
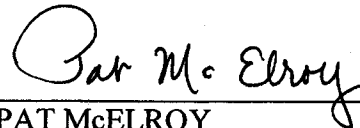


STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT 180 Howard Street, San Francisco, CA 94105-1639	FOR CLERK'S USE ONLY: <div style="text-align: center;"> FILED  FEB 22 2019 </div> <div style="text-align: center;"> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
In the Matter of: THOMAS LAURENCE LIBBY, Member No. 157624 A Member of the State Bar.	Case No(s): 17-0-01582 <div style="text-align: center;"> NOTICE OF ERROR; DIRECTION TO COURT SPECIALIST </div>

A stipulation Re Facts, Conclusions of Law and Disposition and Order Approving the stipulation (Stipulation) was filed in the above-entitled matter on January 8, 2019. However, the Stipulation was erroneously File-Stamped January 8, 2018, rather than January 8, 2019. Accordingly, a court specialist is directed to strike the January 8, 2018, File-Stamped date on the Stipulation and to stamp the Stipulation filed January 8, 2019, and thereafter reserve the Stipulation on the parties. As the erroneous File-Stamped date is merely a clerical error, the Stipulation remains approved. This order does not affect anytime limits in this matter which will be calculated from the date the Order Approving the Stipulation was served on January 8, 2019.

Dated: February 22, 2019


 PAT McELROY
 Judge Pro Tempore of the State Bar Court



(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco REPROVAL			PUBLIC MATTER
Counsel for the State Bar Duncan Carling Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 Telephone: (415) 538-2204 Bar # 262387	Case Number(s): 17-O-01582 17-O-03474 FILED JAN 08 2019 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	For Court use only FILED JAN 08 2018 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	
In Pro Per Respondent Thomas L. Libby Law Offices of Thomas L. Libby PO Box 31575 San Francisco, CA 94131 Telephone: (415) 665-0400 Bar # 157624	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: THOMAS LAURENCE LIBBY Bar # 157624 A Member of the State Bar of California (Respondent)			

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 **February 12, 1992**.
- (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 **15** 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."

(Do not write above this line.)

- (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."
- (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):
- ☐ It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
- ☐ Case ineligible for costs (private reproof).
- ☒ It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-third of the costs must be paid with Respondent's membership fees for each of the following years: 2019, 2020, 2021.

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.

- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
- ☐ Costs are 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ Prior record of discipline:
- (a) ☐ State Bar Court case # of prior case:

(Do not write above this line.)

- (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) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
 - (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
 - (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
 - (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
 - (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
 - (7) ☐ **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.
 - (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
 - (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
 - (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
 - (11) ☐ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
 - (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
 - (13) ☐ **Restitution:** Respondent failed to make restitution.
 - (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
 - (15) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. 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 likely to recur.

(Do not write above this line.)

- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's 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 Respondent.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental 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 Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 Respondent's control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily 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 Respondent's misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior record of Discipline, see page 11.

Emotional Difficulties, see page 11.

Pretrial Stipulation, see page 12.

D. Discipline:

Discipline – Reproval

Respondent is **Publicly** reprovved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, this reprovval will be effective when this stipulation becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the protection of the public and the interests of Respondent will be served by the following conditions being

attached to this reproof. Failure to comply with any condition attached to this reproof may constitute cause for a separate disciplinary proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is ordered to comply with the following conditions attached to this reproof for **two years** (Reproof Conditions Period) following the effective date of the reproof.

- (1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Reproof Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reproof.
- (3) ☒ **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR within ten (10) days after such change, in the manner required by that office.
- (4) ☒ **Meet and Cooperate with Office of Probation:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 45 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the Reproof Conditions Period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's Reproof Conditions Period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with reproof conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) ☒ **Quarterly and Final Reports:**
 - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the Reproof Conditions Period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the Reproof Conditions Period and no later than the last day of the Reproof Conditions Period.

- b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the Reproval Conditions Period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) ☒ **State Bar Ethics School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (8) ☐ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
- (11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the Reproval Conditions Period, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

(Do not write above this line.)

