

PUBLIC MATTER

ORIGINAL
CONFIDENTIAL

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State Bar Court of California Hearing Department		
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES		
Counsel For The State Bar CHARLES A. MURRAY Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 Bar # 146069 Tel: (213) 765-1236	Case Number (s) 05-O-03105; 06-O-10678	(for Court's use) LODGED OCT 03 2007 <i>WOC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
	Counsel For Respondent MICHAEL G. GERNER 10100 Santa Monica Blvd., Suite 300 Los Angeles, California 90067 Bar # 65906 Tel: (310) 772-2207	FILED APR 07 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Submitted to: Program Judge		
In the Matter Of: DAVID LEE CANDAUX Bar # 65382 A Member of the State Bar of California (Respondent)	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 December 18, 1975.
- (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 (12) pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." -See Attachment
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". -See Attachment
- (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.

(Stipulation form approved by SBC Executive Committee 9/18/2002. Rev. 12/16/2004; 12/13/2006.)

Program

(Printed: 050207)



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)] (2 Priors, see Attachment, pg. 11.)
- (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 Attachment, pp. 4-11.)
- (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. (See Attachment, pg. 11.)
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. (See Attachment, pp. 4-11.)
- (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.

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- (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.
- (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:

ATTACHMENT TO ADP STIPULATION
RE FACTS & CONCLUSIONS OF LAW

IN THE MATTER OF: **DAVID LEE CANDAUX, State Bar No. 65383z**

CASE NUMBER: 05-O-03105 & 06-O-10678

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), January 31, 2007.

STIPULATION AS TO 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, or that ~~z~~ he has otherwise committed acts of misconduct warranting discipline, as follows: ADP

05-O-03105

FACTS:

1. In May 1996, Mary Ann Oadell ("Oadell") employed Respondent to bring civil claims for damages against a contractor, Mansour Jahanbin, individually and doing business as Euro Decor Company (collectively "Jahanbin"), and the contractor's surety company.
2. On October 29, 1998, Respondent filed an action in the Los Angeles County Municipal Court on Oadell's behalf entitled, *Mary Ann Oadell v. Monsour (sic) Jahanbin, an individual and doing business as Euro Decor Company, Surety Company of the Pacific, and Does 1 to 10*, case number 98E09254.
3. On November 25, 1998, Respondent filed proof of substituted service on Jahanbin with the court. The proof of service reflected that substituted service had been completed on "J. Jahanbin" at 10943 DeSoto Avenue, Chatsworth, CA 91306 ("Chatsworth address"). About ten months later, on September 9, 1999, Respondent filed a request for entry of default against Jahanbin with the court.
4. On September 17, 1999, the court notified Respondent that his request for entry of default was rejected because Respondent had not returned the original summons.
5. On September 23, 1999, Respondent filed the original summons with a request for entry of default against Jahanbin, and the court entered Jahanbin's default.
6. On September 20, 2000, the court served Respondent with an order to show cause as to why the matter should not be dismissed for failure to submit a request for default and default judgment as to Surety Company of the Pacific ("Surety") and request for default judgment as to Jahanbin. The court requested that Respondent submit his documents no later than October 4, 2000 and set a hearing on the order to show cause for October 20, 2000.
7. On October 20, 2000, Respondent filed a request for dismissal, without prejudice, as to Surety and appeared at the hearing on the order to show cause. The court continued the matter to January 26, 2001 and ordered that a default and default judgment be submitted prior to January 26, 2001.
8. On January 25, 2001, Respondent filed a request for clerk's judgment and served the request on Jahanbin.

9. On January 26, 2001, Respondent appeared at the hearing on the order to show cause and the matter was continued to February 9, 2001 to determine the status of the default judgment.

10. On January 31, 2001, the court served a notice of rejection to Respondent regarding his request for a clerk's judgment as Respondent had not requested a default prove-up hearing.

11. On February 9, 2001, Respondent appeared at the hearing on the order to show cause and the matter was continued to March 9, 2001 to determine the result of the default prove-up hearing pending in another division of the court.

12. On March 5, 2001, Respondent filed a statement of case and summary of damages with the court and appeared at the default prove-up hearing. The cause was submitted at that time.

13. On March 8, 2001, the court entered a default judgment against Jahanbin and in favor of Oadell in the amount of \$20,905.19.

