

**State Bar Court of California
Hearing Department
San Francisco**

<p>Counsel For The State Bar</p> <p>Tammy M. Albertsen-Murray 180 Howard Street San Francisco, CA 94105 (415) 538-2527</p> <p>Bar # 154248</p>	<p>Case Number (s) 05-O-04325-LMA</p>	<p>(for Court's use)</p> <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED <i>[Signature]</i></p> <p style="text-align: center;">SEP 24 2008</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Howard Moore, Jr. 445 Bellevue Avenue, # 03 Oakland, CA 94610 (510) 451-0104</p> <p>Bar # 55228</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: HOWARD MOORE, JR.,</p> <p>Bar # 55228</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 **April 25, 1973**.
- (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 **10** 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."
- (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 added to membership fee for calendar year following effective date of discipline.
 - 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 or a separate attachment entitled "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. **The client suffered a significant delay in the pursuit of his appeal, had to retain new counsel and was ultimately unsuccessful. Respondent's failure to abide by court orders is inherently harmful to 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 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.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances

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.
- (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. **Respondent has been cooperative by stipulating to discipline in this case, thus relieving the State Bar and State Bar Court from expending additional resources to resolve the matter.**
- (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.
- (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

**** Respondent refunded \$10,000 to Robbie Evans in May, 2008, under circumstances other than those described in C.(5) above.**

Please see Stipulation Attachment, page 9, for additional mitigating circumstances.

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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

(1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason:
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions 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 within one year. **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) **Other Conditions:**

ATTACHMENT TO STIPULATION RE:

FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Howard Moore, Jr.

CASE NUMBER: 05-O-04325-LMA

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Facts

In November, 2004, Leroy Evans ("Evans") retained respondent to represent him in his pending appeal, *U.S.A. vs. Evans*, case no. 04-14755-HH, filed in the United States Court of Appeals for the Eleventh Circuit (Georgia) (hereinafter, "*USA v. Evans*"). Robbie Evans, Evans' ex-wife, and Bobbie Slaughter, Evans' former mother-in-law, paid respondent the sum of \$10,000 on behalf of Leroy Evans.

On December 6, 2004, respondent filed a substitution of counsel, becoming Evans' counsel of record in *U.S.A. v. Evans*. Appellant's briefs and record excerpts in the *USA v. Evans* matter were due to be filed by January 13, 2005. On January 10, 2005, respondent filed a Motion for Enlargement of Time in Which to File His Brief and Excerpts of Record on behalf of Evans. In his pleadings, respondent indicated that his brief was due on January 13, 2005. He requested an extension because he had recently attended a funeral, his offices were renovated, and he had to review six boxes of files. On January 13, 2005, the Eleventh Circuit granted respondent's request and ordered that respondent file his briefs on or before March 14, 2005. The Court Clerk duly notified respondent of the January 13, 2005 order. Respondent received the Order and was aware of its contents.

On March 15, 2005, respondent filed a Motion for Enlargement of Time in Which to File His Brief and Excerpts of Record on behalf of Evans. In his pleadings, respondent indicated that this was his second request for an extension. He stated that Evans was convicted of 91 counts, and, due to the complexity of issues, respondent needed additional time to prepare the Appellant's Opening Brief. Respondent stated, "I am certain that Appellant's Opening Brief and Excerpts of Record will be filed within the additional time requested." On March 18, 2005, the Eleventh Circuit Court granted respondent's second request for an extension, and ordered that the brief and excerpts be filed April 1, 2005. The March 18 order specifically stated that the Court would allow no further extensions. The Court Clerk duly notified respondent of the March 18, 2005 order. Respondent received the Order and was aware of its contents.

On March 23, 2005, respondent wrote to Evans and indicated that he would send Evans a copy of the brief that would be filed the following week. On March 30, 2005, respondent wrote a letter to Evans, addressing it to Leroy Evans, 41234-109, Federal Prison Camp, Unit G-18, P.O. Box 150160, Atlanta, Georgia. In his letter, respondent described his concerns about pursuing the appeal. Respondent requested that Evans call him collect to

discuss the issues. Evans did not receive the March 30, 2005 letter. Evans address was Unit A-14 (not G-18). In addition, his prison number was 41234-019 (not 41234-109).

On May 27, 2005, Evans wrote to the Eleventh Circuit, requesting appointment of an attorney and stating that respondent "has failed to allow communications between himself and Defendant and/or persons attempting to contact him on behalf of Defendant." Evans indicated, in his handwritten pleading, that his address was Unit A-14 and his prison number was 41234-019.

On or about September 27, 2005, Robbie Evans, and Bobbie Slaughter, on behalf of Evans, wrote a letter to respondent, which respondent received. In the letter, Robbie Evans indicated, among other things, that respondent failed to speak to Evans while he was confined in prison and requested a refund of the \$10,000 in fees.

