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State Bar Court of California
Hearing Department
San Francisco
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

<p>Counsel For The State Bar</p> <p>Mark Hartman Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2558</p> <p>Bar # 114925</p>	<p>Case Number (s)</p> <p>06-O-10993 07-O-13320</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>LOGGED</p> <p>MAY 13 2008</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> <p>FILED</p> <p>JAN 29 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Eric L. Sayre 2321 D Street, Apartment 7 Sacramento, CA 95816 Telephone: (916) 832-1541</p> <p>Bar # 227423</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p>ERIC L. SAYRE</p> <p>Bar # 227423</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 **December 3, 2003**.
- (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 the 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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, excluding 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".

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- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [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 8.**
- (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 8.**
- (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. **See page 9.**
- (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 is participating in LAP. See page 9.

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

In the Matter of: **ERIC L. SAYRE**

Membership No.: **227423**

State Bar Case Nos.: **06-O-10993**
 07-O-13320

FACTS

Respondent admits that the following facts are true.

State Bar Case No. 06-O-10993

1. Prior to July 2004, respondent was hired to represent the National Justice Foundation of America ("NJFA") and its President, John Rakus ("Rakus"), in a probate matter pending in the Sacramento County Superior Court, case number 04PR00547, *In Re Estate of James C. Moody* ("Moody").
2. Mr. Rakus and James C. Moody were friends and co-members of the NJFA. On December 18, 2003, Mr. Rakus, an attorney, visited Mr. Moody. According to Mr. Rakus, Mr. Moody requested that Mr. Rakus prepare a deed transferring title of Mr. Moody's residence, the Juliesse property, into a life estate for Mr. Moody with the remaining interest transferring to the NJFA upon Mr. Moody's death. Mr. Rakus prepared this document.
3. On March 1, 2004, James Moody died. Subsequently, NJFA and Rakus claimed that a holographic will executed by Mr. Moody in December of 2003 named the NJFA and Mr. Rakus as beneficiaries of Mr. Moody's estate.
4. Kevin Knutson ("Knutson") is the attorney for the Estate of James C. Moody and for the Executor, John Cross, ("Cross") and beneficiary Jacob Sena ("Sena").
5. On July 21, 2004, respondent filed a petition to revoke the probate of Mr. Moody's will on the basis that the will was invalid because it was executed when Mr. Moody lacked capacity, as shown by medical records demonstrating that Mr. Moody signed the will on February 24, 2004, while gravely ill.
6. Mr. Rakus was the named beneficiary of Mr. Moody's life insurance policy, and thus received \$3,250 in life insurance proceeds.

7. Title to the Juliesse property automatically transferred to NJFA upon Mr. Moody's death.

8. On March 24, 2005, Mr. Knutson filed a "Verified Petition to Require Transfer of Personal Property to the Estate," on behalf of the executor of the estate, contending that the life insurance proceeds and the Juliesse property were property of the estate.

9. On August 12, 2005, Mr. Knutson filed a "Notice of Motion and Motion for Judgment on the Pleadings"; respondent failed to file a response.

10. A settlement conference was scheduled for September 19, 2005 to determine the following issues: (a) the validity of Mr. Moody's will executed on February 24, 2004; (b) whether the NJFA or the Estate was the rightful owner of the Juliesse property; and (c) whether Mr. Rakus or the Estate was the rightful beneficiary of the \$3,250 in proceeds from Mr. Moody's life insurance policy.

11. Subsequently, respondent failed to file a settlement conference statement, as required by Local Rule of Court 15.10.5(A). Additionally, on September 19, 2005, respondent and Mr. Rakus failed to appear for the settlement conference.

12. As a result of respondent's failure to file a settlement statement and appear at the settlement conference, Mr. Knutson filed on September 23, 2005 a "Notice of Motion and Motion for Entry of Default and Default Judgment and Imposition of Sanctions."

13. On September 29, 2005, respondent and Mr. Rakus appeared for a hearing on the "Motion for Entry of Default." The Court granted Mr. Knutson's "Motion for Default, Default Judgment and Sanctions," but held the decision in abeyance to allow respondent to file a "Motion to Set Aside the Default, Default Judgment and Sanctions," but held the decision in motion to set aside the default by October 10, 2005. A hearing on the "Motion to Set Aside Default was set for October 27, 2005."

