

Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT LARRY DeSHA, BAR NO. 117910 DEPUTY TRIAL COUNSEL 1149 So. Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1000	Case number(s)  02-0-12290 - AIN 02-0-12913 - AIN  <b>PUBLIC MATTER</b>  <b>FILED</b>  SEP 17 2003  STATE BAR COURT CLERKS OFFICE LOS ANGELES	(for Court's use)  <b>ORIGINAL</b>  kwiktag® 031 975 075 
Counsel for Respondent  ANDREW M. ZANGER, BAR NO. 73268 2118 Wilshire Blvd., Ste #984 Santa Monica, CA 90403 Telephone: (310) 393-9794  IN PROPRIA PERSONA	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  ACTUAL SUSPENSION  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  ANDREW M. ZANGER  Bar # 73268  A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 22, 1976  
 (date)
- (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 and order consist of 9 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (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. (Check one option only):
  - until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
  - costs to be paid in equal amounts prior to February 1 for the following membership years:  
2005 and 2006  
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth under "Partial Waiver of Costs"
  - costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

B. Aggravating Circumstances (for definition, see Standards for Attorney Sections 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 88-0-14348-CEV, et al.

(b)  date prior discipline effective October 2, 1992 to April 2, 1993

(c)  Rules of Professional Conduct/ State Bar Act violations: 3-110(A); 6068(m), 3-500,

2-111(A)(2), 6-101(A)(2), 8-101(B)(3)

(d)  degree of prior discipline six (6) months actual suspension

(e)  If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

State Bar Court case no. 92-0-14997-CEV and 92-0-15935-CEV  
Date prior discipline effective: April 1, 1995 to May 1, 1995  
Rules violated: 3-110(A), 3-700(A)(2), 3-700(D)(1), 6068(m), 6068(i)  
Degree of Prior Discipline: thirty (30) days actual suspension

- (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 to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  Restitution: Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat 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:

D. Discipline

1. Stayed Suspension.

- A. Respondent shall be suspended from the practice of law for a period of two (2) 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 to \_\_\_\_\_ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of \_\_\_\_\_, plus 10% per annum accruing from \_\_\_\_\_ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
  - iii. and until Respondent does the following: \_\_\_\_\_
- B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of two (2) years which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

- A. Respondent shall be actually suspended from the practice of law in the State of California for a period of seventy-five (75) days
- 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 to \_\_\_\_\_ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of \_\_\_\_\_, plus 10% per annum accruing from \_\_\_\_\_ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
  - iii. and until Respondent does the following: \_\_\_\_\_

E. Additional Conditions of Probation:

- (1)  If Respondent is actually suspended for two years or more, he/she shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. If the first report would cover less than 30 days, that report shall be submitted on the next quarter, 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 shall be assigned a probation monitor. Respondent shall 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 shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6)  Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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 shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended.
- (8)  Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (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             |
- (10)  Other conditions negotiated by the parties:
- Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended.
- Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:       ANDREW M. ZANGER  
CASE NUMBERS:           02-O-12290-AIN; 02-O-12913-AIN

**DISMISSALS:**

Case No. 02-O-12290-AIN is dismissed in its entirety, in the furtherance of justice. This is Count One in the Notice of Disciplinary Charges.

**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.

Facts:

- a.       On January 26, 2001, Pollie Price-Lackey ("Price") employed Respondent to represent her in an action for dissolution of marriage. She paid him \$1,500.00 in advance for fees and costs.
- b.       Respondent promptly filed the Petition for Dissolution on February 6, 2001, and served the summons and petition on Price's husband. Thereafter, he took no further action to complete the dissolution.
- c.       On April 17, 2002, Price telephoned Respondent and left him a message that she was terminating his employment and seeking other counsel. On April 29, 2002, Price's new attorney sent Respondent a letter containing a substitution of attorney form, and requesting a bill and a refund of unearned fees.
- d.       Respondent made no reply to Price's new attorney. As a result of his failure to sign and return the substitution form, the substitution of attorney had to be done by the court after hearing a noticed motion filed by Price's new attorney.
- e.       On June 14, 2002, the State Bar opened an investigation , case no. 02-O-12913, pursuant to a complaint filed by Price. On June 26, 2002, State Bar Investigator Dolores Faile wrote to Respondent regarding the complaint. On July 16, 2002, Investigator Faile wrote to Respondent again regarding the complaint. The two letters were properly mailed to Respondent at his State Bar membership record address, and neither of the two letters was returned by the United States Postal Service.

