


**ORIGINAL**

Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL AGUSTIN HERNANDEZ, No. 161625 1149 SOUTH HILL STREET LOS ANGELES, CA 90015-2299	Case number(s) 02-0-13903	(for Court use)  <b>FILED</b>  MAR 11 2004 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel for Respondent EDGAR L. BORNE, III 6709 LA TIJERA BLVD., #529 LOS ANGELES, CA 90045 (323) 295-9562  IN PROPRIA PERSONA	<div style="text-align: center;"> <b>PUBLIC MATTER</b>           kwiktag® 035 117 046   </div>	
In the Matter of  EDGAR L. BORNE, III  Bar # 87315  A Member of the State Bar of California (Respondent)	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  ACTUAL SUSPENSION  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

## A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 18, 1979  
(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 8 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: definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).) Facts supporting aggravating circumstances are related.

(1) ☒ Prior record of discipline [see standard 1.2(f)]

(a) ☒ State Bar Court case # of prior case 87-0-11433

(b) ☒ date prior discipline effective July 10, 1994

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business & Professions Code 6106

Former rules 6-101(A)(2) [3-110(A)]; 8-101(B)(3) [4-100(B)(3)]; and

8-101(B)(4) [4-100(B)(4)].

(d) ☒ degree of prior discipline One year stayed suspension, 30 days actual suspension and two years on probation.

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

(a) 90-0-11229, et. al.

(a) 95-C-12108

(b) August 6, 1994

(b) July 5, 1997

(c) B&P Code sections 6068(j) and 6068(m)

(c) Discipline following criminal conviction for violating Vehicle Code section 23152(a) and (b).

[2 counts];

RPC rules 3-110(A) [2 counts], 4-100(A)(2),

4-100(B)(3)

(d) 90 days stayed suspension, no actual suspension, one year of probation.

(d) Two years stayed suspension, 45 days

actual suspension, two years on probation

(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 [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 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 Three 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 90 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 quarterly 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 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:        EDGAR L. BORNE, III

CASE NUMBER:            02-O-13903

**FACTS AND CONCLUSIONS OF LAW.**

1. Respondent admits that the foregoing facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.
2. On or about September 10, 1999, the California Supreme Court entered an order (S081555), effective on September 27, 1999, suspending Respondent from the practice of law as a result of Respondent's failure to pay State Bar of California's membership fees. On or about September 10, 1999, the State Bar's membership records office properly served a copy of this order on the Respondent at his State Bar membership records address. Respondent remained suspended until he paid his fees and was reinstated to active status on or about November 15, 1999.
3. On or about October 25, 1999, while he was suspended from the practice of law, Respondent appeared in Los Angeles County Superior Court for trial on behalf of defendant Tuafono Tiatia in *People v. Tiatia*, case no. NA035731.
4. On or about October 28, 1999, while he was suspended from the practice of law, Respondent appeared in Los Angeles County Superior Court for trial on behalf of defendant Tuafono Tiatia in *People v. Tiatia*, case no. NA035731.
5. On or about October 29, 1999, while he was suspended from the practice of law, Respondent appeared in Los Angeles County Superior Court for trial on behalf of defendant Tuafono Tiatia in *People v. Tiatia*, case no. NA035731.
6. On or about November 1, 1999, while he was suspended from the practice of law, Respondent appeared in Los Angeles County Superior Court for trial on behalf of defendant Tuafono Tiatia in *People v. Tiatia*, case no. NA035731.
7. On or about November 2, 1999, while he was suspended from the practice of law, Respondent appeared in Los Angeles County Superior Court for trial on behalf of defendant Tuafono Tiatia in *People v. Tiatia*, case no. NA035731.

8. On or about November 3, 1999, while he was suspended from the practice of law, Respondent appeared in Los Angeles County Superior Court for trial on behalf of defendant Tuafono Tiatia in *People v. Tiatia*, case no. NA035731.

9. On or about November 4, 1999, while he was suspended from the practice of law, Respondent appeared in Los Angeles County Superior Court for trial on behalf of defendant Tuafono Tiatia in *People v. Tiatia*, case no. NA035731.

10. On or about November 5, 1999, while he was suspended from the practice of law, Respondent appeared in Los Angeles County Superior Court for trial on behalf of defendant Tuafono Tiatia in *People v. Tiatia*, case no. NA035731.

#### LEGAL CONCLUSION

By appearing in court on behalf of his client on eight separate days between October 25, 1999, through November 5 1999, while suspended from the practice of law, Respondent held himself out as entitled to practice law in wilful violation of Business and Professions Code, sections 6125 and 6126, and thereby failed to comply with the laws of the State of California.

#### PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was February 2, 2004.

#### AUTHORITIES SUPPORTING DISCIPLINE.

A respondent held himself out as entitled to practice law while he was actually suspended, and abandoned two clients. In aggravation, the respondent had two prior impositions of discipline and lacked insight of the impropriety of his actions. The respondent was suspended from the practice of law for two years, stayed, with six months actual suspension. *Farnham v. State Bar* (1976) 17 Cal. 3d 605.

The instant case is not as egregious as the *Farnham* case, but does provide guidance as to the appropriate level of discipline. The respondent in the instant case did not abandon two clients and did not have a finding of moral turpitude. However, Respondent has three prior impositions of discipline and one consisted of five consolidated matters (90-O-11229, et al.). Therefore, a 90 day actual suspension is appropriate in light of the six month actual suspension imposed in *Farnham*.

Date

2-4-04

Respondent's signature

E. Borne

print name

ED BORNE

Date

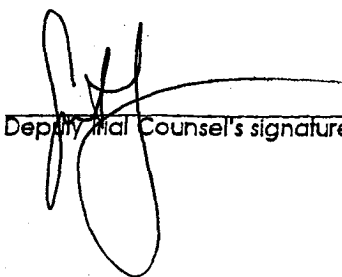
Respondent's Counsel's signature

print name

Date

2/5/04

Deputy Trial Counsel's signature



print name

AGUSTIN HERNANDEZ

## 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. On page 1 after Submitted to, delete the "x" on the box "settlement judge" and place an "x" on the box "assigned judge";
2. On page 2, B.(1)(d) degree of discipline, after "One year stayed suspension, 30 days actual suspension", delete "and two years on probation", and insert "and until restitution is paid, and two years probation."; and,
3. On page 7, LEGAL CONCLUSION, fourth line, delete "failed to comply with the laws of the State of California" and insert "wilfully violated Business & Professions Code section 6068 (a)."

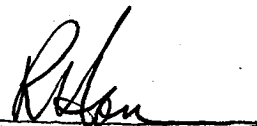
The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date 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.)

Date

3/11/04

RICHARD A. HONN

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. 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 March 11, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed March 11, 2004**

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

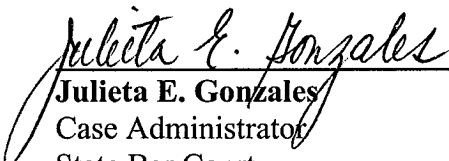
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**EDGAR L BORNE III ESQ  
6709 LA TIJERA BLVD #529  
LOS ANGELES, CA 90045**

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

**Agustin Hernandez, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 11, 2004.**

  
\_\_\_\_\_  
**Julieta E. Gonzales**  
Case Administrator  
State Bar Court