14. At the September 29, 2005 hearing, the court also heard the "Motion for Judgment on the Pleadings," filed by Mr. Knutson on March 24, 2005, found that neither respondent nor his client had filed a response, and granted the motion on that grounds.

15. The Court's order required Mr. Rakus to immediately transfer the \$3,250 in life insurance proceeds to the Estate. Additionally, respondent and Mr. Rakus were ordered to pay the Estate \$2,250 in sanctions. Respondent was present when the court issued this order. However, subsequent to September 29, 2005, respondent failed to report the sanctions to the State Bar of California.

16. Subsequently, respondent failed to file a "Motion to Set Aside the Default, Default Judgment and Sanctions." Additionally, respondent failed to appear for the October 27, 2005 hearing on the motion.

17. As a result, on October 27, 2005, the court ordered the "Default, Default Judgment, and Sanctions" to no longer be held in abeyance. The Court's judgment of October 27, 2005 ordered: (a) a default be entered on Mr. Rakus' "Petition for Revocation of Probate of Purported Will"; (b) a default judgment be entered requiring Mr. Rakus to transfer the Juliese property to the Estate; and (c) sanctions be issued against respondent and Mr. Rakus in the amount of \$3,000 for failing to appear at the September 19, 2005 settlement conference. This order was served on respondent and respondent received a copy of this order. However, respondent failed to report the sanctions to the State Bar of California.

18. On November 7, 2005, respondent filed a "Notice of Appeal" of the Court's orders, including the Order of October 27, 2005 sanctioning respondent and his client \$3,000. Subsequently, respondent failed to designate the clerk's transcript and the reporter's transcript. He also failed to deposit \$100 for preparation of the clerk's transcript.

19. On November 21, 2005, a "Notice of Default" was sent to respondent at his membership address for his failure to designate the clerk's transcript, reporter's transcript and deposit of \$100 for preparation of the clerk's transcript as ordered. Respondent received this "Notice of Default."

20. On November 28, 2005, the court received a "Substitution of Counsel" from respondent, requesting that Chester Rakus aka John Rakus be substituted in as counsel of record. The substitution was filed on December 6, 2005, and the Court placed Mr. Rakus as the counsel for the NJFA.

21. On November 28, 2005, Mr. Rakus filed a "Withdrawal of Appeal," which was entered by the court on December 6, 2005.

22. On January 27, 2006, the Court filed another order issuing the sanctions against respondent and Mr. Rakus in the amount of \$3,000. Subsequently, respondent failed to pay the \$3,000 in sanctions or notify the State Bar of the sanctions.

23. Prior to July 17, 2007, respondent failed to pay any portion of the \$3,000 sanctions. On or about July 17, 2007, one year and nine months after the sanctions were ordered, respondent paid the sanctions in full, and transferred the life insurance proceeds as ordered.

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24. In August 2006, respondent represented Helen Gray ("Gray").

25. On August 6, 2006, respondent filed an unverified Complaint to Quiet Title to Community Real Property on Gray's behalf in Sutter County Superior Court, case number CVCS06-1324, *Helen Gray, et al. vs. Estate of Donly C. Gray, Sr. et al.* ("Gray").

26. Defendant's attorney, Marshall K. Jaquish ("Jaquish"), requested that respondent either dismiss *Gray* or amend the Complaint in *Gray* to comply with the California Code of Civil Procedure.

27. On September 1, 2006, respondent filed a verified Amended Complaint in *Gray*.

28. Jaquish asserted that the Amended Complaint failed to state facts sufficient to constitute a cause of action, had no merit, pled inaccurate and/or incomplete factual allegations, and misled the court.

29. On September 11, 2006, respondent asked Jaquish to stipulate to the filing of a Second Amended Complaint.

30. On September 13, 2006, Jaquish agreed to allow respondent to file a Second Amended Complaint.

31. In a letter dated October 10, 2006, respondent notified Jaquish he would not be filing a Second Amended Complaint.

32. On November 1, 2006, Jaquish filed a Demurrer regarding all four properties at issue in *Gray*.

33. On December 18, 2006, the court sustained the Demurrer as to two of the properties at issue in *Gray* and overruled the Demurrer as to the two other properties.

