

State Bar Court of California
Hearing Department
San Francisco

ORIGINAL

<p>Counsel For The State Bar</p> <p>Manuel Jimenez Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Telephone: (415) 538-2288 Facsimile: (415) 538-2284</p>	<p>Case Number (s) 05-O-02046</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>Rm</i></p> <p>DEC 10 2007</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Bar # 218234</p> <p>In Pro Per Respondent</p> <p>Steven R. Smith Law Office of Steven R. Smith 2412 Meadowbrook Road Sacramento, CA 95825 Telephone: (916) 833-3836</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>Bar # 160549</p> <p>In the Matter Of: Steven R. Smith</p> <p>Bar # 160549</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 **December 2, 1992**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** 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."
- (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):
- 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: **Costs to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of of the Supreme Court order.**
(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 **03-O-03988**
 - (b) Date prior discipline effective **December 23, 2004**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rule 3-110(A) of the Rules of Professional Conduct and section 6068(m) of the Business and Professions Code.**
 - (d) Degree of prior discipline **Public Reproval**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (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.
- (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

Respondent demonstrated candor and cooperation with the State Bar in this matter. At the time of the misconduct, Respondent was experiencing some emotional problems. Although not extreme, the emotional issues did contribute to Respondent's misconduct. Respondent sought treatment for these issues and has been determined by a psychologist to be fit to practice law at this time.

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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **thirty (30) 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 as set forth in the Financial Conditions form attached to this stipulation.
 - 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 must 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 must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

- (3) 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.
- (4) 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.
- (5) 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.

- (6) 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.
- (7) 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.
- (8) 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 Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason: .
- (9) 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.
- (10) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - 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 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

In the Matter of: Steven R. Smith

Case Number: 05-O-02046

FACTS AND CONCLUSIONS OF LAW

1. In August or September, 2000, Arnulfo M. Lopez hired Respondent to represent him in a personal injury matter arising out of an automobile accident that Mr. Lopez was involved in on August 20, 2000. At the time, Respondent was employed by the law firm of Penny & Associates. On September 13, 2000, Respondent left Penny & Associates and started his own law firm. Mr. Lopez decided to retain Respondent to handle the matter.

2. On August 20, 2001, Respondent filed a lawsuit on behalf of Mr. Lopez against Ming Chin Su, in a matter entitled *Lopez v. Su*, Yolo Superior Court, Case No. CV PM 01-1561, as a result of the automobile accident on August 20, 2000.

3. Between August 20, 2001 and February 20, 2002, Respondent failed to serve the complaint on Mr. Su and failed to file with the court proof of service, a Diligence Statement, and an At Issue Statement, as required by the local rules. Between August 20, 2001 and February 20, 2002, Respondent failed to communicate with Mr. Lopez.

4. On February 20, 2002, the court issued an Order to Show Cause (OSC) why sanctions should not be imposed on Respondent for failing to file with the court proof of service, a Diligence Statement, and an At Issue Statement, as required by the local rules.

5. In March, 2002, Respondent caused Mr. Su to be served with the Complaint in this matter. On March 27, 2002, Respondent filed with the court the Diligence Statement and a Discovery Status Report. On March 3, 2002, attorney Monte R. Davis of Davis & Associates filed an Answer on behalf of his client, Mr. Su. Respondent was served with this Answer on April 26, 2002.

6. On April 26, 2002, Mr. Davis served Respondent with a Demand for Production of Documents and Form Interrogatories. Respondent received these discovery requests by April 31, 2006.

7. Subsequently, Respondent failed to comply with Mr. Davis' request for discovery. On August 8, 2002, Mr. Davis sent Respondent by U.S. mail a letter, addressed to Respondent's law office, stating that if he did not receive the responses within 10 days he would file a motion to compel. Respondent received this letter. Respondent, however, did not advise Mr. Lopez of this letter, Mr. Davis' demand, or Mr. Davis' statement that he would file a motion to compel if the discovery requests were not answered within 10 days.

8. Subsequently, Respondent failed to respond to Mr. Davis' letter or provide him with the responses to the discovery requests. On November 15, 2002, Mr. Davis filed and served

on Respondent, at his law office, a motion to compel a response to the Demand for Production of Documents and for monetary sanctions in the sum of \$423 and for a motion to Compel answers to interrogatories and for monetary sanctions in the sum of \$423 against Respondent and Mr. Lopez. The motions informed Respondent that they were set to be heard by the court on December 10, 2002. Respondent received these Motions to Compel, but failed to advise Mr. Lopez of them.