- (12) ☐ **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in **SELECT ONE** _____ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
- (13) ☐ **Other:** Respondent must also comply with the following additional reprobation conditions: _____
- (14) ☒ **Multistate Professional Responsibility Examination Within One Year:** It is further ordered that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)
- (15) ☐ **The following conditions are attached hereto and incorporated:**
- ☐ Financial Conditions ☐ Medical Conditions
- ☐ Substance Abuse Conditions

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: THOMAS LAURENCE LIBBY

CASE NUMBER: 17-O-01582, 17-O-03474

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.

Case No. 17-O-01582

FACTS:

1. On December 22, 2015, Kwanruan Mendoza hired respondent to represent her in a business dispute against her former business partner. She paid respondent \$8,395 advanced fees and \$925 for advanced costs. Between January 2016 and July 2016, respondent reviewed documents, investigated corporate filings, drafted two versions of the complaint, provided advice, and wrote a letter to opposing counsel.
2. Between May 2016 and August 2016, Mendoza telephoned respondent approximately 10 times and left messages, asking for a status update on her case. Respondent sent Mendoza two email acknowledgments of her telephone messages and sent her a letter that he had written on her behalf to opposing counsel, but he failed to give Mendoza a substantive response to the status inquiries until September 2016, when Mendoza and respondent spoke by telephone. Respondent stated that he was in the process of closing his law practice. Mendoza terminated the representation and asked for her case file and a return of unearned fees.
3. On September 26, 2016, respondent sent Mendoza a letter confirming the termination of the representation and advising Mendoza of the statute of limitations. Respondent included his only copy of the case file. Respondent had two addresses on file for Mendoza; he sent the letter and file to one address and a copy of the letter without the file to the other address. Respondent failed to provide an accounting or a refund of any fees. Mendoza did not receive the letters or the case file, and the letters and case file were not returned by the U.S. mail to respondent.
4. In October 2016, respondent closed his law practice. From October 2016 through January 2018, respondent stopped checking his mail, email, and voicemail messages regularly. Respondent failed to tell Mendoza that he was no longer reachable by mail, email or telephone.
5. Respondent did not change his State Bar membership address when he closed his law practice. In January 2006, respondent provided a post office box in San Francisco to the State Bar as his membership address, and that address remained his membership address from January 2006 to the present. Respondent received both personal and business mail at that post office box, but from October 2016 through January 2018, he did not regularly open or read the mail related to

his law practice. In June 2018, respondent received mail from the State Bar at that address and responded to the mail.

6. On January 6, 2017, Mendoza hired another attorney, Jeffrey Miller, to help her obtain the case file and a refund of unearned fees. On January 9, 2017, Miller spoke to respondent by telephone and sent respondent a demand letter that same day, asking for the file and a full refund of fees. Miller called respondent by telephone again and left messages on January 26, January 27, January 30, and February 2, 2017. Respondent failed to return any of those calls or respond to the letter, and he failed to provide an accounting, a refund, or a copy of the file.
7. Although Mendoza did not have her file due to respondent's failure to keep a copy, and respondent failed to cooperate with Mendoza's subsequent counsel, she could have proceeded with her lawsuit against her former business partner because she could have requested the necessary documents through discovery. Mendoza chose not to proceed with her lawsuit.
8. On March 9, 2017, Mendoza filed a State Bar complaint. On March 27, 2017, a State Bar investigator telephoned respondent at his membership telephone number, but his voicemail did not accept messages. On March 27, 2017, the investigator also sent respondent an email, explaining the complaint and directing respondent to send the client file to Miller. Respondent received the email from the State Bar investigator but failed to respond to the email.
9. Between May 2017 and September 2017, the State Bar attempted to locate and contact respondent without success. On September 18, 2017, respondent telephoned the State Bar and left a voicemail, stating that he heard the State Bar was trying to contact him, but he did not know why. He did not leave a return telephone number or a different address where he could be reached.
10. On October 2, 2017, a State Bar investigator sent respondent two letters of inquiry, one for the case involving Mendoza, and one for another case involving complainant Michael Lowe (Case No. 17-O-03474). Respondent received these letters but failed to respond to the letters. On October 23, 2017, the investigator sent respondent a second inquiry letter by mail and fax, and sent him an email stating that a response to the inquiry letters was required.
11. On November 3, 2017, respondent replied to the investigator by email and stated that he no longer practices law, but he failed to provide a substantive response to the inquiry letters, and he failed to provide an accounting of the work he performed on the cases.
12. On November 29, 2017, another State Bar investigator took over the cases and sent respondent an email, stating that respondent was still required to respond to the inquiry letters. The investigator explained in the email that there were two State Bar investigations pending, one involving complainant Kwanruan Mendoza and one involving complainant Michael Lowe.
13. On December 8, 2017, respondent replied by email, describing health problems that he was experiencing and stating that he was not practicing law. Respondent failed to provide a substantive response to the allegations of misconduct in the letters of inquiry.
14. On December 11, 2017, the investigator sent respondent an email, which again requested a response to the allegations of misconduct. On January 3, 2018, respondent replied to the