34. On January 4, 2007, the court filed the Order regarding its ruling on the Demurrer in *Gray*. This Order allowed respondent 20 days to file a Second Amended Complaint after the filing of the Notice of Entry of the Order.

35. On January 8, 2007, the court filed the Notice of Entry of the Order in *Gray*.

36. Respondent did not timely file a Second Amended Complaint in *Gray*.

37. On February 8, 2007, respondent filed an Ex Parte Application for Order for Case Management Order Extending Time to File and Serve Plaintiff's Second Amended Complaint for Good Cause.

38. On February 8, 2007, the court denied respondent's Ex Parte Application without prejudice and suggested that respondent instead file a motion.

39. Subsequently, respondent did not file a motion for an order extending time to file and serve a Second Amended Complaint.

40. On April 3, 2007, Jaquish filed a Motion to Dismiss the Amended Complaint.

41. On April 3, 2007, the court filed an Order granting the Dismissal Motion as to the two properties where it had sustained Jaquish's Demurrer on December 18, 2006.

CONCLUSIONS OF LAW

Respondent admits that he is culpable of the following violations of the State Bar Act and the Rules of Professional Conduct.

State Bar Case No. 06-O-10993

1. By not filing a settlement conference statement, by not appearing for a settlement conference, by not filing a response to the "Motion for Judgment on the Pleadings," by not appearing for the hearing on the Estate's Motion for Sanctions and Default Judgment, and by not following the proper procedure for requesting an appeal in *Moody*, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of rule 3-110(A) of the Rules of Professional Conduct.

2. By not notifying the State Bar in writing that the court had ordered him to pay sanctions of \$2,250 in *Moody*, respondent wilfully failed to report in writing about a judicial sanction of more than \$1,000 within 30 days of the time respondent had knowledge of the imposition the sanctions, in violation of section 6068, subdivision (c) of the Business and Professions Code.

3. By failing to pay the \$2,250 sanctions in *Moody* for a year and nine months, respondent wilfully violated an order of the court requiring him to do an act connected with, or in the course of, his profession which he ought in good faith to have done, in violation of section 6103 of the Business and Professions Code.

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4. By not timely filing a Second Amended Complaint in *Gray*, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES

Multiple Acts of Misconduct: Respondent committed multiple acts of misconduct in case numbers 06-O-10993 and 07-O-13320 ("the current cases").

Harm: Respondent significantly harmed the defendants in *Moody* by failing to pay \$3,000 in sanctions for over one and one-half years after they were imposed.

MITIGATING CIRCUMSTANCE

Candor and Cooperation: Respondent has been candid and cooperative with the State Bar in resolving the current cases, including his signing medical waivers so that the State Bar would have access to his records regarding his treatment for mental health problems.

ADDITIONAL MITIGATING CIRCUMSTANCE

Participation in Lawyer Assistance Program: On September 17, 2007, respondent contacted the State Bar's Lawyer Assistance Program ("LAP"). On October 2, 2007, respondent completed the LAP intake process and signed the evaluation plan, whereby he will be assessed and evaluated for long-term participation. Respondent understands that he will not be admitted into the State Bar Court's Alternative Discipline Program until he signs a long-term participation agreement with LAP.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

On March 28, 2008, the State Bar faxed a disclosure letter to respondent. In this letter, the State Bar advised respondent of any pending investigation or proceeding not resolved by this Stipulation re Facts and Conclusions of Law.

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In the Matter of ERIC L. SAYRE	Case number(s): 06-O-10993 07-O-13320
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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.

3/30/08
Date

Eric Sayre
Respondent's Signature

ERIC L. SAYRE
Print Name

Date

Respondent's Counsel Signature

Print Name

4/7/08
Date

Mark Hartman
Deputy Trial Counsel's Signature

MARK HARTMAN
Print Name

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In the Matter Of ERIC L. SAYRE, ESQ.	Case Number(s): 06-O-10993-LMA 07-O-13320
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ORDER

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

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

5.19.08

Date

Jay A. ...

Judge of the State Bar Court
LUCY ARMENDARIZ