9. Respondent failed to file a response to the aforementioned motions, despite having received them. On December 10, 2002, the court heard the motions. Respondent failed to appear for the motion, despite having received proper notice of the hearing date, time and location. The court granted the motions ordering Mr. Lopez to respond to the discovery requests and sanctioned Mr. Lopez \$423. On December 13, 2002, Mr. Davis served Respondent with the Notice of Entry of Order. The Notice of Order was filed on December 17, 2002. Respondent received the Notice of Entry of Order, but failed to inform Mr. Lopez of the Order, including that he had been ordered to pay sanctions.

10. On December 26, 2002, Mr. Davis sent Respondent a letter at his office address demanding that the discovery responses and sanctions be received by January 6, 2003. Respondent received this letter, but did not inform his client of it. As of December 26, 2002, Mr. Lopez still did not know of the requests for discovery, that Respondent had failed to comply with them, or that the court had ordered compliance and sanctions be paid.

11. Subsequently, Respondent failed to comply with the court's order by failing to respond to the discovery requests or pay the sanctions order.

12. On January 11, 2003, Respondent, without informing his client, served on Mr. Davis an unverified response to Form Interrogatories. Mr. Lopez had not signed the responses, even though former Code of Civil Procedure 2030(f) required that interrogatories be signed by the party under penalty of perjury. The responses were not valid and did not comply with the requirements for responding to interrogatories. Respondent did not serve a response to the Demand for Production of Documents.

13. On January 29, 2003, Mr. Davis filed and served Respondent at his office address a motion to dismiss the action for Respondent's failure to comply with the court order by failing to provide a proper response to the interrogatories and a response to the Request for Production of Documents. Mr. Davis also requested \$1,223.00 in sanctions against Respondent and Mr. Lopez. Respondent received this motion but failed to advise Mr. Lopez of it.

14. On March 10, 2003, Respondent served Mr. Davis with a Written Response to Demand for Production. He, however, did not produce any documents. Again, this response was inadequate. On March 10, 2003, Respondent also filed and served Mr. Davis with an Opposition to the Motion to Dismiss. He included a copy of the unsigned Responses to Interrogatories and a Written Response to Demand for Production. Respondent also requested that the hearing on this motion be changed from March 20, 2003 to March 25, 2003. On March

12, 2003, the court filed and served an Order on the parties changing the date to March 25, 2003 at 8:30 a.m.

15. On April 2, 2003, the court denied the motion to dismiss, but ordered that plaintiff provide verified discovery responses within 15 days of service of the order and ordered the plaintiff to pay \$625.30 in sanctions. On April 8, 2003 the court filed a Notice of Ruling and it was served on Respondent at his office address. Respondent received the Notice of Ruling.

16. On May 5, 2003, Mr. Davis noticed Mr. Lopez' deposition for May 23, 2003 by serving Respondent at his office address with the notice of deposition. Respondent received the notice. However, he failed to inform Mr. Lopez of the deposition.

17. Subsequently, Respondent served Mr. Davis with the discovery responses. However, there was still missing information. On May 12, 2003, Mr. Davis sent by U.S. Mail a letter to Respondent at his office address demanding further responses to the discovery requests. Respondent received this letter, but failed to inform his client of this letter to respond to it.

18. On May 23, 2003, neither Respondent nor Mr. Lopez appeared for the noticed deposition. On May 23, 2003, Mr. Davis wrote Respondent about the failure of Respondent and his client to appear at the deposition and gave them seven (7) days to re-set the deposition. Mr. Davis demanded a meet and confer and a new date for the deposition. Respondent received this letter but failed to inform Mr. Lopez of it. Respondent also failed to respond to Mr. Davis' letter or communicate with Mr. Davis regarding the failure to appear at the scheduled deposition or to set a new date for Mr. Lopez' deposition. Respondent did not engage in a meet and confer, requested by Mr. Davis.

