperate and participate in a disciplinary investigation pending against respondent insofar as she did not provide a written response to Gormley's letters about her handling of the Elder case.

AGGRAVATION

Respondent committed multiple acts of misconduct. She also significantly harmed her clients. The minors in the Elena case have so far received nothing, and the adults in the Elena case have received nothing from Bridgestone. Because the Elder case was dismissed, Elder had to hire a new attorney to get her case reinstated.

MITIGATION

Although respondent's misconduct is serious, she practiced law for fourteen years without discipline before the start of her misconduct.

ETHICS SCHOOL

The Minimum Continuing Legal Education ("MCLE") credit given for participation in Ethics School shall not be counted toward the MCLE hours required for attorneys generally.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

On January 2, 2008, Deputy Trial Counsel Mark Hartman ("Hartman") faxed a disclosure letter to respondent. In this letter, Hartman advised respondent of any pending investigation or proceeding not resolved by this stipulation.

ESTIMATED PROSECUTION COST

The estimated prosecution cost of the current cases is \$7,009.40. This sum is only an estimate. If this stipulation is rejected or if relief from the this stipulation is granted, the prosecution cost of the current cases may increase because of the cost of further proceedings.

SUPPORTING AUTHORITY

The Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct ("standards"), standards 1.3, 2.2(b), 2.4(b), 2.6, 2.10, and 1.6(b) apply to the current cases. Standard 1.3 provides: "The primary purposes of disciplinary proceedings . . . are the protection of the public, the courts[,] and the legal profession; the maintenance of high professional standards by attorneys[:]; and the preservation of public confidence in the legal profession." In the current cases, as in other disciplinary cases, the determination of discipline begins "by looking to the purpose of sanctions for attorney misconduct." (*In re Morse* (1995) 11 Cal.4th 184, 205.)

The standards give guidance and deserve "great weight." (*In re Naney* (1990) 51 Cal.3d 186, 190; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 933, fn. 5.) "[A]dherence 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 misconduct." (*In re Naney, supra*, 51 Cal.3d at p. 190; see also *In re Brown* (1995) 12 Cal.4th 205, 220.) The California Supreme Court accepts a disciplinary recommendation resulting from application of the standards unless it has "grave doubts" about the recommendation's propriety. (*In re Morse, supra*, 11 Cal.4th at p. 206; *In re Lamb* (1989) 49 Cal.3d 239, 245.)

Standard 2.2(b) provides that a violation of rule 4-100 of the Rules of Professional Conduct which does not involve misappropriation "shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances." Pursuant to this standard, respondent's wilful violation of rule 4-100(B)(3) in the Elena case warrants at least a three-month actual suspension.

Standard 2.4(b) provides that a failure to perform services which does not demonstrate a pattern of misconduct or a failure to communicate with a client "shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client." Pursuant to this standard, respondent's wilful violations of rule 3-110(A) of the Rules of Professional Conduct in both the Elena and Elder cases and her wilful violation of section 6068,

subdivision (m) of the Business and Professions Code in the Elder case call for reproof or suspension.

Section 2.6 provides that the violation of any provision of section 6068 or section 6103 of the Business and Professions Code "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3." Pursuant to this standard, respondent's wilful violations of section 6068, subdivisions (i) and (o)(3) and section 6103 of the Business and Professions Code in the Elder case require disbarment or suspension.

Standard 2.10 provides that "wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3." Pursuant to this standard, respondent's wilful violation of rule 3-700(D)(1) of the Rules of Professional Conduct in the current case warrants reproof or suspension.

Standard 1.6(a) provides that if two or more ethical violations occur in a disciplinary case and if the standards prescribe different sanctions for these violations, "the sanction imposed shall be the more or most severe of the different applicable sanctions." Pursuant to this standard, respondent's ethical violations in the current cases requires at least a three-month actual suspension.

Similar cases can indicate appropriate discipline. (*In re Morse, supra*, 11 Cal.4th at pp. 207-208; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) *King v. State Bar* (1990) 52 Cal.3d 307 is instructive. King "neglected [two] client matters . . ." (*Id.* at p. 315.) King "willfully and repeatedly failed to perform competently the legal services for which he was employed, failed to return client files, and violated his oath and duties as an attorney." (*Id.* at p. 309.) In mitigation, King had practiced law for approximately fourteen years without discipline before the start of his misconduct. (See *id.* at pp. 309-311.) In aggravation, one client "suffered a serious financial loss because of King's error." (*Id.* at p. 311.) The Supreme Court ordered a four-year stayed suspension and probation, conditioned on a three-month actual suspension. (*Id.* at pp. 309, 316.)

Respondent's acts of misconduct are similar to King's. Like King, respondent failed to provide competent legal services in two cases and failed to return a client file in one case. Like King's client in one case, respondent's clients in the Elena case have suffered serious harm. In addition, respondent failed to provide proper accountings in the Elena case, disobeyed court orders in the Elder case, failed to report \$1,000 sanctions in the Elder case, and failed to cooperate with the investigation of the Elder case.

The standards and *King v. State Bar* (1990) 52 Cal.3d 307 support the stipulated discipline in the current cases: a one-year stayed suspension and a two-year probation, conditioned on a ninety-day actual suspension.

(Do not write above this line.)

In the Matter of PHYLLIS J. BRYAN, No. 145472, A Member of the State Bar.	Case number(s): 05-O-04144-PEM 06-O-15160-PEM (Consolidated)
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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 Fact, Conclusions of Law and Disposition.

<u>5/1/08</u> Date	 Respondent's Signature	<u>Phyllis J. Bryan</u> Print Name
<u>6/24/08</u> Date	 Deputy Trial Counsel's Signature	<u>Mark Hartman Treva R. Stewart</u> Print Name

(Do not write above this line.)

In the Matter Of PHYLLIS J. BRYAN, No. 145472, A Member of the State Bar.	Case Number(s): 05-O-04144-PEM 06-O-15160-PEM (Consolidated)
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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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates 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 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

July 14, 2008

Pat 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 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 July 14, 2008, 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:

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

**PHYLLIS J. BRYAN
468 N CAMDEN DR #200
BEVERLY HILLS, CA 90210**

Courtesy Copy to:
**PHYLLIS J. BRYAN
650 CARDINAL WAY
RENO, NV 89509**

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

TREVA R STEWART, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 14, 2008.


George Hue
Case Administrator
State Bar Court