



(Do not write above this line.)

**State Bar Court of California
Hearing Department
San Francisco**

<p>Counsel For The State Bar</p> <p>Allen Blumenthal Supervising Trial Counsel 180 Howard Street San Francisco, CA 94105 Telephone: (415) 538-2228</p> <p>Bar # 110243</p>	<p>Case Number (s) 05-O-3825 and 05-O-5131</p>	<p>(for Court's use)</p> <p align="center">PUBLIC MATTER</p> <p align="center">FILED <i>[Signature]</i></p> <p align="center">DEC 20 2006</p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Lindsay Slatter 369 Pine Street, # 627 San Francisco CA 94104 Telephone (415) 403-1300</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>Bar # 72692</p> <p>In the Matter Of: Jose Jess Alvarez</p> <p>Bar # 65039</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 18, 1975**.
- (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 **16** 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."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Stayed Suspension

(Do not write above this line.)

- (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):
- costs added to membership fee for calendar year following effective date of discipline.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: (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
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Stayed Suspension

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

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 **three years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, California Rules of Court)

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 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.
- (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 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.

(Do not write above this line.)

- (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 the 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:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> 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 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:**

Within 30 days of the imposition of this discipline, Respondent will mark as "cancelled" the promissory note signed by Ms. Diaz and return the promissory note to Ms. Diaz. Respondent will mark as "cancelled" the promissory note signed by Mr. Arechiga on March 4, 2004 for \$8,500 and return the promissory note to Mr. Arechiga. In his first quarterly report and in each quarterly report thereafter until he has complied with this condition, Respondent shall declare under penalty of perjury that he has complied with this condition and marked and returned these promissory notes to his clients. Should Mr. Arechiga request, Respondent agrees to participate in mandatory fee arbitration and be bound by the fee arbitrator's decision. Respondent shall also declare under penalty of perjury in each quarterly report whether Mr. Arechiga has requested fee arbitration, whether the arbitration has occurred, its result, and whether Respondent has complied with the arbitrator's decision. Respondent shall attach a copy of the arbitration award to the first quarterly report after the award is issued.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Jose Jess Alvarez

CASE NUMBER(S): 05-O-3825 & 05-O-5131

FACTS AND CONCLUSIONS OF LAW.

A. Case No. 05-O-3925 (Diaz)

COUNT ONE-A

1. On December 21, 2000, Maria Diaz hired Respondent Jose Jess Alvarez (hereinafter "Respondent") to obtain a court order releasing a lien on her house. Respondent was paid \$65 that day as an advanced fee.

2. Ms. Diaz's native and primary language is Spanish. While she speaks some English, her ability to understand English and comprehend written English is limited. Respondent, who is fluent in Spanish, was aware of Ms. Diaz's limitations in English. During the course of Respondent's representation, Respondent communicated with Ms. Diaz in Spanish.

3. On February 24, 2001, Respondent presented Ms. Diaz with and had her sign a fee agreement written in English, even though Ms. Diaz's native and primary language is Spanish and Ms. Diaz's communications with Respondent were in Spanish.

4. The fee agreement provided that Ms. Diaz would deposit with Respondent \$1,000 as security against his fees and costs and that Respondent would charge \$250 an hour for his services. The fee agreement also provided that "any dispute with respect to Client's liability for fees and costs incurred shall be submitted to arbitration in accordance with applicable provisions of the California Business and Professions Code sections 6200 et seq. Attorney and Client agree to be bound by the award of the arbitrators, and that such award shall be enforceable in accordance with said provisions of the Code of Civil Procedure and the Business and Professions Code."

5. Respondent did not provide Ms. Diaz with a Spanish translation or explanation of the fee agreement and its terms and he did not explain to her the terms of the agreement or their implications in Spanish. Ms. Diaz was not proficient enough in English to understand the fee agreement, its terms, or implications. Her consent to the fee agreement was not informed consent.

6. While the fee agreement advised Ms. Diaz in English that she was entitled to seek the advice of independent counsel with regard to the terms and conditions of this agreement, it did not advise Ms. Diaz to seek the advice of independent counsel. Further, the advice that was given was provided in English, not Spanish. Respondent did not provide Ms. Diaz with a Spanish translation of the advise that Ms. Diaz was entitled to seek independent counsel or an explanation why seeking such advise was provided. Ms. Diaz was not proficient enough in English to understand the waiver, its purpose, and its implications. Her consent was not informed consent.