investigator by email and gave a substantive response to the allegations in Case No. 17-O-03474 involving Michael Lowe, but did not give a response to the allegations involving Mendoza.

15. On December 21, 2018, long after Mendoza complained to the State Bar, respondent provided Mendoza with an accounting of the work performed on her case. He also provided a refund of \$925 for advanced costs.

CONCLUSIONS OF LAW:

16. By failing to respond to approximately 10 telephonic reasonable status inquiries made by Mendoza between May 2016 and August 2016, respondent failed to respond promptly to reasonable status inquiries by a client, in willful violation of section 6068(m) of the Business and Professions Code.
17. By failing to inform Mendoza that he closed his law practice in October 2016 and failing to provide Mendoza with a current address, telephone number, or email where respondent could be contacted, respondent failed to inform Mendoza of a significant development, in willful violation of section 6068(m) of the Business and Professions Code.
18. By failing to provide Mendoza with an accounting of work performed on her case upon her termination of the representation and request for unearned fees, respondent failed to render an appropriate accounting to the client regarding the funds paid to respondent, in willful violation of former rule 4-100(B)(3) of the Rules of Professional Conduct.
19. By failing to provide Mendoza with her file upon her termination of the representation, respondent failed to release promptly all of the client's papers and property to the client after termination of respondent's employment, in willful violation of former rule 3-700(D)(1) of the Rules of Professional Conduct. It was at least grossly negligent and thereby willful to have sent by mail the only copy of the file that respondent had. Respondent thereby failed to provide the file to the client.
20. By failing to provide a substantive response to the State Bar's letter of October 2, 2017, regarding the complaint made against respondent by Mendoza, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of Business and Professions Code section 6068(i).
21. By failing to maintain a mailing address to be used for State Bar purposes from October 2016 through January 2018, respondent failed to comply with the requirements of Business and Professions Code section 6002.1, in willful violation of Business and Professions Code, section 6068(j).

Case No. 17-O-03474

FACTS:

22. On August 24, 2016, Michael Lowe hired respondent to write a letter on his behalf to Wells Fargo Bank regarding a foreclosure action. Lowe had requested a larger scope of legal work on the foreclosure action, but respondent advised Lowe that he was planning to close his law

practice soon and was only available for a limited amount of work. They agreed that respondent would write the letter but perform no other work on the matter. Lowe paid respondent \$1,000.

23. Respondent reviewed the foreclosure records and on September 2, 2016, he sent a letter to Wells Fargo Bank on behalf of Lowe. The letter explained that Lowe was current on his loan obligations, asked Wells Fargo Bank to cease foreclosure activities immediately, and instructed the recipient to contact respondent with any questions or concerns. Respondent did not send a copy of the letter to Lowe. Over the following month, Lowe telephoned and emailed respondent several times to inquire about the status of the letter. Respondent received these inquiries but failed to respond to the telephone messages or emails.
24. In October 2016, respondent closed his law practice. Respondent failed to tell Lowe that he was no longer reachable by mail, email or telephone. In or about October 2016, Lowe sent respondent an email asking for a refund. Respondent received this email but failed to respond to the email, send an accounting, or send a refund.
25. On December 21, 2018, after Lowe complained to the State Bar, respondent provided Lowe with an accounting of the work performed on his case.

