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<b>State Bar Court of California</b> Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT JEAN CHA 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1157 Bar # 228137	Case number(s) 04-0-13779-JMR and 05-0-02298 (pending investigation)	(for Court's use)  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>[Signature]</i>  SEP 22 2005  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent Arthur Margolis 2000 Riverside Drive Los Angeles, CA 90039-3758 (323) 953-8996  Bar # 57703	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND            DISPOSITION AND ORDER APPROVING            STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  Bryant K. Calloway  Bar # 140431 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 June 6, 1989 (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 14 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) 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.



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- (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)  **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.

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- (10)  **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.
- (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 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 herein. (See rule 953, California Rules of Court.)

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**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 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 in each report 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, 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 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:

- Substance Abuse Conditions       Law Office Management Conditions
- Medical Conditions                       Financial Conditions

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In the Matter of Bryant K. Calloway	Case Number(s): 04-0-13779-JMR and 05-0-02298 (pending investigation)
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### Law Office Management Conditions

- a.  Within \_\_\_ days/ \_\_\_ months/ \_\_\_ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b.  Within ~~xxxxx days/xxxxx months~~ 2 years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 4 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for \_\_\_ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

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**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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

**No MPRE recommended. Reason:** \_\_\_\_\_

(2)  **Other Conditions:**

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

IN THE MATTER OF:        BRYANT K. CALLOWAY

CASE NUMBER(S):        04-O-13779-JMR & 05-O-02298 (Pend. Inv.)

**FACTS AND CONCLUSIONS OF LAW**

**6068(i) – 04-O-13779—JMR**

On or about July 9, 2004, the State Bar opened an investigation regarding disciplinary misconduct alleged in case number 04-O-13779, pursuant to a complaint filed by Andre Sparks (the Sparks matter). Based upon the allegations of misconduct, it was determined that a response from Respondent was necessary to complete the State Bar investigation.

On or about September 3, 2004, State Bar Investigator Christopher Doukakis (Doukakis) wrote a letter to Respondent, which Respondent received, requesting a written response to the specified allegations of misconduct in the Sparks matter by September 17, 2004.

On or about October 5, 2004, Respondent wrote a letter to the State Bar requesting additional time to respond to the allegations in the Sparks matter.

On or about January 27, 2005, Doukakis wrote another letter to Respondent, which Respondent received, requesting a written response to the Sparks matter by February 10, 2005.

Respondent failed to provide a written response to the allegations in the Sparks matter in response to a State Bar investigation.

By not providing a written response to the allegations in the Sparks matter or otherwise cooperating in the investigation of the Sparks matter, Respondent failed to cooperate in a disciplinary investigation in violation of the Business and Professions Code, section 6068(i).

**6103 – 05-O-02298** (Pending Investigation)

Frank D'Errico (Frank) filed a complaint with the State Bar on April 29, 2005 (the Frank matter), after he and his attorney Thomas Hood (Hood) had not received payment on a \$1,000 discovery sanction from Respondent. Respondent failed to timely pay the \$1,000.00 discovery sanction to defendant and/or defendant's counsel in *Cordell Ross v. Frank D'Errico*, Orange

County Superior Court Case No.: 03CC14838. Respondent is still the attorney of record for plaintiff Cordell Ross (Ross).

On or about December 2, 2004, a Tentative Ruling for a \$1,000 sanction was determined in open court. Shortly thereafter, Respondent became aware of the tentative ruling. Respondent was served with the Minute Order and Notice of Ruling on December 6, 2004. The order sets out that Respondent is obligated to pay \$1,000 to Frank within 30 days. The applicable commencement date has not been determined by this stipulation.

On or about March 17, 2005, the sanction order was entered with the Superior Court.

On July 29, 2005, Respondent mailed a check in the amount of \$1,000.00 to Hood. On August 8, 2005, Hood confirmed receipt of said check and forwarded the check to Frank. On August 12, 2005, Frank received the check and deposited it on that same day.

On or about August 15, 2005, Hood confirmed receipt of a check for \$1,000 from Respondent.

Respondent did not timely pay the sanction order. within the time period set out in the order. At the latest, it was due on April 16, 2005.