14. On May 3, 2001, Respondent filed an abstract of judgment against Jahanbin.

15. On August 23, 2001, Jahanbin's attorney filed an ex parte application for a temporary restraining order to stay enforcement of the judgment pending a hearing on Jahanbin's motion to set aside the default judgment. With the application, Jahanbin declared under penalty of perjury that (a) he never did business under the name of "Euro Decor" at the Chatsworth address; (b) he first became aware of Oadell's action on August 4, 2001, when he received a Notice of License Suspension for the Contractors State License Board on August 3, 2001, as a result of a civil court judgment; (c) he was notified by his attorney on August 6, 2001 of the default judgment entered against him; and (d) he obtained a copy of the court file on August 8, 2001 and provided the file to his attorney. Jahanbin's attorney contended that the substituted service on Jahanbin was defective as Jahanbin was not served at his correct address.

16. On August 23, 2001, Respondent appeared at the hearing on the ex parte application. The Court granted the ex parte application, in part, by stipulation.

17. On August 28, 2001, the court stayed execution on the judgment until Jahanbin's motion to set aside the default judgment was heard on September 27, 2001.

18. On September 7, 2001, Jahanbin's attorney filed a motion to set aside the default judgment.

19. On September 21, 2001, Respondent filed an opposition to the motion to set aside default. In the opposition, Respondent argued that Jahanbin had not shown that the default judgment had been entered as a result of mistake, inadvertence, surprise or excusable neglect pursuant to Code of Civil Procedure section 473(b). Respondent also declared under penalty of perjury that Jahanbin and Euro Decor Company had accepted service of documents at the Chatsworth address in an action to foreclose a mechanic's lien against Oadell in August 1998.

20. On September 24, 2001, Respondent filed a declaration of a process server, Ron Landzaat, who stated under penalty of perjury that he had conducted a fictitious business name search on November 5, 1998, which revealed that Mansour Jahanbin was the owner of a business called "Paradise Nurseries" located at the Chatsworth address.

21. On September 27, 2001, the court continued the hearing on the motion to November 6, 2001.

22. On October 31, 2001, Jahanbin's attorney filed declarations with the court from Mansour Jahanbin and Majid Jahanbin in which they declared under penalty of perjury that

Mansour Jahanbin had not conducted business at the Chatsworth address since November 1995, and that Euro Decor Company never conducted business at the Chatsworth address.

23. On November 6, 2001, the motion was taken off calendar.

24. Nearly two years later, on August 8, 2003, Jahanbin's attorney filed a second motion to set aside the default judgment and submitted a proposed answer and cross-complaint against Oadell with the court. The court set the hearing on the motion for September 10, 2003.

25. Respondent sent a letter to Oadell dated August 13, 2003 in which he informed Oadell that an opposition to Jahanbin's motion was due on or before August 31, 2003.

26. On September 10, 2003, a hearing on the second motion to set aside the default judgment was heard. Respondent and Oadell appeared during the hearing. Respondent had not timely filed a written opposition to the motion, but he brought a written opposition with him to court. The court refused to consider Respondent's late written opposition or oral arguments.

27. Under Code of Civil Procedure section 473.5(a), notice of a motion for relief from a judgment due to lack of actual notice was required to be filed within a reasonable time, but in no event exceeding the earlier of (i) two years after entry of a default judgment; or (ii) 180 days after service of written notice that the default or default judgment had been entered. Despite that Jahanbin had received written notice of the default judgment entered on March 8, 2001 by August 8, 2001, and despite that his second motion to set aside the default was not filed until August 8, 2003, the court granted the motion, finding that the default papers were not properly served on Jahanbin. On September 10, 2003, the Court vacated the default judgment entered on March 8, 2001. Jahanbin's answer and cross-complaint against Oadell were deemed filed on September 10, 2003.

28. On September 11, 2003, Respondent filed an answer to the cross-complaint on Oadell's behalf.

29. On September 17, 2003, Respondent submitted a memorandum to set the case for trial to the court.

30. On September 18, 2003, the court served written notice on Respondent that his memorandum to set the case for trial was rejected. Since there was no answer, no default and no default judgment as to Roes 1 to 10, the case was not at issue.

