

**IN THE MATTER OF CARY O. LINDSTROM, CASE NOS. 02-O-14508, 04-O-15353**

**COURT'S MODIFICATIONS TO STIPULATED FACTS,  
CONCLUSIONS OF LAW AND DISPOSITION**

The parties failed to set forth in the Stipulation the findings of fact and conclusions of law that support the level of discipline. However, based on the court's involvement in the settlement conference, wherein the parties reached a final agreement as to the terms and conditions of the Stipulation that included the facts and law set forth below, the court hereby orders that the stipulation is MODIFIED to include the following:

**A. Case No. 02-0-14508 (Somera)**

**Findings of Fact**

In or about the fall of 1993, Respondent was employed by Loreto Somera ("Somera") to represent Somera in a lawsuit for breach of contract and promissory note against Danilo M. Nejal, William N. Ware and Roy Leal Lardizabal ("Defendants"). On or about October 7, 1993, Respondent filed a Complaint on behalf of Somera against Defendants in Santa Clara County Municipal Court, entitled *Somera vs. Nejal et al.*

On or about December 17, 1993, the Court entered a default judgment in favor of Somera in the amount of \$9,619.59. Respondent obtained a Writ of Execution and the Santa Clara County Sheriff collected a total of \$9,016.24 from Defendants in satisfaction of the judgment between approximately April 1994 and September 1995. The funds were delivered to Respondent on behalf of Somera in the form of County of Santa Clara Warrants issued by the Santa Clara County Controller-Treasurer Department.



Subsequent to in or about December 1993 through in or about 2002, Somera made several contacts with Respondent's office inquiring as to Respondent's efforts to collect on the judgment in Somera's case. On or about September 20, 1994, Respondent provided Somera with a written breakdown of attorney fees and costs stating that Respondent had received two checks for Somera totaling \$2,176.92. On or about December 14, 1994, Somera received written notice of six additional payments on Somera's judgment received by Respondent between September 23, 1994 and December 2, 1994. Somera signed and returned each of these notices. Thereafter, Somera did not receive notice of any of the additional funds Respondent received in satisfaction of the judgment in Somera's case.

In or about 2002, Somera reviewed the Court file on *Somera vs. Nejal* and discovered that \$9,016.24 in funds had been collected from the Defendants and of that amount, \$8,826.24 had been delivered to Respondent. Somera then contact Respondent's office inquiring about these funds. Respondent failed to respond to Somera and failed to inform Somera in writing or provide Somera with any documentation regarding Respondent's receipt of the \$8,826.24 in satisfaction of the Judgment in *Somera vs. Nejal*.

Pursuant to the terms of the fee agreement between Somera and Respondent, Somera was entitled to receive 60% of all money collected on his case less costs, which costs totaled \$138.00. Respondent was entitled to 40% of all money collected on the judgment in *Somera vs. Nejal*. The total amount of funds paid to Somera from Respondent in satisfaction of the judgment in Somera's case was \$2,514.38. The total amount of funds received by Respondent on the case was \$9,016.24 less \$138 in costs advanced by Respondent and \$190.00 in fees taken by the court. Somera was therefore entitled to receive 60 percent of \$8,688.24, namely \$5,212.94. Respondent

failed to disburse to Somera all or any portion of the remaining \$2,698.56 which Somera was entitled to receive.

While Respondent provided Somera with partial accountings of the funds received in satisfaction of the judgment in Somera's case, Respondent never provided Somera with an accurate and complete accounting for the \$8,826.24. Respondent also did not provide Somera with a complete and accurate accounting showing how much of the funds Respondent retained for his fees and what portion Somera was entitled to receive.

On or about September 17, 2002, the State Bar opened an investigation, Case No. 02-O-14508, pursuant to a complaint filed against Respondent by Somera. ("the Somera matter".)

On or about October 2, 2002, November 21, 2002, December 20, 2002, January 17, 2003, and February 27, 2003, State Bar Investigator Michael H. Hummer ("Hummer") through his office staff contacted Respondent by letter regarding the Somera matter. Hummer's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar of California membership address. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Hummer's letters as undeliverable for any other reason.