7. Respondent did not explain to Ms. Diaz in writing in a manner which should reasonably have been understood by her the terms of the agreement and its implications.

8. On February 24, 2001, at the same time Respondent had Ms. Diaz sign the fee agreement, he also presented and had Ms. Diaz sign a promissory note. This promissory note secured Respondent's fees and required Ms. Diaz to pay Respondent \$300 a month. The promissory note stated that the \$5,000 would be due in full and payable on February 24, 2002. The note, which is written in English, provided that "all parties to this note waive demand, notice of non-payment, and protest."

9. The note also obligated Ms. Diaz to pay the \$5,000 regardless of whether or not Ms. Diaz wished to terminate Respondent's services.

10. The promissory note was written in English. Respondent did not provide Ms. Diaz with a Spanish translation or explanation of the promissory note or its terms and he did not explain to her in Spanish the terms and consequences of the promissory note. Ms. Diaz was not proficient enough in English to understand the promissory note and its terms. Her consent to the promissory note was not informed consent.

11. While the promissory note did advise Ms. Diaz in English that she was entitled to seek the advice of independent counsel with regard to the terms and conditions of this agreement, it did not advise Ms. Diaz to seek the advice of independent counsel. Further, the advice that was given was provided in English, not Spanish. Respondent did not provide Ms. Diaz with a Spanish translation of the advice that Ms. Diaz was entitled to seek independent counsel or an explanation why seeking such advise was provided. Ms. Diaz was not proficient enough in English to understand the promissory note, its terms, and implications. Her consent to the promissory note was not informed consent.

12. Respondent did not explain to Ms. Diaz in writing in a manner which should reasonably have been understood by her the terms of the promissory note and its implications. The terms of the promissory note were not fair.

13. From December 21, 2000 through February 24, 2001, Ms. Diaz paid \$4,000 to Respondent as an advance on his fees and costs.

14. By entering into a fee agreement with Ms. Diaz that required her to engage in mandatory fee arbitration and having his client sign a promissory note for \$5,000 that waived demand, notice and any protest to the fees Respondent knowingly acquired an ownership, possessory, security, or a pecuniary interest adverse to his client. By failing to disclose to the client in writing in a manner which should reasonably have been understood by her the terms of the fee agreement and the promissory note secured by Ms. Diaz' home, by not advising her in writing in a manner which should reasonably have been understood by her that she should seek independent counsel before consenting to the fee agreement and promissory note, by not giving his client a reasonable opportunity to seek that advice of counsel, and by having his client sign a promissory note that was not fair, Respondent wilfully violated rule 3-300 of the Rules of Professional Conduct by acquiring an ownership, possessory, security, or a pecuniary interest adverse to his client without complying with the requirements of Rules 3-300 of the Rules of Professional Conduct.

COUNT ONE-B

15. The allegations of paragraphs 1 through 15 are incorporated by reference.

16. Subsequent to December 21, 2000, Respondent failed to perform the services for which he was hired. He failed to file any action to remove the lien on Ms. Diaz' house or perform any substantive services for Ms. Diaz. He did not perform in a diligent manner and did not complete or perform the services for which he was hired.

17. Ultimately, Ms. Diaz hired a paralegal, Lenora O'Neil, to assist her in filing the necessary documents to remove the lien. Ms. Diaz did so because Respondent was not performing or communicating with her. Ms. O'Neil was able in a short period of time to prepare and assist Ms. Diaz in filing the necessary documents and obtain removal of the lien on Ms. Diaz's house. Thus, with the assistance of Ms. O'Neil, Ms. Diaz was able to obtain on her own the removal of the lien on her house. Respondent and his law office had no role in removing the lien on Ms. Diaz's house. Respondent performed no services of value for Ms. Diaz.

18. By failing to perform the services for which he was hired, including failing to take any substantive action on his client's behalf and to perform in a diligent manner, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of rule 3-110(A) of the rules of Professional Conduct.