//  
//  
//  
//  
//

f. The investigator's letters requested that Respondent reply in writing to specified allegations of misconduct being investigated by the State Bar, and they further requested Respondent to provide five categories of documents to explain his conduct. On July 25, 2002, Respondent sent a letter to the State Bar partially explaining his conduct. He did not submit any of the requested documents, but promised to do so. Thereafter, he did not submit any documents in response to the State Bar's two requests.

g. On December 1, 2002, Respondent sent Price a refund of \$1,300.00, charging her only for the court filing fee and process server fee, and charging her nothing for work performed. The refund was larger than owed, consisting of approximately half earned fees and half unearned fees.

#### Conclusions of Law:

a. By failing to work further on the dissolution action, and by failing to sign and return the form substituting him out as Price's attorney in the dissolution action, Respondent repeatedly failed to perform legal services with competence. He thereby violated Rule 3-110(A) of the California Rules of Professional Conduct.

b. By failing to prepare and submit a bill for his services, after the request from Price's new attorney, Respondent wilfully failed to render appropriate accounts to the client regarding the funds. He thereby violated Rule 4-100(B)(3) of the California Rules of Professional Conduct.

c. By delaying more than seven months after termination of employment to refund unearned fees to Price, Respondent wilfully failed to promptly refund unearned fees. He thereby violated Rule 3-700(D)(2) of the California Rules of Professional Conduct.

d. By failing to provide the State Bar with any of the documents requested from him, Respondent failed to cooperate in a disciplinary investigation. He thereby violated section 6068(i) of the Business and Professions Code.

#### **A.(1) AGGRAVATING CIRCUMSTANCES:**

a. The State Bar has previously imposed discipline on Respondent on two occasions. The first discipline imposed an actual suspension of six months, and was held to be an aggravating factor in the second discipline, which imposed an actual suspension of only 30 days.

b. The first discipline was for acts which occurred between July of 1986 and March 6, 1991. The second discipline was for acts which occurred between July 3, 1990, and August of 1992. Excluding failure to cooperate with the State Bar, the two remaining counts in the second discipline are for acts dating back to July of 1990 and February of 1991. The primary counts in the second discipline are thus for acts occurring prior to the latest acts for which the first discipline was imposed.

c. In view of the overlap of the time periods for which the two prior disciplines were imposed, the parties stipulate that this third discipline shall be treated as only a second discipline and that General Standard 1.7 (b) is not applicable.

**PENDING CASES:**

- a. The written advice of pending cases, referenced in paragraph A.(6), was sent on September 10, 2003.
- b. There are no pending cases left unresolved by this stipulation.

September 9, 2003  
Date

Respondent's signature

ANDREW M. ZANGER  
print name

Date

Respondent's Counsel's signature

print name

September 9, 2003  
Date

Deputy Trial Counsel's signature

LARRY DeSHA  
print name

### 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 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.

1. Page 2, Para. B. (1) (d) - Add 3 years suspension, stayed and 3 years of probation.
2. Page 2, Para. B. (1) (e) - Case no. 92-O-14997 is 92-O-14999; add 1 year suspension stayed and 4 years of probation.
3. Page 4, E. (4) - Respondent shall comply with the terms thereof.
4. Page 7, (a) (b) (c) - Change "California Rules of Professional Conduct" to Rules of Professional Conduct of the State Bar of California.

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 953(a), California Rules of Court.)

SEP 12 2003

Date

Judge of the State Bar Court

ALBAN I. NILES

**CERTIFICATE OF SERVICE**  
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 September 17, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed September 17, 2003**

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

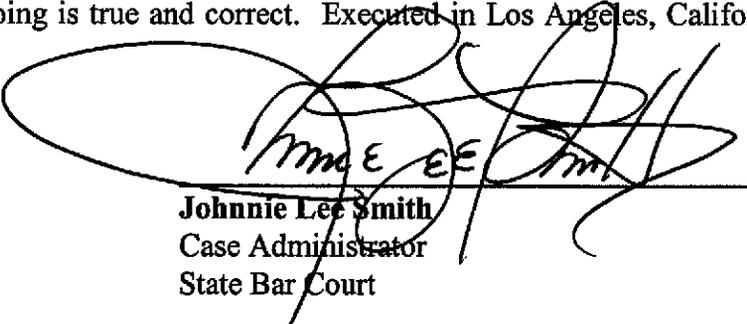
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ANDREW M ZANGER  
2118 WILSHIRE BLVD #984  
SANTA MONICA CA 90403**

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

**LARRY DESHA, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 17, 2003.

  
**Johnnie Lee Smith**  
Case Administrator  
State Bar Court