



ORIGINAL
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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT BROOKE A. SCHAFER 1149 South Hill Street, 9 th Floor Los Angeles, CA 90015-2299 Telephone: (213) 765-1051 Bar # 194824	Case Number(s) 05-C-01740	(for Court use) <div style="text-align: center;"> LODGED AUG 03 2007 STATE BAR COURT CLERK'S OFFICE LOS ANGELES FILED JUN 16 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per JAMES S. LOCHEAD 490 S. FAIR OAKS AVENUE PASADENA, California 91105 Telephone: (626) 375-2295 Bar # 146932	PUBLIC MATTER	
In the Matter of JAMES STUART LOCHEAD Bar # 146932 A Member of the State Bar of California (Respondent)	Submitted to Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 June 11, 1990 (date)
- (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 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 and order consists of 8 pages.
- (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 [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 Action violations _____
- (d) Degree of prior discipline _____
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (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~~.
- (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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

See attached.

(Do not write above this line.)

C. Mitigating Circumstances [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 to 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 of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs 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:

See attached.

ATTACHMENT TO
ADP STIPULATION RE FACTS, CONCLUSIONS OF LAW

IN THE MATTER OF: **JAMES S. LOCHEAD** (Respondent"), SB# 146932

CASE NUMBER: **05-C-1740-RMT**

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was September 13, 2006.

PARTIES ARE BOUND BY THE STIPULATED FACTS:

The parties intend to be and are bound by the stipulated facts contained in this stipulation. The facts so stipulated shall independently survive even if the conclusions of law and/or disposition recommended are rejected or changed in any manner whatsoever by the Hearing Department or the Review Department of the State Bar Court, or by the California Supreme Court.

WAIVER OF FINALITY OF CONVICTION (rule 607):

Pursuant to the Rules of Procedure of the State Bar of California, rule 607 the parties stipulate that the Court may decide the issues as to the discipline to be imposed even if the criminal convictions discussed herein are not final.

Respondent waives finality of his conviction and consents to the State Bar Court's acceptance of this Stipulation as to facts and conclusions of law in all respects as if the conviction was final, including the entry of findings consistent with this Stipulation, imposition of discipline, or entry of a recommendation as to the degree of the discipline to be imposed.

Respondent waives any right to challenge on the basis of a lack of finality of his conviction the State Bar Court's recommendation of discipline, if any, and the actual imposition of discipline, if any, by the State Bar Court or the California Supreme Court.

Respondent further waives any right he may have to seek review or reconsideration on the basis of any relief he may receive as a result of any appeal of, or petition regarding, the criminal conviction underlying any recommendation of and/or actual imposition of discipline by the State Bar Court or the California Supreme Court.

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW.

1. Respondent admits that he is a member of the State Bar of California and that the State Bar Court has jurisdiction over this action. Respondent further admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct, or has otherwise committed acts of misconduct warranting discipline:

The Underlying Criminal Offense – Stalking

2. In March 2001 Respondent's wife filed for divorce; she moved out along with their minor children in October 2001. To a great extent the end of their marriage was related to Respondent's long-term abuse of alcohol and drugs, both prescription and non-prescription.

3. By the spring of 2002 Respondent was broke. On May 7, 2002, in the midst of an alcohol and drug withdrawal, he found himself agitated and angry at his wife for leaving. He telephoned his estranged wife in an effort to salvage their marriage. She told him she did not

want to talk to him. He started to drink and called several more times, leaving messages for her. She did not return his messages. He continued calling as he drank more, leaving an angry message that he knew where she walked the dog and "somebody could find a dead female there in the morning." Ten minutes later he left another message, saying that she should not consider the prior call a threat, but a promise. In his distraught and drunken state, Respondent went to her residence where he slashed the tires of the car sitting out front and threw eggs at her house.

4. The next day, May 8, 2002, Respondent was arrested. Ultimately he was charged with making a criminal threat as referenced above, and with stalking. The latter charge was based on the final call, in that the state penal code defines stalking, in pertinent part, as "willful and continuous harassment." (Penal Code sec. 646.9(A)). In September 2002 he plead guilty to the stalking charge, and the charge of criminal threat was dismissed.

Guilty Plea, Sentencing and Probation Violations

5. In early September 2002 Respondent plead guilty to the crime of stalking, Penal Code sec. 646.9(A), in Los Angeles Superior Court. His sentence included: 195 days in jail (credit for time served), 3 years formal probation, abstention from alcohol, completion of a residential treatment program, psychiatric counseling and no contact with the victim Rebecca Lohead. Respondent was to be remanded directly into the auspices of the Salvation Army residential treatment center upon release from jail.