CONCLUSIONS OF LAW:

26. By failing to respond to several telephonic and email reasonable status inquiries made by Lowe between August 2016 and October 2016, respondent failed to respond promptly to reasonable status inquiries by a client, in willful violation of section 6068(m) of the Business and Professions Code.
27. By failing to inform Lowe that he sent Wells Fargo a letter on Lowe's behalf on September 2, 2016, and failing to provide a copy of the letter to Lowe, respondent failed to inform Lowe of a significant development, in willful violation of section 6068(m) of the Business and Professions Code.
28. By failing to provide Lowe with an accounting of work performed on his case upon his termination of the representation and request for unearned fees, respondent failed to render an appropriate accounting to the client regarding the funds paid to respondent, in willful violation of former rule 4-100(B)(3) of the Rules of Professional Conduct.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent was admitted to the practice of law in California on February 12, 1992, and has no prior record of discipline. Respondent is entitled to significant mitigation for having practiced law for 25 years without discipline. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.)

Extreme Emotional Difficulties (Std. 1.6(d)): In December 2011, respondent's son died. In November 2015, respondent's other son nearly died and was in a serious medical condition through 2016. In 2016, respondent experienced extreme emotional difficulties based on these incidents and other personal and family issues. Respondent closed his law practice in October 2016 due to these emotional difficulties. Respondent has presented evidence from his treating physician that he is

presently managing his professional affairs competently and does not pose a threat to clients. (*Harris v. State Bar* (1990) 51 Cal. 3d 1082, 1088 [attorney's illness was properly considered in mitigation, but did not excuse abandonment of client].)

Prefiling Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. Of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1.) The standards help fulfill the primary purpose of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and, preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal. 4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) Any discipline recommendation that deviates from the Standards must include clear reasons for the departure. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or lesser than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.2 states that suspension or reproof is the presumed sanction for a violation of former rule 4-100 of the Rules of Professional Conduct not involving commingling or failure to promptly pay out entrusted funds.

Standard 2.7(b) states that actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests. Standard 2.7(c) states that suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients. This matter only involves two client matters and thus Standard 2.7(c) is the more appropriate Standard.

Standard 2.12(b) states that reproof is the presumed sanction for a failure to cooperate with a State Bar disciplinary investigation.

Here, respondent failed to communicate or provide an accounting in two matters that concluded in September 2017. He also failed to update his membership records address. The duty to communicate with a client includes the duty to communicate with persons who reasonable believe they are clients to the attorney's knowledge, at least to the extent of advising them they are not clients. (*Butler v. State Bar* (1986) 42 Cal.3d 323, 329; *Gadda v. State Bar* (1990) 50 Cal.3d 344, 353; *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 563.)

Further, California law holds that an attorney's duty to his or her client can extend beyond the closing of the file or the attorney's withdrawal. (See e.g., *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, 179; *In the Matter of Feldsott* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 754, 757; *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128, 146 [attorney has duty to communicate to former client in response to any concerns the client has regarding the settlement distribution and accountings].)

Even without a request, an attorney has a duty to provide a client with an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.) Here, both clients requested a refund of unearned fees, and while respondent believed he had earned the entire fee, he had a duty to provide the clients with an accounting. This is necessary so the client can ascertain whether to dispute the attorney's claim to the fees.

Mendoza terminated the representation in September 2016, and Lowe terminated the representation in October 2016, which is the same month that respondent closed his law office. Standard 2.7(c) applies because the violations were limited in scope and time. Thus, the Standards provide that suspension or reproof is the presumed sanction, and the recommended discipline is therefore consistent with the Standards.

While respondent's losing the client file is serious, the harm was capable of being remedied, but the client chose not to proceed with her lawsuit. Thus, considering all of the violations and the mitigating factors, a public reproof is appropriate.

Case law also supports a public reproof in this case. In *Matter of Respondent G*, the attorney failed to perform competently in a probate case, which caused the client to accumulate interest and penalties on unpaid inheritance taxes. The Review Department concluded that the misconduct was "an isolated and relatively minor incident early in respondent's career," and found mitigation based on the attorney's candor and cooperation, improvement to his office procedures, and his voluntary participation in the State Bar's Ethics School. The Review Department recommended a private reproof with a condition that the attorney pay restitution to the client. (*In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.)