After his March 30, 2005 (misaddressed) letter to Evans, respondent failed to thereafter communicate with Evans, or Robbie Evans on behalf of Evans. Respondent did not advise Evans of respondent's failure to file a timely appellate brief on Evans behalf. By taking no further action on Evans' case after March 30, 2005, until he responded to an Order to Show Cause issued by the Court on December 12, 2005, respondent constructively terminated his services to Evans. Respondent failed, upon termination of his services, to notify the Eleventh Circuit Court of Appeals the he was no longer representing Evans, and he failed to file a motion to withdraw with the appropriate pleadings (also known as an *Anders* brief).¹

In his December 30, 2005 response to a December 12, 2005 Order to Show Cause issued by the Eleventh Circuit, respondent indicated that he had difficulty proceeding with a theory for Evans' appeal. On February 22, 2007, the Eleventh Circuit issued a confidential order regarding respondent's conduct in the case. Respondent failed to file a timely brief, or *Anders* brief, on behalf of Evans on or before April 1, 2005, or at anytime thereafter.

Conclusions of Law

1. By failing to timely file an appellate brief, or *Anders* brief, on behalf of Evans, respondent failed to perform with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).
2. By failing to abide by the Eleventh Circuit Court's March 18, 2005 order requiring respondent to file briefs no later than April 1, 2005, respondent failed to obey an order of the court requiring him to do or forebear an act connected with or in the course of respondent's profession, in wilful violation of Business and Professions Code, section 6103.
3. By constructively terminating his services to Evans in March, 2005, without notifying the Eleventh Circuit, without notifying Evans, and without returning Evans' file and fee, respondent failed, upon termination of employment, to take reasonable steps to avoid

¹ If an appellate attorney believes an appeal is frivolous, he must request permission to withdraw from the case. He must provide, with his request, a brief referring to anything in the record that might support the appeal (*United States v. Blackwell*, (1985) 767 F.2d. 486; *Anders v. California* (1967) 386 U.S. 738, 744). This brief is referred to as an "*Anders* brief."

reasonably foreseeable prejudice to his client, in wilful violation of Rules of Professional Conduct, rule 3-700(A)(2).

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A (7), was September 11, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 11, 2008, the costs in this matter are \$ 2,296.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
05-O-04325	Three	Bus. and Prof. Code, section 6068(m) [failure to respond to client inquiries]

AUTHORITIES SUPPORTING DISCIPLINE

Standard 2.6 mandates disbarment or suspension for violations of Business and Professions Code, section 6103, depending upon the gravity of the offense or harm, if any, to the victim. Standard 2.4(b) mandates reproof or suspension for failure to communicate or perform, depending on the extent and degree of harm to the client.

Case law demonstrates that the abandonment of an incarcerated client merits a strong response. Discipline ranges from stayed suspension up to actual suspension for two years for similar misconduct *Borre v. State Bar* (1991) 52 Cal. 3d 1047 (two year actual suspension for abandonment of an incarcerated client's criminal appeal, fabricated exculpatory letter), *Harris v. State Bar* (1990) 51 Cal. 3d 1082 (ninety day actual suspension for failure to perform over a four year period), *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459 (six month actual suspension for abandoning a habeas corpus petition, failure to return file and failure to refund \$7,000 in fees and failure to cooperate in State Bar investigation), *In the Matter of Thomas Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 (stayed suspension for abandonment of criminal appeal).

ADDITIONAL MITIGATING CIRCUMSTANCES

Respondent received the First Lifetime Achievement Award in recognition of outstanding

contributions to the legal profession from the Black Law Students Association at the Boston University School of Law (Spring 2005). On August 3, 2007, respondent was inducted into the National Bar Association's Hall of Fame at the annual convention in Atlanta, Georgia for distinguished service to the community and the legal profession.

Though the misconduct is serious, respondent has had no prior discipline since his admission to the practice of law in California 1973.

STATE BAR ETHICS SCHOOL

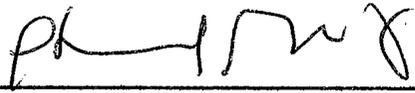
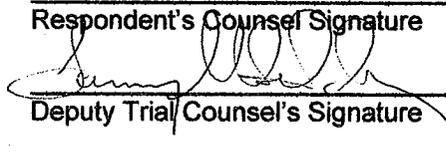
Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

(Do not write above this line.)

In the Matter of HOWARD MOORE, JR.	Case number(s): 05-O-04325-LMA
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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>09-11-2008</u> Date	 Respondent's Signature	<u>Howard Moore, Jr.</u> Print Name
<u>9/18/2008</u> Date	 Deputy Trial Counsel's Signature	<u>Tammy M. Albertsen-Murray</u> Print Name

(Do not write above this line.)

In the Matter Of HOWARD MOORE, JR.	Case Number(s): 05-O-04325-LMA
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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.)**

Sept. 23, 2008
Date

[Signature]
Judge of the State Bar Court
LUCY ARMENDARIZ

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 September 24, 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:

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

**HOWARD MOORE
MOORE & MOORE
1563 SOLANO AVE., #204
BERKELEY, CA 94707-2116**

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

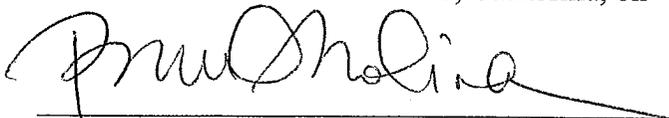
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

TAMMY ALBERTSEN-MURRAY, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 24, 2008.



Bernadette C.O. Molina
Case Administrator
State Bar Court