31. On September 25, 2003, Respondent submitted a second memorandum to set the case for trial to the court.

32. On September 26, 2003, the court served written notice on Respondent that his second memorandum to set the case for trial was rejected. Since there was no answer, no default, and no dismissal filed as to Roes 1 to 10, on the cross-complaint, the case was not at issue. In the same written notice, the court informed Respondent that an order to show cause hearing was set for October 15, 2003. The written notice of the court's rejection of the memorandum to set case for trial and notice of the order to show cause hearing was not returned to the court undeliverable.

33. On October 15, 2003, a hearing on the order to show cause was held. There were no appearances by Respondent or Jahanbin's attorney. The court found that no answer or default had been filed as to the Roe defendants and the court ordered the Roe defendants dismissed. On October 15, 2003, the court clerk served written notice of the dismissal on Respondent at his address of record of 16133 Ventura Blvd., Suite 1175, Encino, CA 91436 ("Respondent's Encino address"), and on Jahanbin's attorney. There is no record that this written notice was returned to the court undelivered.

34. Also, on October 15, 2003, the court clerk served Respondent at Respondent's Encino address with written notice that an order to show cause hearing was set for November 17, 2003, because no memorandum to set the case for trial or plaintiff's election or stipulation to arbitration had been filed with the court. In the notice, the court stated that Respondent could avoid an appearance in court on November 17, 2003 by submitting either a request for dismissal; a memorandum to set the case for trial; or a plaintiff's election or stipulation to arbitrate, within five court days prior to November 17, 2003. The court warned Respondent that failure to comply with the court's instruction or failure to appear may result in dismissal of the action.

35. On October 28, 2003, the October 15, 2003 notice of the order to show cause hearing was returned to the court undeliverable as addressed.

36. On November 17, 2003, a hearing on the order to show cause was held. There were no appearances by Respondent or Jahanbin's attorney. The court found that no memorandum to set the case for trial had been filed. The court dismissed the entire action, without prejudice, pursuant to Government Code section 68608.

37. On November 17, 2003, the court clerk served written notice of the dismissal on Respondent at Respondent's Encino address.

38. On December 4, 2003, the November 17, 2003 notice of dismissal was returned to the court undeliverable as addressed.

39. Respondent remained as Oadell's attorney of record until on or about March 8, 2005, but did not move to set aside the dismissal of the action.

40. Following the September 10, 2003 hearing, Oadell periodically called and left messages for Respondent for the status of her case, but Respondent never returned Oadell's calls. Further, on at least two occasions after the September 10, 2003 hearing, Oadell went to Respondent's office and requested to speak with Respondent about her case, but Respondent was not available to speak with her and did not call her with the status of her case.

41. Oadell, having not heard from Respondent regarding the status of her case, asked her sister, a paralegal, for assistance in determining the status of her case. Oadell's sister conducted an internet search in the early part of 2005 and discovered the dismissal of Oadell's action. Respondent had never notified Oadell of the dismissal of her case.

42. After discovering the dismissal, Oadell contacted Respondent in or about March 2005 and terminated Respondent's employment and requested her file.

43. On March 7, 2005, Oadell obtained her file from Respondent.

44. On March 8, 2005, Oadell filed a substitution of attorney with the court removing Respondent as Oadell's attorney of record and naming Oadell as plaintiff in pro per.

45. On June 29, 2005, the State Bar of California ("State Bar") opened an investigation, identified as case number 05-O-03105, in connection with a complaint received from Oadell about the dismissal of her case against Jahanbin.

46. On August 17, 2005, a State Bar investigator sent a letter to Respondent regarding Oadell's complaint. The August 17, 2005 letter was placed in a sealed envelope addressed to Respondent's at his State Bar of California membership records address of 16133 Ventura Blvd., Suite 1175, Encino, CA 91436 ("membership records address"). The August 17, 2005 letter was mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service ("USPS") in the ordinary course of business. The USPS did not return the August 17, 2005 letter as undeliverable or for any other reason.

47. In the August 17, 2005 letter, the investigator requested that by August 31, 2005, Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar regarding Oadell's. Respondent did not respond to the August 17, 2005 letter.

48. On September 6, 2005, a State Bar investigator sent another letter to Respondent's membership records address. The September 6, 2005 letter was mailed by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The USPS did not return the September 6, 2005 letter as undeliverable or for any other reason.

