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State Bar Court of California
Hearing Department
San Francisco

<p>Counsel For The State Bar</p> <p>Office of the Chief Trial Counsel Maria J. Oropeza 180 Howard Street San Francisco, CA 94105 (415) 538-2569</p>	<p>Case Number (s) 05-O-02721</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED</p> <p>JAN 18 2007 <i>HOC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Bar # 182660</p> <p>In Pro Per Respondent</p> <p>Jesse Ortiz, III 1107 Ninth Street, Suite 1025 Sacramento, CA 95814</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>Bar # 176450</p> <p>In the Matter Of: Jesse Ortiz, III</p> <p>Bar # 176450</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 June 12, 1995.
- (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 11 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."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproval



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- (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 (public reproof)
 - case ineligible for costs (private reproof)
 - costs to be paid in equal amounts 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
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproof

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- (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 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
- (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 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.
- (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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproval

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- (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:

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of
- (2) *During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproval

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During the period of probation, Respondent must furnish 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 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 conditions attached to the reproof.
- (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.
- 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) 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 of the effective date of the reproof.
- No MPRE recommended. Reason:
- (11) 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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Jesse Ortiz III, Bar No. 176450

CASE NUMBER(S): 05-O-02721 ET AL.

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.

Statement of Facts: Count One (Case No. 05-O-02721)

1. Jesse Ortiz III ("respondent Ortiz") was admitted to the practice of law in the State of California on June 12, 1995, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, in a matter in which respondent had agreed to provide legal services, as follows:

3. In August 2003, Mark Wais ("Wais") retained the law firm of Beigler, Ortiz and Chan to represent him in a criminal matter. No fee agreement was ever executed between the parties. Paul Chan ("Chan") was responsible for all pre-trial preparation and would be second chair in the matter. Respondent Ortiz was to be lead counsel for the trial. The representation of Wais was to be a joint effort by both Chan and Ortiz.

4. In August 2003, Chan and respondent Ortiz received the sum of \$17,280.00 from Wais, in the form of his workers compensation settlement check. The funds were deposited into the firm's trust account. Chan and respondent Ortiz took \$10,000.00 as attorney fees, and released the remainder of the funds to Wais.

5. If Wais were to be convicted of the offenses alleged in the criminal complaint, it would be his third conviction, and as such the three strikes law would apply to his matter.

6. On September 15, 2003, Chan appeared on Wais' behalf at the trial readiness conference. The court vacated the jury trial date of September 30, 2003 and set the matter for jury trial on December 9, 2003, trial readiness conference was set for November 24, 2003, with the last day for motions as November 7, 2003.

7. On September 15, 2003, Wais inquired of Chan when he would be able to meet with respondent Ortiz to discuss his case. Chan responded that he and respondent Ortiz would be out to see Wais to discuss the case.

8. Respondent Ortiz had no discussions with Wais between September 15, 2003

through November 24, 2003, concerning his criminal matter.

9. Neither Chan nor respondent Ortiz visited Wais in jail to have a substantive discussion about his matter between September 15, 2003 through November 24, 2003.

10. On November 24, 2003, Wais inquired of Chan when he would be able to meet with respondent Ortiz to discuss his case. Chan responded that he and respondent Ortiz would be out to see Wais to discuss the case.

11. Respondent Ortiz had no discussions with Wais between November 24, 2003 through January 13, 2004 concerning his criminal matter.

12. Neither Chan nor respondent Ortiz visited Wais in jail to have a substantive discussion about his matter between November 24, 2003 and January 13, 2004.

13. On January 13, 2004, Wais placed a phone call to respondent Ortiz and was able to speak with Ortiz, who promised that he would send out Chan to meet with Wais to review his case.

14. Neither Chan nor respondent Ortiz visited Wais after the January 13, 2004 phone call.

15. On January 17, 2004, Wais wrote a letter to respondent Ortiz, delineating his many concerns inclusive of: (1) that Wais had been asking to see respondent Ortiz since September 2003, (2) that his mother Evalyn Wais has left repeated messages for Ortiz and Chan to contact Wais, (3) that he could not leave messages at the office because the office did not accept his collect calls, (4) that Chan was not prepared for the November 24, 2003, trial readiness conference, (5) that Ortiz had not been prepared for the bail reduction hearing, (6) that taking his money without performing was a crime, (7) that Ortiz promised to visit Wais or send Chan to visit Wais on January 13, 2004, (8) that Wais hired Ortiz not Chan as his attorney, and (9) that Wais wanted motions filed before the January 16, 2004 deadline, but since neither Ortiz nor Chan had visited him, they had no knowledge what motions Wais was requesting.

16. Respondent Ortiz received Wais' January 17, 2004 letter and did not respond to Wais' complaints until February 2, 2004.

17. On January 19, 2004, Wais wrote a letter to trial judge in his matter complaining that he was not able to meet with his attorneys and did not know what the status of his matter was.