In *In the Matter of Respondent C*, the attorney was admonished for a failure to communicate with a client, specifically his failure to tell the client that damages could not be pursued in the case. The attorney did not cooperate in the investigation stage, but he fully cooperated with the Office of Chief Trial Counsel. The attorney had practiced for nearly 30 years with no prior record of discipline. (*In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.)

In *Van Sloten v. State Bar*, an attorney failed to perform in a divorce case and failed to return numerous phone calls over the course of a year, effectively abandoning his client in the case. The attorney had no prior record of discipline. The Supreme Court found limited aggravation based on the attorney's failure to appear for oral argument before the Review Department, and ordered that Van Sloten receive a stayed six-month suspension, with one year of probation. (*Van Sloten v. State Bar* (1989) 48 Cal. 3d 921.)

Here, respondent failed to communicate in two cases, and he failed to provide an accounting in both cases. Respondent did perform substantial work on both cases, but the clients were unaware of the amount of work due to his failure to account or communicate with them. Respondent also failed to monitor or update his membership records address so that the State Bar and clients could contact him after he closed his practice. This is substantially more misconduct than the misconduct in *Respondent C.* and *Respondent G.*, and therefore warrants a higher level of discipline than an admonition or a private reproof. Respondent has significant mitigating factors, however, that were not present in *Van Sloten*, specifically 25 years of practice without discipline and extreme emotional difficulties which caused respondent to close his law practice. Based on these mitigating factors, a public reproof with two years of reproof conditions is consistent with *Respondent C.*, *Respondent G.*, and *Van Sloten*.

On balance, a public reproof with two years of reproof conditions and a requirement that respondent attend State Bar Ethics School will serve the purposes of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 21, 2018, the discipline costs in this matter are \$3,300. 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.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)


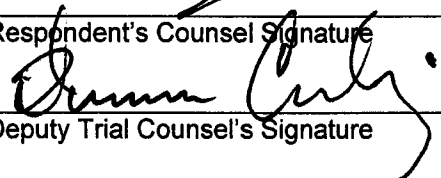
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In the Matter of:
THOMAS LAURENCE LIBBY

Case Number(s):
17-O-01582, 17-O-03474

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, Conclusions of Law, and Disposition.

<u>12/21/2018</u>	<u></u>	<u>Thomas Laurence Libby</u>
Date	Respondent's Signature	Print Name
<u>12/21/2018</u>	<u></u>	<u>Duncan Carling</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
THOMAS LAURENCE LIBBY

Bar # 157624

Case Number(s):
17-O-01582, 17-O-03474

REPROVAL 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.

On page 2 of the Stipulation, in numbered paragraph (8), "2019, 2020, 2021" is deleted and in its place is inserted, "2020, 2021, 2022."

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **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.

Date

Jan. 8, 2019

Pat McElroy

Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 January 8, 2019, 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:

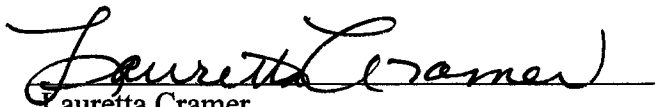
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

THOMAS L. LIBBY
LAW OFFICES OF THOMAS L.
LIBBY
PO BOX 31575
SAN FRANCISCO, CA 94131 - 0575

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

DUNCAN C. CARLING, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 8, 2019.


Laurretta Cramer
Court Specialist
State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 February 22, 2019, I deposited a true copy of the following document(s):

NOTICE OF ERROR; DIRECTION TO COURT SPECIALIST

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

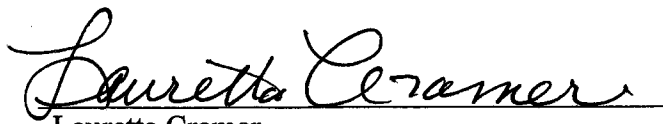
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

THOMAS L. LIBBY
LAW OFFICES OF THOMAS L.
LIBBY
PO BOX 31575
SAN FRANCISCO, CA 94131 - 0575

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

DUNCAN C. CARLING, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 22, 2019.


Laurretta Cramer
Court Specialist
State Bar Court