49. With the September 6, 2005 letter, the investigator provided a copy of the August 17, 2005 letter. The investigator requested that Respondent provide a response to Oadell's complaint by September 15, 2005. Respondent did not respond to the investigator's letters.

50. On October 17, 2005, a State Bar investigator sent another letter to Respondent's membership records address. The October 17, 2005 letter was mailed by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The USPS did not return the October 17, 2005 letter as undeliverable or for any other reason.

51. With the October 17, 2005, the investigator provided a copy of the August 17, 2005 letter. The investigator requested that Respondent provide a response to Oadell's complaint by October 24, 2005. Respondent did not respond to the investigator's letters and did not otherwise cooperate in the investigation of Oadell's complaint.

CONCLUSIONS OF LAW:

52. By not filing a written opposition to Jahanbin's second motion to set aside the default judgment; by not filing a memorandum to set the case for trial or a plaintiff's election or stipulation to arbitrate; by allowing Oadell's action to be dismissed; and by not moving to set aside the dismissal, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

53. By not returning Oadell's calls and not providing her with the status of her case, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client, in wilful violation of Business and Professions code, section 6068(m).

54. By not informing Oadell of the dismissal of her case, Respondent wilfully failed to keep a client reasonably informed of a significant development in a matter in which Respondent had agreed to provide legal services, in wilful violation of Business and Professions code, section 6068(m).

55. By not providing a written response to the allegations or otherwise cooperating in the investigation of Oadell's complaint, Respondent wilfully failed to cooperate and participate in a disciplinary investigation pending against Respondent, in wilful violation of Business and Professions code, section 6068(i).

06-O-10678

FACTS:

56. On February 19, 2003, Shannen Rakich ("Rakich") hired Respondent to pursue claims for damages arising from a traffic collision which occurred on February 18, 2003. Respondent did not provide Rakich with any fee agreement for the representation.

57. On February 13, 2004, Respondent filed a lawsuit on Rakich's behalf entitled, *Shannon Rakich v. Jeremy Greenbaum, et al.*, Los Angeles County Superior Court case number 04T00251.

58. On May 14, 2004, defendant's counsel served on Respondent form interrogatories and a request for production of documents propounded to Rakich ("the discovery"). The responses to the discovery were initially due on June 19, 2004. Respondent did not serve responses to the discovery.

59. On July 13, 2004, defendant's counsel sent a letter to Respondent in which he requested verified responses to the discovery, without objection, by July 20, 2004. In the letter, defendant's counsel warned Respondent that he would file motions to compel the discovery responses and request sanctions if the discovery responses were not received.

60. On July 15, 2004, defendant's counsel granted Respondent an extension to August 16, 2004 to respond to the discovery given the nature of the issues present related to pleadings. Respondent did not serve responses to the discovery.

61. On August 25, 2004, defendant's counsel sent Respondent a letter in which he requested the responses to the discovery. Respondent did not respond to the August 25, 2004 letter and did not serve responses to the discovery.

62. On September 15, 2004, defendant's counsel called Respondent's office and left a detailed message with Respondent's assistant in which he indicated that he would be filing a motion to compel responses to the discovery and in which he requested a return call from Respondent. Respondent did not contact defendant's counsel.

63. On September 17, 2004, defendant's counsel sent a letter to Respondent. In the letter, defendant's counsel requested that Respondent (a) serve verified responses to the discovery; (b) provide a settlement demand; (c) execute an Alternative Dispute Resolution ("ADR") Referral form and Stipulation to Participate in ADR, and forward the form and Stipulation to defendant's counsel for filing with the court, so that a mediator could be assigned to the case and so that the mediation could be completed by November 15, 2004, as ordered by the court; and (d) contact him to discuss when Respondent would be sending the discovery responses and the settlement demand. In the letter, defendant's counsel warned Respondent that he would have to file a motion to compel the discovery responses if the responses were not received. Respondent did not serve the discovery responses, return the ADR form or Stipulation, or contact defendant's counsel in response to his September 17, 2004 letter.

64. On October 12, 2004, defendant's counsel filed motions to compel responses to the discovery. On October 7, 2004, defendant's counsel served the motions to compel on Respondent at his address of record. Respondent did not file an opposition to the motions and never served the discovery responses even though Rakich had provided responses to the discovery to Respondent.