19. On June 10, 2003, Mr. Davis filed and served Respondent at his office address a motion to strike the compliant in *Lopez v. Su* and dismiss the action or compel Mr. Lopez' deposition. The hearing on this motion was set for August 13, 2003. Mr. Davis also requested \$990.30 in sanctions against Respondent and Mr. Lopez. Respondent received the motion, but failed to inform Mr. Lopez of it.

20. Subsequently, Respondent failed to respond to the motion to strike the complaint. On August 13, 2003, the court granted the motion to strike the complaint and dismiss Mr. Lopez' lawsuit with prejudice, but denied Mr. Davis' request for further sanctions. The Notice of Entry of Dismissal was filed and served on Respondent at his office address on September 4, 2003. Respondent received this notice, but failed to inform his client of the order and that his lawsuit had been dismissed.

21. From March, 2003 through September, 2003, Respondent rarely communicated with Mr. Lopez, even though Mr. Lopez had his son, Hector Lopez, attempt to contact Respondent. Respondent failed to respond to those messages by Mr. Lopez and failed to advise Mr. Lopez of the discovery motions, the motions to compel, the deposition notice, the letter from Mr. Davis regarding the failure of Respondent and Mr. Lopez to appear at Mr. Lopez' scheduled deposition, and Mr. Davis' motion to strike Mr. Lopez' complaint and dismiss his lawsuit.

Respondent effectively abandoned Mr. Lopez' case, without seeking and obtaining the court's permission and without advising Mr. Lopez that he was abandoning the case or giving him an opportunity to obtain new counsel. Respondent's conduct harmed Mr. Lopez by causing his lawsuit to be dismissed with prejudice and by causing \$1,048.30 in monetary sanctions to be awarded against Mr. Lopez. Mr. Lopez' case was never heard on its merits. Respondent has since made payment of this sanction amount on Mr. Lopez' behalf.

22. In late September, 2003, Mr. Lopez sent his son, Hector Lopez, to the courthouse to check on the lawsuit since respondent was not communicating with him. Hector learned that the case had been dismissed. He informed his father of this development. This was the first time Mr. Lopez learned that his lawsuit had been dismissed.

23. Subsequently, Mr. Lopez hired attorney Joseph Welch to get the matter reinstated. Mr. Welch failed and the matter remains dismissed.

24. By failing to timely serve the complaint in this matter, by failing to timely respond to discovery requests, by untimely and improperly responding to discovery requests, by failing to inform his client of and appear at a noticed deposition, by failing to contact Mr. Davis to reschedule the deposition, and by failing to oppose motions to compel and dismiss the lawsuit, Respondent repeatedly failed to perform the services for which he was retained, in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

25. By failing to adequately respond to Mr. Lopez's attempts (through his son) after March, 2003, about the motions to compel, the orders compelling discovery, the deposition notice, the letter requesting that the deposition be rescheduled, the motion to strike and dismiss, and the order dismissing the matter, Respondent wilfully failed to adequately respond to reasonable client inquires and keep his client reasonably informed of significant developments in his case after March, 2003, in violation of section 6068(m) of the Business & Professions Code.

26. By abandoning Mr. Lopez's case without seeking and obtaining court approval and without informing his client that he would be withdrawing or abandoning him, Respondent wilfully violated 3-700(A)(1) and 3-700(A)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A(7), was November 1, 2007.

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.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 31, 2007, the estimated prosecution costs in this matter are approximately \$2,296.00. 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.

AUTHORITIES SUPPORTING DISCIPLINE

The Standards

A forty-five day actual is appropriate here and well within the discipline suggested by the Standards, especially given the multiple misconduct here and the significant harm Respondent caused, resulting in the complete dismissal of his client's case and the ordering of \$1,048.30 in monetary sanctions against his client, Mr. Lopez.

Standard 1.3 of the Standards for Attorney Professional Misconduct (hereinafter "Standard" or "Standards") provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession, the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.7(a) requires that if a respondent is found culpable of misconduct, and the respondent has a prior disciplinary sanction, that the subsequent discipline be greater than the initial discipline.

Standard 2.4(b) requires that a respondent found culpable of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension, depending on client harm.

Standard 2.6 states that for offenses involving specified sections of the Business and Professions Code, including sections 6068 and 6103 shall result in disbarment or suspension depending on the gravity of the offense or the harm. In the instant case, multiple clients were harmed and the gravity of the respondent's conduct was grave.

