


State Bar Court of California
Hearing Department
San Francisco

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

~~CONFIDENTIAL~~

<p>Counsel For The State Bar</p> <p>Susan I. Kagan Deputy Trial Counsel 180 Howard Street, 7th Fl. San Francisco, CA 94105 Tel: (415) 538-2037</p> <p>Bar # 214209</p>	<p>Case Number (s) 05-O-02615 06-O-13784</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>MAY 18 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court's use)</p> <p>LODGED</p> <p>JAN 16 2007</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> <p>kwiktag® 078 540 999</p> 
<p>Counsel For Respondent</p> <p>Lindsay K. Slatter, Esq. Fishkin & Slatter, LLP 369 Pine Street, Ste. 627 San Francisco, CA 94104</p>	<p>Submitted to: Assigned Judge</p>	
<p>Bar # 72692</p> <p>In the Matter Of: KATHLEEN JILL SMITH</p> <p>Bar # 182929</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 6/12/96.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 9 pages, excluding 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".

(Do not write above this line.)

- (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 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case **02-O-10605 [Supreme Court case # S121788]**
 - (b) Date prior discipline effective **3/22/04**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **3-110A; 6068(m); 6068(i)**
 - (d) Degree of prior discipline **No actual suspension, one-year stayed suspension and two years' probation**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
State Bar Court case # of prior case: 05-PM-00897 [Supreme Court case #S121788]
Date prior discipline effective: 7/12/05
Degree of prior discipline: One-year 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 ~~care and~~ cooperation to ~~victims of his/her~~ ~~misconduct~~ 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:

See attachment.

(Do not write above this line.)

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:

Pro Bono Activities and Community Service: Respondent has a substantial record of pro bono activities and community service.

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **KATHLEEN JILL SMITH**

CASE NUMBERS: **05-O-02615; 06-O-13784**

FACTS AND CONCLUSIONS OF LAW

Case No. 05-O-02615

Facts:

1. Respondent and the Office of the Chief Trial Counsel entered into a Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving Stipulation ("stipulation") in settlement of State Bar Case No. 02-O-10605. Respondent executed the stipulation on or about October 27, 2003. The Court approved the stipulation on November 25, 2003. The State Bar Court served the stipulation and order on respondent by mail. Respondent received the stipulation and order.
2. Pursuant to the stipulation, respondent was required to comply with the conditions of probation for a period of two years. The conditions of probation included the following: (1) submission of written quarterly reports on each January 10, April 10, July 10 and October 10 of the probationary period; (2) answering fully, promptly and truthfully any inquiries of the Office of Probation regarding probationary compliance; (3) attendance of Ethics School within one year of the effective date of discipline; and (4) passage of the MPRE within one year of the effective date of discipline.
3. By order, dated March 22, 2004, the Supreme Court imposed discipline on respondent in Case No. S121788 (State Bar Court case no. 02-O-10605). The Supreme Court suspended respondent for one year but stayed the execution of the suspension on the condition that respondent comply with all terms of probation. On or about March 22, 2004, the Clerk of the Supreme Court served the order on respondent by mail. Respondent received the Supreme Court order.
4. On or about April 20, 2004, Eddie Esqueda ("Esqueda"), a probation deputy, sent a letter to respondent at the address shown on the official membership records of the State Bar as provided in Business and Professions Code section 6002.1, subdivision (c), by first class mail, postage prepaid. Respondent received a copy of this letter in the ordinary course of the mail. The April 20, 2004 letter reminded respondent of the terms of probation, including the reporting requirements, and enclosed the disciplinary orders imposing probation.
5. On or about September 13, 2004, Esqueda sent a letter to respondent at the address shown on the official membership records of the State Bar as provided in Business and Professions Code section 6002.1, subdivision (c), by first class mail, postage prepaid. Respondent received a copy of this letter in the ordinary course of the mail. The September 13, 2004 letter advised respondent that the Office of Probation had not received the first quarterly report and reminded respondent of her reporting obligations.
6. In addition to the letters of April 20 and September 13, 2004, Esqueda contacted respondent via telephone on two different occasions to remind her of the terms of probation. On December 22, 2004, Esqueda called respondent and left a voicemail message requesting that she return the call. On January

5, 2005, Esqueda called respondent and left a voicemail message requesting that she return the call. Respondent received at least one of the voicemail messages.