COUNT ONE-C

19. The allegations of paragraphs 1 through 18 are incorporated by reference.

20. Initially, Respondent would respond to Ms. Diaz's inquiries about her case, assuring her he was handling the matter.

21. However, from 2002 through 2003, Respondent failed to communicate with Ms. Diaz, despite her numerous requests that he do so. She would telephone Respondent at his office's telephone number and leave messages for him to contact her. He failed to respond to these inquiries, even though he received the messages.

22. Subsequently, Ms. Diaz hired a paralegal, Lenora O'Neil, to assist her in filing the necessary documents to remove the lien. Ms. Diaz did so because Respondent was not performing or communicating with her. Ms. O'Neil was able in a short period of time to prepare and assist Ms. Diaz in filing the necessary documents and obtain removal of the lien on Ms. Diaz's house.

23. Respondent did not earn any portion of the fees paid to him by Ms. Diaz. He also did not return the fees to Ms. Diaz, even after she wrote to him at his office address requesting that the \$4,000 in fees and costs she advanced be returned. Respondent never responded to that letter, even though he received it.

24. By failing to respond to Ms. Diaz's inquiries, Respondent failed to respond to Ms. Diaz's reasonable inquiries about her case, in violation of section 6068(m) of the Business & Professions Code.

COUNT ONE-D

25. The allegations of paragraphs 1 through 24 are incorporated by reference.

26. Respondent did not earn any portion of the fees paid to him by Ms. Diaz. He also did not return the fees to Ms. Diaz, even after she wrote to him at his office address requesting that the fees be returned. Respondent never responded to that letter, even though he received it.

27. By failing to perform the services for Ms. Diaz for over two years and failing to respond to her inquiries, Respondent in effect withdrew from employment without informing Ms. Diaz and without refunding the unearned fees, despite Ms. Diaz's requests that they be returned.

28. On August 2, 2005, Ms. Diaz complained to the State Bar about Respondent's conduct in this matter, including his failure to refund her fees. On September 9, 2005 the State Bar sent Respondent a letter inquiring about Ms. Diaz's complaint. Respondent received this letter.

29. On September 23, 2005, Respondent refunded \$4,000 to Ms. Diaz. However, this refund was made only after receiving notice from the State Bar of Ms. Diaz's complaint to the State Bar regarding his conduct.

30. By withdrawing from representing Ms. Diaz without informing her and by failing to promptly refund the fees she paid him, despite her requests that Respondent refund the unearned fees and costs, Respondent wilfully withdrew from employment without taking reasonable steps to avoid reasonable prejudice to the rights of his client, including, but not limited to, failing to promptly refund unearned fees.

B. Case No. 05-O-5131 (Arechiga)

COUNT TWO-A

31. On March 6, 2002, Cristobal Arechiga hired Respondent to represent him in a dissolution of marriage action, in a matter entitled *Arechiga v. Arechiga*, Alameda Superior Court, Case No. 847222-3.

32. On March 6, 2002, Respondent presented Mr. Arechiga with and had him sign a fee agreement written in English, even though Respondent knew that Mr. Arechiga's native and primary language is Spanish and his communications with Respondent were in Spanish. Respondent knew that Mr. Arechiga did not read or speak English. Throughout his representation, Respondent communicated with Mr. Arechiga in Spanish.

33. The fee agreement provided that Mr. Arechiga would pay Respondent \$3,000 as an advance fee and that Respondent would charge for the time he expended. Although Respondent listed this as a non-refundable fee, it, in fact, was not; it was an advance for fees. The fee agreement also provided for fee arbitration.

34. Respondent did not provide Mr. Arechiga with a Spanish translation or explanation of the fee agreement or its terms. Mr. Arechiga was not sufficiently proficient in English to understand the fee agreement and its terms. He did not read or speak English. His consent to the fee agreement was not informed consent.

35. Respondent did not explain to Mr. Arechiga in writing in a manner which should reasonably have been understood by him the terms of the agreement and its implications.

36. On March 6, 2002, Mr. Arechiga paid Respondent \$300 as an advanced fee. On March 7, 2002, Mr. Arechiga paid Respondent \$2,700 as an advanced fee. Thus, by March 7, 2002, Mr. Arechiga had paid Respondent \$3,000 as advanced fees.

