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State Bar Court of California
Hearing Department



<p>Counsel For The State Bar</p> <p>Hugh G. Radigan Deputy Trial Counsel 1149 S. Hill Street Los Angeles, Ca. 90015 213-765-1206</p> <p>Bar # 94251</p>	<p>Case Number (s) 07-O-10597</p> <p>(for Court's use)</p>	<p>FILED</p> <p>OCT 15 2010</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>James M. Simmons P.O. Box 431368 Los Angeles, Ca. 90043 424-200-4968</p> <p>Bar # 159726</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Nana S. Gyamfi</p> <p>Bar # 171480</p> <p>A Member of the State Bar of California (Respondent)</p>		

PUBLIC MATTER

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 July 22, 1994.
- (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."

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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.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: **2011 and 2012** (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

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 **02-O-15610, 03-O-03450, 04-O-10066 and 04-O-10557**
 - (b) Date prior discipline effective **August 30, 2006**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code sections 6068(a)(two counts), 6068(j) (two counts), 6068(m) (one count) and Rules of Professional Conduct, rules 3-700(D)(2) (two counts) and 3-110(A) (one count).**
 - (d) Degree of prior discipline **suspended for two years, execution of suspension stayed plus two years probation.**
 - (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.
- (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 over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation 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. **Respondent has provided ten character letters from a wide range of professional disciplines who have attested to their knowledge of the pending charges and Respondent's integrity and value to her community both professionally and socially.**
- (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) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **two years**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

(1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) 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.

(3) 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.

(4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

(5) 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. During the period of probation, Respondent must furnish to the monitor such reports as may be requested,

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in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (6) 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 probation conditions.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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.
- (9) 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:

- (1) **Multistate Professional Responsibility Examination:** 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. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

No MPRE recommended. Reason:

- (2) **Other Conditions:**

Respondent is to give notice to the complaining witness, Johnnie Smith, of her rights to proceed to fee arbitration by certified mail, return receipt requested. This notification by certified mail is to be given thirty days after the effective date of the discipline order herein. Proof of compliance with this certified mail notification to the complaining witness is to be made available to the Probation Department.

Williams *1/29/06*

HJR

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Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Nana S. Gyamfi

CASE NUMBER(S): 07-O-10597

FACTS AND CONCLUSIONS OF LAW.

Case No. 07-O-10597:

1. On or about April 5, 2005, Johnnie Williams ("Williams") employed Respondent on behalf of her grandson, Johnell Smith ("Smith"), to appeal his California state court criminal conviction for residential burglary on July 1, 2002. On September 13, 2002, Smith was sentenced to 30 years to life with the possibility of parole under California's Three Strikes Law. Smith's sentence was enhanced by Smith's two prior juvenile adjudications for robbery.

2. Between April 5, 2005 and February 17, 2006, Williams advanced \$7,000 as fees for the representation.

3. On May 18, 2005, Respondent's office filed a form petition for a writ of habeas corpus on behalf of Smith in the United States District Court on behalf of Smith (the "petition"). Respondent did not sign the petition, but her signature was simulated on the petition. The stated ground for the petition was that there was insufficient proof that the two prior juvenile court convictions could enhance Smith's sentence as the convictions were gained without a jury trial. The petition also reflected that Smith previously had filed an appeal of his conviction with the California Court of Appeal; a petition for review with the California Supreme Court; and a petition for writ of habeas corpus with the California Supreme Court on the same ground stated in the petition. The Court of Appeal affirmed Smith's conviction on July 24, 2003. The Supreme Court summarily denied the petition for review on October 22, 2003 and summarily denied the petition for writ of habeas corpus on May 19, 2004.

4. On June 28, 2005, the Warden, Scott Kerlan, filed an answer to the petition.

5. On August 9, 2005, Respondent's office filed a reply on behalf of Smith as ordered by the court. Respondent did not sign the reply, but her signature was simulated on the reply. In the reply, the

petitioner was erroneously identified as "Santana Kelly," which suggests that the reply was a boilerplate document used by Respondent's office.¹

6. On August 24, 2005, the magistrate judge filed his report and recommendation that the petition be dismissed. The judge concluded that the clearly established and controlling federal law in existence as of the time of Smith's sentencing supported the sentence enhancement.

7. On September 14, 2005, Respondent's office filed objections to the magistrate judge's report and recommendation on behalf of Smith. Respondent did not sign the objections, but her signature was simulated on the objections.

8. At the time Williams employed Respondent to represent Smith, Respondent employed Anthony R. Gaston ("Gaston") to perform services in the Smith matter. Effective July 31, 2005, the California Supreme Court suspended Gaston from the practice of law. Gaston remained suspended at all times mentioned herein.

9. On May 18, 2005, Gaston served the petition on Smith and opposing counsel. On August 7, 2005, Gaston served the reply on Smith and opposing counsel. On September 13, 2005, Gaston served the objections on opposing counsel.

10. Respondent did not serve upon the State Bar, Williams or Smith any written notice of her employment of Gaston for the Smith matter, prior to or at the time of employing Gaston to work on the Smith matter.

Legal Conclusion:

11. By not serving written notice to the State Bar, Williams or Smith of her employment of Gaston in the Williams matter, Respondent wilfully employed a person that Respondent knew or reasonably should have known was a suspended member of the State Bar in willful violation of the requirements of rule 1-311(D) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was September 16, 2010.