6. Respondent deserted the Salvation Army treatment center one hour after being admitted. The court issued a warrant, and Respondent was arrested and a probation violation hearing was held. In November 2002 the court imposed 365 days in custody, to be served at the Aware Foundation program. Respondent was released to that program.

7. In January 2003 Respondent's sentence was modified so that he could serve his year in custody at the Grandview Foundation.

8. In February 2004 the court issued another bench warrant for a Failure to Appear at a progress report hearing. The warrant was cleared the next day when Respondent appeared. However, Respondent started using drugs again. By this time he was broke and living in an abandoned car. By May 2004 Respondent was back in custody on a shoplifting incident where he stole \$165.00 worth of food and alcohol. Upon his arrest Respondent was taken to hospital where he stayed for 17 days.

9. Because of the new arrest the court set another probation violation hearing on the stalking conviction, which it trailed pending the outcome of the shoplifting charge. In November 2004, still in custody, Respondent had completed the Impact In-Custody treatment program, and was awaiting a bed at the Impact Sober Living Home in Pasadena. Respondent was released to that facility.

10. In January 2005 the court found that Respondent violated probation due to the new shoplift, and sentenced him to continue on the same terms and conditions of his then-existing probation. The shoplifting charge was dismissed pursuant to Penal Code sec. 1385 in January 2006, as Respondent had completed certain treatment requirements under the superior court's drug court supervision.

Conclusions of Law

The above-described facts and circumstances surrounding the incident between Respondent and victim in May 2002, resulting in Respondent's felony conviction for violating Penal Code sections 646.9(a), stalking, do not involve moral turpitude but do constitute

misconduct warranting discipline as wilful violations of Business and Professions Code section 6068(a) which, in pertinent part, requires an attorney to support the laws of this state.

AGGRAVATION, cont'd

Although not charged in State Bar Court, the shoplifting incident described above may be considered uncharged misconduct even though ultimately dismissed through a "drug court" deferral in superior court. (*In re Kopinski* (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716).

MITIGATION, cont'd

1. Cooperation Respondent has cooperated with the state bar in admitting misconduct by this stipulation. In addition, in the superior court matter he entered a plea to the crime instead of challenging the events at trial. Respondent is entitled to some mitigation credit, albeit not full credit as the misconduct was easily provable. (*In re Bouyer* (Rev. Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888, 891).
2. Family Problems At the time of the commission of the crime Respondent's wife and children had recently left him and were living in their own home. He had been married over 20 years. His drinking and substance usage, together with financial problems, drove the two apart. It was when he realized the separation was going to be permanent and that she was rejecting him, that he became distraught. With this as background, when his wife would not return his calls the rejection really sunk in and he became enraged. (*E.g., In re Naney* (1990) 51 Cal.3d 186).
3. Additional Mitigation From 1996 to 1999 Respondent reports he transported and participated in AA panels traveling to state prison camps in California, speaking to inmates. This is entitled to some, but not full credit in mitigation. (*E.g., In re Dyson* (Rev. Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280).

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In the Matter of JAMES STUART LOCHEAD Member #146932	Case number(s): 05-C-01740-RMT
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date 12/14/06 Respondent's signature *James S. Lochead* Print name JAMES S. LOCHEAD

Date _____ Respondent's Counsel's signature _____ Print name _____

Date 12/07/06 Deputy Trial Counsel's signature *Brooke A. Schaffer* Print name BROOKE A. SCHAFER

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In the Matter of JAMES STUART LOCHEAD Member #146932	Case number(s): 05-C-01740-RAH
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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 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(d), Rules of Procedure.)

8/03/07
Date


RICHARD A. HONN
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 Los Angeles, on August 13, 2007, I deposited a true copy of the following document(s):

CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDER;

STIPULATION RE FACTS AND CONCLUSIONS OF LAW; and,

CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM

in a sealed envelope for collection and mailing on that date as follows:

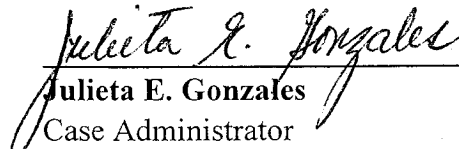
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JAMES S LOCHEAD ESQ
LAW OFC JAMES S LOCHEAD
490 S FAIR OAKS AVE
PASADENA, CA 91105**

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

Eric H. Hsu, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 13, 2007**.



Julieta E. Gonzales
Case Administrator
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 Los Angeles, on June 16, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

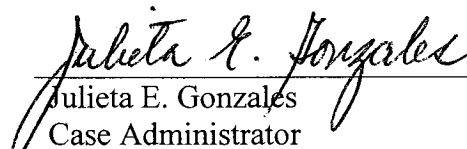
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ALAN CLARE ESQ
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

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

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 16, 2010.



Julieta E. Gonzales
Case Administrator
State Bar Court