65. On November 2, 2004, a hearing was held on defendant's motions to compel. Respondent did not appear at the hearing. The court granted the motions to compel and ordered Rakich to serve verified responses, without objection, within 15 days. The court imposed a \$636.30 sanction against Rakich and Respondent, jointly and severally, and ordered that the sanction be paid within 15 days. Additionally, because Respondent had not cooperated in selecting a mediator as previously ordered by the court, the court vacated the mediation completion date and ordered the parties to appear in court on January 11, 2005 for mediation.

66. On November 3, 2004, defendant's counsel served written notice of the court's November 2, 2004 orders on Respondent at his address of record. Respondent did not serve the discovery responses and did not pay the \$636.30 sanction.

67. On November 29, 2004, defendant's counsel sent a letter to Respondent in which he informed Respondent that he would be filing another motion for sanctions unless there was compliance with the court's November 2, 2004 orders. Respondent did not serve the discovery

responses, did not pay the \$636.30 sanction, and did not respond in any manner to the November 29, 2004 letter.

68. On December 8, 2004, defendant filed a motion for terminating sanctions and monetary sanctions against Rakich and Respondent, jointly and severally, for failure to comply with the court's November 2, 2004 orders. On December 7, 2004, defendant's counsel served the motion for terminating sanctions on Respondent at his address of record.

69. On January 3, 2005, defendant's motion for terminating sanctions was heard. Respondent did not appear on Rakich's behalf. The court dismissed the action, without prejudice, against all defendants for plaintiff's failure to obey the court's discovery order pursuant to Code of Civil Procedure sections 2023 and 2030. The court denied defendant's request for monetary sanctions.

70. On January 3, 2005, defendant's counsel sent written notice of the dismissal to Respondent by mail to his address of record.

71. On January 3, 2005, the clerk of the court sent written notice of the dismissal to Respondent by mail to his address of record.

72. On June 2, 2005, Rakich's mother, Carrie McCullough ("McCullough"), sent a letter to Respondent at Rakich's direction in which she requested the status of settlement of Rakich's case. Around June 2005, McCullough also sent e-mails to and left a telephone message for Respondent at Rakich's direction in which she requested the status of settlement of Rakich's case. Respondent did not provide the status to McCullough or to Rakich.

73. Respondent did not inform Rakich of the imposition of the \$636.30 sanction against her. Respondent did not inform Rakich of the dismissal of her case for failure to obey discovery orders.

74. After Respondent effectively withdrew from his representation of Rakich, Respondent did not notify Rakich of his withdrawal from representation, did not allow Rakich time to employ other counsel, and did not release Rakich's file to her.

75. On January 25, 2006, the State Bar of California ("State Bar") opened an investigation, identified as case number 06-O-10678, in connection with a complaint received from Rakich. Rakich complained that Respondent had abandoned her case and that as a result, she was left with \$7,000 in unpaid medical bills.

76. On February 27, 2006, a State Bar investigator sent a letter to Respondent regarding Rakich's complaint. The February 27, 2006 letter was placed in a sealed envelope addressed to Respondent's at his State Bar of California membership records address of 16133 Ventura Blvd., Suite 1175, Encino, CA 91436 ("membership records address"). The February 27, 2006 letter was mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service ("USPS") in the ordinary course of business. The USPS did not return the February 27, 2006 letter as undeliverable or for any other reason.

77. In the February 27, 2006 letter, the investigator requested that by March 13, 2006, Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar regarding Rakich's complaint. Respondent did not respond to the February 27, 2006 letter.

78. On March 20, 2006, a State Bar investigator sent another letter to Respondent's membership records address. The March 20, 2006 letter was mailed by first class mail, postage

prepaid, by depositing for collection by the USPS in the ordinary course of business. The USPS did not return the March 20, 2006 letter as undeliverable or for any other reason.

79. With the March 20, 2006 letter, the investigator provided a copy of the February 27, 2006 letter. The investigator requested that Respondent provide a response to Rakich's complaint by April 3, 2006. Respondent did not respond to the March 20, 2006 letter and did not otherwise cooperate in the investigation of Rakich's complaint.