¹ In February 2004, Santana Kelly had filed a petition for review of his conviction with the California Supreme Court, and that petition was denied on March 17, 2004.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
07-O-10597	One	Failure to perform with competence (Rules of Professional Conduct, rule 3-110(A))
	Three	Failure to refund unearned fees (Rules of Professional Conduct, rule 3-700(D)(2))

FACTS SUPPORTING MITIGATION.

Respondent has provided ten character letters from a wide range of professional disciplines who have attested to their knowledge of the pending charges and Respondent's reputation for integrity, honesty and participation in civic activities that are of value to her community.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 16, 2010, the prosecution costs in this matter are approximately \$3,654.00. 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 1.3 of the Standards For Attorney Sanctions For Professional Misconduct provides that the primary purpose of discipline is the protection of the public, the courts and the legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

Standard 2.10 provides for reproof or suspension for those violations of Rule of Professional Conduct, rule 1-311(D), according to gravity of the offense or the harm, if any, to the victim.

The Standards should be followed whenever possible. *In re Silvertown* (2005) 36 Cal. 4th 81, 92. The Supreme Court gives the standards great weight, and will reject a recommendation consistent with the standards only where the Court entertains grave doubts as to its propriety. See *In re Naney* (1990) 51 Cal. 3rd 186, 190. Further, although the standards are not mandatory, it is well established that the standards may be deviated from only when there is a compelling, well-defined reason to do so. See *Aronin v. State Bar* (1990) 52 Cal. 3rd 276, 291; *Bates v. State Bar* (1990) 52 cal. 3rd 1056, 1060, fn.2.

In this case, the stipulated discipline is within the range of discipline prescribed by the standards as set forth above. In light of the fact that Respondent has been in practice for sixteen years, and in light of the fact she has cooperated with the State Bar and taken responsibility for her actions, a period of actual suspension is not deemed necessary. The parties submit that given Respondent's recognition of wrongdoing, together with her remorse and candor and cooperation throughout this matter, that the stipulated discipline (a stayed suspension and probationary terms including submitting the alleged issue of unearned fees to arbitration) and probationary conditions in this matter are sufficient to assure that

Respondent will conform her future conduct to ethical standards and therefore, protect the public, courts and legal profession.

STATE BAR ETHICS SCHOOL.

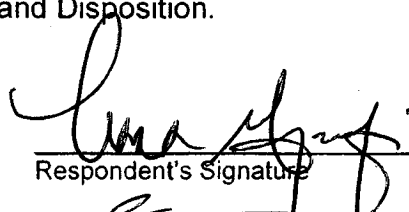
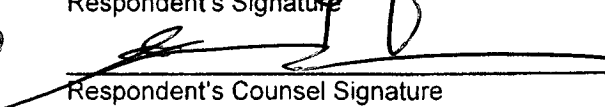
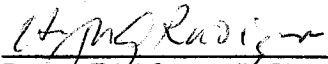
Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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In the Matter of Nana S. Gyamfi	Case number(s): 07-O-10597
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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 Fact, Conclusions of Law and Disposition.

<u>09/22/2010</u> Date	 Respondent's Signature	<u>Nana S. Gyamfi</u> Print Name
<u>9/22/2010</u> Date	 Respondent's Counsel Signature	<u>James M. Simmons</u> Print Name
<u>September 22/10</u> Date	 Deputy Trial Counsel's Signature	<u>Hugh G. Radigan</u> Print Name

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In the Matter Of NANA S. GYAMFI	Case Number(s): 07-O-10597
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, ^{DAM} IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without _a prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 1 of the Stipulation, at paragraph A.(3), line 3, "11" is deleted, and in its place is inserted "10".
2. On page 2 of the Stipulation, at paragraph A.(8), "2011 and 2012" is deleted, and in its place is inserted "2012 and 2013".
3. On page 2 of the Stipulation, at paragraph B.(1)(d), "suspended for two years" is deleted, and in its place is inserted "suspended for two years and until rehabilitation".
4. On page 5 of the Stipulation, at paragraph F.(2), line 3, the word "within" (which was inserted between the words "thirty" and "day") is deleted, and the word "within" is inserted between the words "given" and "thirty".
5. On page 5 of the Stipulation, at paragraph F.(2), line 4, "made available" is deleted, and in its place is inserted "provided".
6. On page 5 of the Stipulation, at paragraph F.(2), line 5, "within 60 days after the effective date of the discipline order herein" is inserted after "Department".
7. On Attachment Page 2, at paragraph 11, line 2, "Williams" is deleted, and in its place is inserted "Smith".

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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 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

10/14/10

Date



Donald F. Miles
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 15, 2010, 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:

JAMES M SIMMONS
P O BOX 431368
LOS ANGELES CA 90043

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

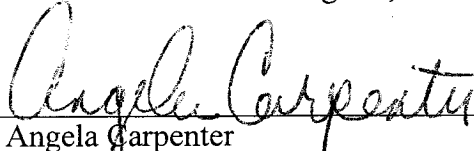
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 15, 2010.



Angela Carpenter
Case Administrator
State Bar Court