7. On or about February 28, 2005, the Office of the Chief Trial Counsel filed a motion to revoke probation in Case No. 05-PM-00897. The motion was served via certified mail, return receipt requested, on the respondent at the respondent's official membership records address. On March 16, 2005, respondent received the motion and signed the certified mail receipt.

8. On or about March 7, 2005, a Notice of Assignment was filed in Case No. 05-PM-00897. The State Bar Court served the notice of assignment on respondent by mail. Respondent received the notice of assignment.

9. Respondent did not file a response to the State Bar's motion to revoke probation.

10. On March 29, 2005, the State Bar Court issued a Submission Order taking the matter under submission for decision as of March 29, 2005. A copy of the Submission Order was properly served upon respondent by first-class mail, postage fully prepaid, at the address shown on the official membership records of the State Bar as provided in Business and Professions Code section 6002.1, subdivision (c). Respondent received the Submission Order.

11. On April 14, 2005, the State Bar Court Hearing Department filed its Order Granting Motion to Revoke Probation and Order of Involuntary Inactive Enrollment in case number 05-PM-00897 and placed respondent on involuntary inactive enrollment pursuant to section 6007(d) of the Business and Professions Code as of April 19, 2005, for wilfully violating certain conditions of probation as ordered by the Supreme Court in case number S121788 [02-O-10605], as follows:

- a. By failing to submit the quarterly reports due on July 10, 2004, October 10, 2004, and January 10, 2005; and
- b. By failing to respond to Probation Deputy's September 13, 2004 letter or telephone calls fo December 22, 2004, and January 5, 2005, thereby failing to answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to her personally or in writing relating to whether she is complying or has complied with the probation conditions.

A copy of the Order was properly served upon respondent by first-class mail, postage fully prepaid, at the address shown on the official membership records of the State Bar as provided in Business and Professions Code section 6002.1, subdivision (c). Respondent received the Order.

12. From on or about April 20, 2005 through on or about May 2, 2005, while respondent was on inactive enrollment pursuant to section 6007(d) of the Business and Professions Code, respondent appeared in the Sonoma County Superior Court as the appointed conflicts counsel in dependency matters, including but not limited to, the following dependency case numbers:

1639, 1922, 2088, 2087, 1482, 1483, 1574, 1575, 1504, 1505, 1993, 2052, 27019, 1712, 27993, 1119, 1997, 1417, 2086, 2085

13. On May 3, 2006, Judge Nadler of the Sonoma County Superior Court Family Law Division informed respondent of her inactive status.

14. On or about May 2, 2005, John A. Barker & Associates provided check number 8907 in the amount of \$1,400.00 to respondent as legal fees for services performed from April 16 through April 30, 2005. Respondent cashed this check.

15. On or about May 16, 2005, John A. Barker & Associates provided check number 9025 in the amount of \$1,400.00 to respondent as legal fees for services performed from May 1 through May 16, 2005. Respondent cashed this check.

16. As of May 3, 2005, John A. Barker & Associates was aware of respondent's ineligibility to practice law. Respondent initially offered to refund the legal fees paid to her for the period of April 20 through May 16, 2005, however, the firm declined the offer. Consequently, respondent did not provide a refund at that time. As part of these proceedings, within 90 days of the signing of this stipulation, respondent agrees to refund \$1,247.00 to John A. Barker & Associates which represents the portion of legal fees paid for the period of April 20 through May 2, 2005.

17. By order, dated July 12, 2005, the Supreme Court imposed discipline on respondent in Case No. S121788 (State Bar Court case no. 05-PM-00897). The Supreme Court revoked probation and suspended respondent for one year, commencing on April 19, 2005. On or about July 12, 2005, the Clerk of the Supreme Court served the order on respondent by mail. Respondent received the Supreme Court order.

Legal Conclusions:

By practicing law when she was not entitled to do so, respondent violated section 6125 of the Business and Professions Code and failed to support the Constitution and laws of the United States and of this state, in violation of Business and Professions Code sections 6068(a).