Hummer's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Somera matter and specifically requested Respondent to provide records accounting for the receipt and disbursement of Somera's funds pertaining to *Somera vs. Nejal*. Respondent did not respond to Hummer's letters or otherwise communicate with Hummer regarding the Somera matter for almost a three-month period.

On or about November 27, 2002, December 10, 2002, January 16, 2003, and March 14, 2003, Respondent provided responses but they did not include information as to the balance of the funds which Somera was entitled to receive.

On or about December 1, 2003, and January 12, 2004, Special Deputy Trial Counsel Michael J. Seng ("Seng") contacted Respondent by mail also requesting information as to the Somera funds for which Respondent had not accounted. Seng's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar of California membership address. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Seng's letters as undeliverable for any other reason. Respondent failed to respond to Seng's inquiries and failed to provide any of the additional information requested by Seng.

**Conclusions of Law**

By failing to promptly inform Somera regarding Respondent's receipt of the \$8,826.24 in satisfaction of the Judgment in *Somera vs. Nejal*, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code, section 6068(m).

By failing to pay Somera \$2,698.56 of the client's portion of the funds received by Respondent in satisfaction of the judgment in Somera's case, Respondent wilfully failed to pay client funds promptly in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

By not providing complete and accurate information to Somera regarding funds received by Respondent on behalf of Somera, Respondent wilfully failed to render appropriate accounts to

the client regarding the funds in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

By not timely responding to Seng's inquiries for information concerning the allegations in the Somera matter or otherwise cooperating in the investigation of the Somera matter, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code, section 6068(i).

**B. Case No. 04-0-15353 (Long)**

**Findings of Fact**

On or about October 3, 2003, Christopher A. Long ("Long") retained Respondent to represent Long in a legal matter and paid Respondent an agreed \$1,000 flat fee for Respondent's services.

Beginning in November 2003, and continuing periodically on multiple occasions thereafter, Long contacted Respondent's office to inquire into and determine the status of the legal matter Respondent had been hired to attend to. Initially Respondent reassured Long that he was taking care of the matter for him, but thereafter Respondent failed and refused to respond directly or indirectly to Long's status inquiries and failed and refused to return messages Long left with Respondent's secretary.

On or about November 13, 2004, Long wrote Respondent describing his repeated, unsuccessful attempts at contacting Respondent and ascertaining the status of his legal matter and requested Respondent's action or a refund of Long's \$1,000 fee deposit. Respondent never responded to Long's letter or otherwise communicated with him again.

Respondent was obligated either to perform the legal services for which he had been

retained or to issue a refund of Long's fee payment. Respondent did not perform the services he was hired to perform. In November 2005, after notice of disciplinary charges were filed, Respondent did refund the \$1,000 to Long.

On or about November 17, 2004, the State Bar of California opened an inquiry into the above-referenced allegations claimed by Long, and referred the matter to Special Deputy Trial Counsel Michael J. Seng ("Seng") for further investigation.

On or about February 15, 2005, Seng contacted Respondent by mail requesting information as Respondent's response to the allegations made by Long. Seng's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar of California membership address. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Seng's letters as undeliverable for any reason. Respondent failed to timely respond to Seng's inquiries and failed to timely provide information requested by Seng.

**Conclusions of Law**

By failing to respond to Long's inquiries and/or advise him of the status of his legal matter, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code, section 6068(m).

By failing to promptly refund the unearned \$1,000 fee payment, Respondent wilfully failed to pay promptly to his client, client funds in his possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

By not responding to Seng' s inquiries for information concerning the allegations in the Long matter or otherwise cooperating in the investigation of the Long matter, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code, section 6068(i).

**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 April 14, 2006, 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:

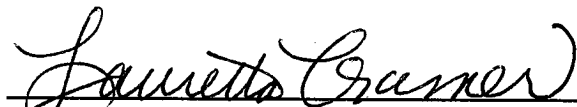
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**CARY O. LINDSTROM  
LAW OFC CARY O LINDSTROM  
65 E TAYLOR ST  
SAN JOSE, CA 95112**

**MICHAEL J SENG  
SENG & SENG  
P O BOX 14180  
FRESNO CA 93650-4180**

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

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **April 14, 2006**.

  
**Laurretta Cramer**  
Case Administrator  
State Bar Court