37. Subsequently, Respondent performed some services for Mr. Arechiga.

38. On March 4, 2004, two years after being hired, Respondent presented to and had Mr. Arechiga sign a promissory note for \$8,500, promising to pay \$100 a month. The promissory note stated that the it was given for valuable consideration, hereby acknowledged as received, and as retention of Respondent's law firm, even though Respondent's law firm had been retained two years earlier. The \$8,500 would be due in full and payable on September 15, 2004. The note, which is written in English, provided that "all parties to this note waive demand, notice of non-payment, and protest."

39. The note also obligated Mr. Arechiga to pay the \$8,500 regardless of whether or not Mr. Arechiga wished to terminate Respondent's services.

40. The promissory note was written in English. Respondent did not provide a Spanish translation or explanation of the promissory note or its terms and he did not explain to Mr. Arechiga in Spanish the terms and consequences of the promissory note. Mr. Arechiga was not proficient enough in English to understand the promissory note, its terms, and implications. His consent to the promissory note was not informed consent.

41. While the March 4, 2004 promissory note advised Mr. Arechiga in English that he was entitled to seek the advice of independent counsel with regard to the terms and conditions of this note secured by Mr. Arechiga's home, it did not advise Mr. Arechiga to seek the advice of independent counsel. Further, the advice that was given was provided in English, not Spanish. Respondent did not provide Mr. Arechiga with a Spanish translation of the advice that Mr. Arechiga was entitled to seek independent counsel or an explanation why seeking such advice was provided. Mr. Arechiga was not proficient enough in English to understand the advice to seek independent counsel. His consent to the March 4, 2004 promissory note was not informed consent.

42. Respondent did not explain to Mr. Arechiga in writing in a manner which should reasonably have been understood by him the terms of the March 4, 2004 promissory note secured by Mr. Archiga's home and its implications. The terms of the agreement were not fair.

43. On January 3, 2005, Respondent had Mr. Arechiga sign a substitution of attorney form substituting Respondent out of the case. At the same time, Respondent presented to and had Mr. Arechiga sign a new promissory note secured by Mr. Arechiga's home for \$11,000, promising to pay \$200 a month. The new promissory note stated that the it was given for

valuable consideration, hereby acknowledged as received, and as retention of Respondent's law firm, even though Respondent at the same time was having Mr. Arechiga sign a substitution of attorney form substituting Respondent out of the case. The \$11,000 would be due in full and payable on refinance of Mr. Arechiga's home or January 1, 2007. The January 3, 2005 promissory note secured by Mr. Arechiga's home was written in English.

44. The note stated that the \$11,000 "may not be the total amount due and owing for legal services rendered and this note must be paid regardless of whether or not you wish to terminate representation of Respondent and that Respondent by accepting the maker as a client will forego representing others." Respondent claims that the consideration was his reducing the fee to \$11,000. However, if that was the terms of the agreement, it was not stated in the document or any other document.

45. The January 3, 2005 promissory note was written in English. Respondent did not provide a Spanish translation or explanation of the promissory note secured by Respondent's home or its terms and he did not explain to Mr. Arechiga in Spanish the terms and consequences of the promissory note. Mr. Arechiga was not proficient enough in English to understand the promissory note secured by his house and its terms. His consent to the new promissory note secured by his house was not informed consent.

46. While the promissory note advised Mr. Arechiga in English that he was entitled to seek the advice of independent counsel with regard to the terms and conditions of this note, it did not advise Mr. Arechiga to seek the advice of independent counsel. Further, the advice that was given was provided in English, not Spanish. Respondent did not provide Mr. Arechiga with a Spanish translation of the advice that Mr. Arechiga was entitled to seek independent counsel or an explanation why seeking such advice was provided. Mr. Arechiga was not proficient enough in English to understand the advice to seek counsel in the January 3, 2005 promissory note secured by Mr. Arechiga. His consent to the January 3, 2005 promissory note secured by his home and waiver of his right to seek independent counsel was not informed consent.