Case No. 06-O-13784

Facts:

1. On January 7, 2002, respondent was appointed to represent Enorina Garcia ("Garcia") in the juvenile dependency case, *In the Matter of Sean R. McCarthy, Jr.*, Sonoma County Court No. 1408-DEP. Garcia is the mother of Sean R. McCarthy, Jr. ("child"); Sean R. McCarthy, Sr. is the child's father. The Sonoma County Department of Human Services sought termination of Garcia and McCarthy's parental rights. Respondent was appointed to represent Garcia at the trial level, and if necessary, through the filing of a Notice of Appeal.

2. On November 7, 2003, a trial was held in the matter. On November 26, 2003, the Court issued a judgment terminating Garcia and McCarthy's parental rights. On December 11, 2003, the Court issued a Notice of Entry of Judgment and Notice of Right to Appeal. Respondent received a copy of the judgment and notice. The notice advised, *inter alia*, that a Notice of Appeal must be filed "within sixty (60) days of the date of mailing by the Clerk of the Court of this document."

3. After receiving the judgment and notice, respondent contacted Garcia to determine whether she intended to appeal the judgment. Garcia confirmed that she wanted to appeal the judgment and

requested respondent to file the Notice of Appeal.

4. The deadline for filing the Notice of Appeal was February 9, 2004.

5. On February 10, 2004, respondent sent a two-page facsimile to Garcia. The facsimile contained a signature page for the Notice of Appeal and a cover page advising: "Please have Enorina sign at the bottom and IMMEDIATELY fax back to me at the above number." On the same date, Garcia signed the signature page and returned it to respondent via facsimile.

6. On February 11, 2004, respondent filed the Notice of Appeal. The notice was rejected as untimely. Due to the untimely filing of the notice, Garcia lost her right to appeal.

Legal Conclusions:

By failing to timely file the Notice of Appeal, which resulted in Garcia losing her right to appeal, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to on page on, paragraph A(6), was December 11, 2006.

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(vi) is applicable. Respondent has submitted five (5) letters of reference from members of the legal community who are aware of respondent's misconduct and attest to respondent's good character. Respondent has a substantial record of pro bono activities and community service. "Service to the community is a mitigating factor that is entitled to 'considerable weight.'" (*Calvert v. State Bar* (1991) 51 Cal.3d 765, 785, citations omitted.)

AGGRAVATING CIRCUMSTANCES

Standard 1.2(b)(i) is applicable. Respondent has two prior records of discipline.

Standard 1.2(b)(ii) is applicable. Respondent's inability to cooperate with the State Bar or the State Bar Court prior to discovering her inability to practice law evidences a pattern of misconduct.

Standard 1.2(b)(iv) is applicable. Respondent's failure to timely file the Notice of Appeal significantly harmed Garcia who lost her right to appeal the judgment terminating her parental rights.

Standard 1.2(b)(v) is applicable. Respondent's failure refund the legal fees paid by John A. Barker & Associates for the period of April 20 through May 16, 2005 evidences an indifference toward rectification.

Standard 1.2(b)(vi) is applicable. Respondent's request for a referral to ADP three weeks before trial evidences a lack of cooperation.

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior proceeding 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.

(Do not write above this line.)

In the Matter of Kathleen J. Smith	Case number(s): 05-O-02615; 06-O-13784
---------------------------------------	---

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.

12/14/06
Date

12/18/06
Date

12/20/06
Date

Kathleen J. Smith
Respondent's Signature

Kathleen J. Smith
Print Name

Lindsay K. Slatter
Respondent's Counsel Signature

Lindsay K. Slatter, Esq.
Print Name

Susan I. Kagan
Deputy Trial Counsel's Signature

Susan I. Kagan
Print Name

(Do not write above this line.)

In the Matter Of KATHLEEN JILL SMITH	Case Number(s): 05-O-02615;06-O-13784
--	---

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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

Jan 16, 2007
Date

Pat McElroy
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 San Francisco, on January 16, 2007, I deposited a true copy of the following document(s):

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR
COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND
ORDERS**

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

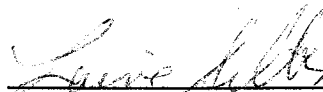
by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

SUSAN KAGAN

KATHLEEN JILL SMITH

LINDSAY SLATTER

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 16, 2007**.



Laine Silber
Case Administrator
State Bar Court