Case Law

The Supreme Court recently re-affirmed that great weight is to be given the Standards and that they should be followed whenever possible. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

While the Standards are not mandatory, the Supreme Court has held that they should be followed unless the charged attorney can demonstrate the existence of extraordinary circumstances justifying a lesser sanction. (*In re Silvertown*, supra, 36 Cal.4th at 92.) It is Respondent's burden to demonstrate that there are extraordinary circumstances justifying a lesser

sanction than that recommended by the Standards. Here, a discipline recommendation consistent with the standards is appropriate and consistent with the purposes of attorney discipline. (See Standards 1.3 and 1.6 of the Standards.)

Case law supports a period of actual suspension. If anything, given the violations, Respondent's prior record of discipline the significant harm here causing the complete dismissal of his client's case and \$1,048.30 in monetary sanctions, and all the mitigating and aggravation factors, the discipline recommended in this case in on the more lenient side of case law. Given Respondent's cooperation, the fact his prior misconduct occurred during the same time period as this misconduct, that Respondent received psychological counseling for the emotional issues that contributed to his misconduct, and that his therapist believes that he is currently fit to practice law, the State Bar believes that the public will be protected and the high standards for attorneys in this state and public confidence will be maintained with a two year suspension, stayed, three years probation, and a forty-five day actual suspension.

Case law for failures to perform, communicate and abandonment, support actual suspension. (See *King v. State Bar* (1990) 52 Cal.3d 307 [90 days actual suspension for failures to perform in two matters, including allowing client's default for \$84,000]; *Matthew v. State Bar* (1989) 49 Cal.784 [60 days actual suspension for two failures to perform, improper withdrawal, and a failure to account and refund]; *Franklin v. State Bar* (1986) 41 Cal.3d 700 [45 days actual suspension for two failures to perform and a misrepresentation to the State Bar]; *Layton v. State Bar* (1990) 50 Cal.3d 889 [30 days actual suspension for failing to perform in a probate matter]; *Stuart v. State Bar* (1985) 40 Cal.3d 838 [30 day actual suspension for failure to perform]; *Smith v. State Bar* (1985) 38 Cal.3d 525 [30 day actual suspension for two failures to perform]; *Bach v. State Bar* (1991) 52 Cal.3d 1201 [30 day suspension for failure to perform, refund unearned fees, and failure to cooperate]; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 [six month suspension, stayed for one failure to perform].

AGGRAVATING CIRCUMSTANCE

Prior Disciplinary Matters (Standard 1.2(b)(i)). The respondent has a prior public reproof [Case Nos. 03-O-03988]. The prior discipline is remarkably similar to the instant case, where the respondent filed an answer, failed to serve it and failed to communicate. Standard 1.7(a) states that when there is one prior record of discipline the degree of discipline imposed "shall be greater than that imposed in the prior proceeding unless the prior discipline was so remote in time to the current offense 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."

Client Harm (Standard 1.2(b)(iv)). Respondent's conduct resulted in his client being abandoned, without giving him the opportunity to seek new counsel; the client getting sanction; and the client's case being dismissed without prejudice.

MITIGATING CIRCUMSTANCES

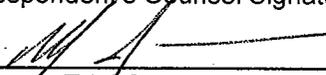
None

(Do not write above this line.)

In the Matter of Steven R. Smith	Case number(s): 05-O-02046
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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>11-8-07</u> Date	 Respondent's Signature	<u>Steven R. Smith</u> Print Name
<u> </u> Date	<u>IN PRO PER</u> Respondent's Counsel Signature	<u> </u> Print Name
<u>11-30-07</u> Date	 Deputy Trial Counsel's Signature	<u>Manuel Jimenez</u> Print Name

(Do not write above this line.)

In the Matter Of Steven R. Smith	Case Number(s): 05-O-02046
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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.

1. Box E (1) should be unchecked.
2. Box F (3) should be unchecked.

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.)**

Dec. 10, 2008
Date

Lucy Armendariz
Judge of the State Bar Court
LUCY ARMENDARIZ

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 December 10, 2007, 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:

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

**STEVEN R. SMITH
LAW OFFICE OF STEVEN R. SMITH
2412 MEADOWBROOK RD
SACRAMENTO, CA 95825**

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 10, 2007**.



Bernadette C. O. Molina
Case Administrator
State Bar Court