18. On January 22, 2004, Wais' mother Evalyn Wais wrote to respondent Ortiz delineating Wais' complaints, inclusive of: (1) the only time Wais was able to discuss his matter with Chan was in the open court room, while manacled to other inmates, and within hearing distance of the bailiff, (2) that Ortiz last visited Wais on September 3, 2003, for the sole purpose of picking up documents from Wais, (3) that Wais was unable to leave messages with Ortiz or Chan, because they would not accept his collect calls, (4) that Evalyn Wais had called on her son's behalf and relayed the message that her son would like to speak with either Ortiz or Chan to discuss his matter prior to his court appearances, and (5) that in a conference call which took place on January 14, 2004, respondent Ortiz promised to coordinate calendars with Chan so that one of them would visit Wais, that as of the date of the letter neither Ortiz or Chan had visited her son.

19. Respondent Ortiz received Ms. Wais' January 22, 2004 letter and did not communicate with Mr. Wais.

20. On February 5, 2004, Wais wrote to Ortiz and requested that he be kept informed of all developments in his matter, specifically of all motions filed on his behalf. Wais also requested copies of all police reports, court transcripts and transcripts of tapes from the undercover agents. Wais also wanted a second copy of all documents to be sent to his mother, Evalyn Wais. This letter was not mailed until February 20, 2004.

21. On February 20, 2004, Evalyn Wais, delivered to the law firm's office the request for the accounting and the request to keep him informed of all developments in his matter. In addition, she informed Ortiz and Chan of Wais' request that they file a motion regarding the applicability of the three strikes law to his matter, that motions were due in two weeks that he wanted to speak with the Ortiz or Chan prior to the filing of any motions and that if Ortiz could not work on the matter to refund the fees paid so that Wais could obtain a new attorney.

22. Ortiz and Chan received the February 20, 2004 letters and neither Ortiz nor Chan responded to Wais' request.

Conclusions of Law: Count One (Case No. 05-O-02721)

23. By failing to respond to Wais' request to meet with him, failing to respond to Wais' request to be kept informed of all developments in his matter, respondent failed to respond promptly to reasonable status inquiries of a client, in a matter in which respondent had agreed to provide legal services, a wilful violation of Business and Professions Code section 6068(m).

Statement of Facts: Count Two (Case No. 05-O-02721)

24. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

25. The allegations contained in Count One of this Stipulation are herein incorporated by reference as if set forth in full.

26. In March 2004, Wais wrote to Ortiz delineating his complaints against both Ortiz and Chan. Wais stated that he was unhappy with the level of services he had received and that he wanted an accounting and a full refund of any unearned portion of the fees he paid.

27. Ortiz received the March 2004 request for an accounting and a refund and did not provide Wais with an accounting or a refund.

28. On July 20, 2004, Evalyn Wais wrote to Ortiz on behalf of her son, stating that a meeting scheduled for March 26, 2004 to discuss an accounting and refund to her son, never took place. Ms. Wais stated that her son wanted interest on the refund due to him, which she believed to be in the amount of \$8,500.

29. On or about August 2, 2004, respondent Ortiz wrote to Evalyn Wais and informed her that her figure was incorrect, that generally criminal retainers were non-refundable, but that he had advised Wais that he would do an accounting of the time the firm spent on Wais' matter.

Respondent Ortiz stated that an accounting was done and that the sum billed exceeded the retainer.

30. Respondent never provided any refund to Wais of any fees that were unearned.

Conclusions of Law: Count Two (Case No. 05-O-02721)

31. By failing to promptly provide a refund of any fees paid by Wais that were not earned respondent, failed to refund promptly any part of a fee paid in advance that has not been earned, a wilful violation of Rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was November 21, 2006

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 21, 2006, the estimated prosecution costs in this matter are approximately \$2,008.00. Respondent acknowledges that this figure is an estimate. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.4(b) states in pertinent part "Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in a reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client."

Standard 2.6 states in pertinent part "Culpability of a member of a violation of any of the following provisions 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." Subsection (a) cites to Business and Professions code section 6068.

Standard 2.10 states in pertinent part "Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or a of a 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.”

Decisions of the Supreme Court and the Review Department involving abandonment of a client’s case with no prior record of attorney’s misconduct have typically resulted in discipline ranging from no actual suspension to 90 days of actual suspension. (*In the Matter of Nunez* (Rev. Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196, 206.)

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 Jesse Ortiz, III Bar No. 176450	Case Number(s): 05-O-02721
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- 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. (See rule 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

01-09-07
Date



Judge of the State Bar Court

RICHARD A. PLATEL

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 January 18, 2007, 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:

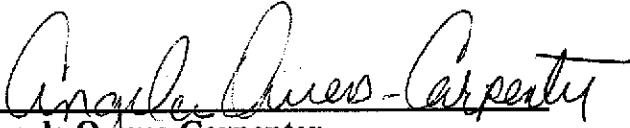
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JESSE ORTIZ, III
1107 NINTH STREET SUITE 1025
SACRAMENTO CA 95814

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

MARIA OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 18, 2007**.


Angela Owens-Carpenter
Case Administrator
State Bar Court