47. Respondent did not explain to Mr. Arechiga in writing in a manner which should reasonably have been understood by her the terms of the January 3, 2005 promissory note secured by Mr. Arechiga's home and its implications.

48. Although Respondent and Mr. Arechiga signed a substitution of attorney form on January 3, 2005, Respondent did not file the substitution of attorney form until July 28, 2005.

49. By entering into a fee agreement with Mr. Arechiga that required him to engage in fee arbitration and having his client sign a promissory note for \$8,500 that waived demand, notice and any protest to the fees, and by having his client sign a subsequent promissory note for \$11,000 secured by Mr. Arechiga's home, Respondent knowingly acquired an ownership,

possessory, security, or a pecuniary interest adverse to his client. By failing to disclose to the client in writing all the terms of the promissory notes, by failing to disclose to the client in writing in a manner which should reasonably have been understood by him the terms of promissory notes secured by Mr. Arechiga's home, by not advising him in writing in a manner which should reasonably have been understood by him that he should seek independent counsel before consenting to the promissory notes, by not giving his client a reasonable opportunity to seek that advice of counsel, and by having his client sign promissory notes that were not fair, Respondent wilfully violated rule 3-300 by knowingly acquiring an ownership, possessory, security, or a pecuniary interest adverse to his client without complying with the requirements of Rule 3-300 of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was October 10, 2006.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.8 of the Standards for Attorney Sanctions For Professional Misconduct (hereinafter "Standards") states that culpability of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

Standard 2.4(b) of the Standards states that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.10 of the Standards states that culpability of a member of a wilful violation of any provision of the Business & Professions Code not specified in these standards or a wilful violation of the Rules 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 respect to the purposes of imposing discipline set forth in Standard 1.3.

Thus, the stayed suspension recommended here is well within the discipline suggested by the Standards, especially given the multiple misconduct here.

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 Silvertan* (2005) 36 Cal.4th 81, 92.)

Thus, 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 Silverton*, supra, 36 Cal.4th at 92.) That is, 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 also supports a period of stayed suspension. If anything, given the violations, the multiple nature of the violations, and harm, and all the mitigating and aggravation factors, the discipline recommended in this case is on the more lenient side of case law. However, given Respondent's long history as an attorney without priors, and the conditions of probation attached to this discipline, 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, with three years probation.

Violations of rule 3-300 (or its predecessors) has generally resulted in discipline ranging from public reproof to two years actual suspension. (See *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297, 308.)

Case law for failures to communicate, failures to perform, and failures to refund unearned fees has resulted in reprovals to periods of actual suspension. (See *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 [six month suspension, stayed for one failure to perform]; *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175 [private reproof for one instance of failure to perform]; *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 one failure to perform].

(Do not write above this line.)

In the Matter of
Jose Jess Alvarez, No. 65039

Case number(s):
05-O-03825 & 05-O-05131

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.

11-30-06

Date



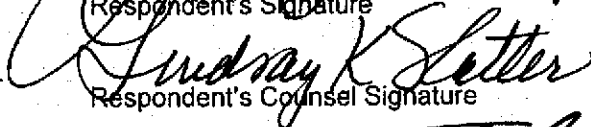
(Respondent's Signature)

Jose Jess Alvarez

Print Name

11-30-06

Date



Respondent's Counsel Signature

Lindsay Slatter

Print Name

12/5/06

Date



Deputy Trial Counsel's Signature

Allen Blumenthal

Print Name

(Do not write above this line.)

In the Matter of JOSE JESS ALVAREZ	Case number(s): 05-O-03825 & 05-O-05131
---------------------------------------	--

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. On page 5, section F(2)--Respondent must mark as "cancelled" the promissory note signed by Mr. Arechiga on March 4, 2004, for \$8500 and return the promissory note to Mr. Arechiga within 30 days of the imposition of this discipline.

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.)

Dec. 18, 2006
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 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 20, 2006, 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:

**LINDSAY K. SLATTER
FISHKIN & SLATTER LLP
1111 CIVIC DRIVE #215
WALNUT CREEK CA 94596-3831**

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

ALLEN BLUMENTHAL, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 20, 2006.**



**George Hae
Case Administrator
State Bar Court**