By not paying \$1,000 in ordered sanctions, timely, Respondent violated an order of the court requiring him to do an act connected with or in the course of his profession. Respondent is culpable for section 6103 of the Business and Professions Code.

## **POINTS AND AUTHORITIES**

### **Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California (Standard)**

Standard 1.3 states that the purposes of sanctions are the protection of the public, the courts and the legal profession, the maintenance of high professional standards by attorneys, and the preservation of public confidence in the legal profession.

Standard 1.7(a) states that the degree of discipline shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Standard 1.7(b) states that the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigation circumstances clearly predominates, if a member is found

culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline.

Standard 2.6(a) states that a violation of the Business and Professions Code, section 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.10 states that culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim with due regards to the purposes of imposing discipline set forth in standard 1.3.

### Rules of Professional Conduct

Section 6103 of the Business and Professions Code states, "A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forebear, ... constitute[s] cause[ ] for disbarment or suspension."

Respondent has two prior records of discipline. (Std. 1.2(f); Rules of Procedure for the State Bar Court Proceedings, rule 216.) the nature and extent of each of these prior records is an aggravating circumstance. (Std. 1.2(b)(i).)

Following Standard 1.7(b) would result in an excessive sanction. In the instant case, Respondent has engaged in misconduct similar to that underlying his prior disciplinary proceedings for failing to obey a court order. Here, however, there is low-level harm. The sanction order was eventually paid.

Since this is Respondent's third disciplinary proceeding, literal application of Standard 1.7 would call for disbarment unless the most compelling mitigating circumstances predominate. As in *Anderson*, the State Bar looks to the approach of determining the appropriate level of discipline and considers the nature and extent of the prior record in conjunction with Standard 1.7. (*In the Matter of Anderson* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 208, 217; see *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-780; *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 539.)

Standard 1.7(b) has been seen as a guideline which does not require strict adherence. (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.) Standard 1.7(b) is to be applied with due regard to the nature and extent of the respondent's prior records. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.)

When applying the guidelines on balance with the present facts and circumstances, stayed suspension is an appropriate sanction.

Respondent has disobeyed a court order, and failed to cooperate in a State Bar investigation in full awareness of the disciplinary process based on his prior history and past dealings with the State Bar.

The "primary goal of disciplinary probation is the protection of the public and rehabilitation of the attorney. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525,540; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 291.)

A greater level of discipline than Respondent's prior disciplinary actions is appropriate. Respondent is culpable of section 6068(i) and section 6103 violations. In aggravation, Respondent has had two prior disciplinary proceedings. The first already resulting in a private reproof. In Respondent's second disciplinary proceeding Respondent was disciplined for failing to comply with the conditions of his reproof and pay restitution which resulted in a one-year stayed suspension with a two-year probation with restitution. Thus, a two-year stayed suspension and a two-year probationary period with no actual suspension is proper in the present matter.

#### **PENDING PROCEEDINGS**

The disclosure date referred to, on page one, paragraph A.(7), was August 15, 2005.

#### **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>
04-O-13779	One	Rule of Professional Conduct 3-700(D)(1)

#### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 15, 2005, the estimated prosecution costs in this matter are approximately \$4,273. Respondent acknowledges that this figure is an estimate only and that it does not

include State Bar Court costs which will be included in any final cost assessment. 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.

#### **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  Bryant K. Calloway	Case number(s):  04-0-13779-JMR and 05-0-02298 (pending investigation)
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

9-1-05 Date	 Respondent's signature	Bryant K. Calloway Print name
9/3/05 Date	 Respondent's Counsel's signature	Arthur L. Margolis Print name
9/6/05 Date	 Deputy Trial Counsel's signature	Jean Cha Print name

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In the Matter of  Bryant K. Calloway	Case number(s):  04-0-13779-JMR and 05-0-02298 (pending investigation)
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### ORDER

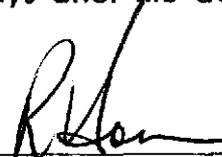
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The 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.

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

9/19/05



**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 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 September 22, 2005, 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:

**ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES CA 90039 3758**

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

**JEAN CHA, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 22, 2005**.



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**Bernadette C. O. Molina**  
Case Administrator  
State Bar Court