CONCLUSIONS OF LAW:

80. By not responding to discovery, by allowing sanctions to be imposed against Rakich, and by allowing Rakich's case to be dismissed, Respondent intentionally, recklessly, and repeatedly failing to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

81. By not responding to McCullough's letter, e-mails and telephone message, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client, in wilful violation of Business and Professions code, section 6068(m).

82. By not informing Rakich of the imposition of the \$636.30 sanction against her, and the dismissal of her case for failure to obey discovery orders, Respondent wilfully 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).

83. By ceasing to provide legal services for Rakich and abandoning Rakich's case, Respondent wilfully withdrew from his representation of Rakich without taking reasonable steps to avoid reasonably foreseeable prejudice to Rakich, including giving due notice to Rakich, allowing Rakich time to employ other counsel, and complying with rule 3-700(D) of the Rules of Professional Conduct, in wilful violation of Rules of Professional Conduct, rule 3-700(A)(2).

84. By not providing a written response to the allegations or otherwise cooperating in the investigation of Rakich's complaint, Respondent wilfully failed to cooperate and participate in a disciplinary investigation pending against Respondent, in wilful violation of Business and Professions code, section 6068(i).

AGGRAVATING CIRCUMSTANCES.

Prior Discipline:

SEPTEMBER 7, 1983
Case No. BM 4775: Effective ~~December 15, 1983~~⁴. Violation: Failure to Perform
Discipline: 2 years suspension stayed; 2 years probation; must pass Prof. Resp. Exam within one year.

Case No. 02-O-16124: Effective September 17, 2003. Violation: Failure to Perform
Discipline: Public reproof with duties; 1 year probation with conditions, Ethics School, MPRE within 1 year and costs.

Failure to Cooperate:

Within present subject case no. 05-O-03105, Respondent failed to respond and/or participate in disciplinary proceedings, resulting in the filing of a motion for entry of default, entry of default and an order that he be placed involuntarily inactive pursuant to 6007(e) from July 16, 2006 to September 13, 2006.

(Do not write above this line.)

In the Matter of DAVID LEE CANDAUX Member #65382	Case number(s): 05-O-03105; 06-O-10678
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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.

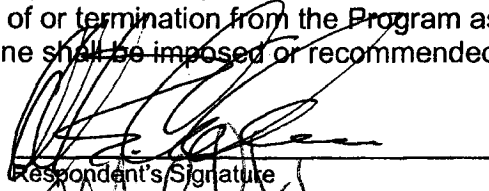
If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

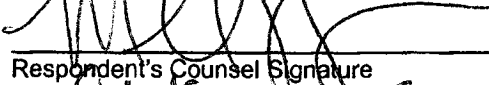
If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement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

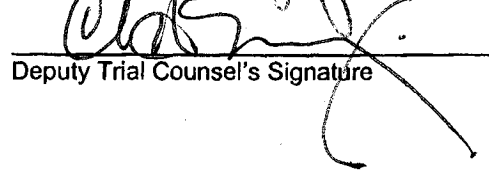
May 8, 2007
Date

5-8-07
Date

MAY 8, 2007
Date


Respondent's Signature


Respondent's Counsel Signature


Deputy Trial Counsel's Signature

DAVID L. CANDAUX
Print Name

MICHAEL G. GERNER
Print Name

CHARLES A. MURRAY
Print Name

(Do not write above this line.)

In the Matter Of DAVID LEE CANDAUX Member #65382	Case Number(s): 05-O-03105; 06-O-10678
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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.)

10/2/07
Date



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 October 3, 2007, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW; CONTRACT
AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S
ALTERNATIVE DISCIPLINE PROGRAM; CONFIDENTIAL STATEMENT
OF ALTERNATIVE DISPOSITIONS AND ORDERS**

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:

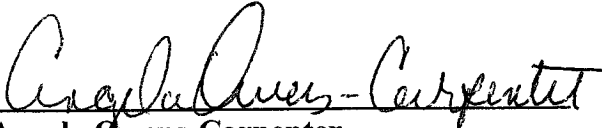
**MICHAEL GERNER
A PROF LAW CORP
10100 SANTA MONICA BLVD STE 300
LOS ANGELES CA 90067**

**DAVID LEE CANDAUX
5737 KANAN RD #181
AGOURA HILLS CA 91301**

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

CHARLES MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 3, 2007.**


Angela Owens-Carpenter
Case Administrator
State Bar Court