

State Bar Court of California Hearing Department Los Angeles PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES		
Counsel For The State Bar Monique T. Miller Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1486 Bar # 212469	Case Number (s) 06-O-12517 06-O-12518 06-O-14218	(for Court's use) FILED SEP 11 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent Lori Smith 1401 Allendale Drive Riverside, CA 92507 (951) 784-4155 Bar # 196156	Submitted to: Program Judge	
In the Matter Of: LORI SMITH Bar # 196156 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 26, 1996**.
- (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 **10** 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".



- (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
- (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:
- (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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: LORI SMITH

CASE NUMBER(S): 06-O-12517; 06-O-12518; 06-O-14218

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND
STIPULATED FACTS AND CULPABILITY**

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on November 29, 2007, and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of another amended Notice of Disciplinary Charges relating to cases which are the subject matters of this stipulation.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 06-O-12517

Facts

1. On October 19, 2005, Jeishyel Tobar ("Tobar") employed Respondent to provide legal services in a matter or matters involving child custody, visitation, and support in Los Angeles Superior Court case no. RID 208733 ("the Tobar matter").
2. On October 19, 2005, Tobar paid Respondent \$3,000.00 to represent her in the Tobar matter. Respondent's Legal Services Contract states that: "[T]he retainer fee. . . will be deposited into a Client Trust Account and credited against the overall fee in your matter when periodic billing takes place."
3. On November 23, 2005, Respondent filed an Order To Show Cause re Modification of Child Custody/Visitation in the Tobar matter ("OSC"). The Court set the Tobar matter for an OSC on January 26, 2006, and set a mediation appointment for January 19, 2006.
4. On January 9, 2006, at a meeting in Respondent's office, Respondent's paralegal Marie Carrillo ("Carrillo") informed Tobar of Respondent's withdrawal by presenting her with a

letter that stated that due to a severe medical condition, Respondent was closing her law office and would no longer practice law, and that she would no longer represent Tobar in the Tobar matter. Tobar was given a copy of most of her client file by Carillo. She was told at that time by Carillo that she would get her money back (refund of advanced fees) in about a week. At the same time, Carillo informed Tobar of the OSC date and the mediation appointment.

5. On January 12, 2006, Respondent signed a Substitution of Attorney, substituting Tobar for Respondent, in pro per. The substitution was filed with the Court on or about January 18, 2006.

6. Respondent's last billing sent to Tobar, dated January 13, 2006, accounted for Tobar's \$3,000 advanced fee leaving her a credit balance of \$1,626.85.

7. On January 18, 2006, Tobar sent a letter to Respondent demanding a refund of her total \$3,000 in advanced fees.

8. On April 20, 2006, Tobar received a check issued from Respondent's Union Bank of California client trust account no. 8970019341 ("Union Bank CTA"), in the amount of \$500.00, with a notation in the memo section, "partial client refund."

9. As of April 20, 2006, Respondent owed Tobar a refund of unearned advanced fees in the undisputed amount of \$1,126.85. To date, Respondent has not refunded any portion of the \$1,126.85 to Tobar.

10. Per Respondent's retainer agreement dated October 19, 2005, Tobar's advanced fees of \$3,000 paid to Respondent were to be held in Respondent's client trust account.

11. On May 31, 2006, Respondent's Union Bank CTA had a balance of \$106.69. The balance in Respondent's Union Bank CTA was below the \$2,500 in disputed advanced fees that should have been held in the account.

12. On April 3, 2006, the State Bar opened an investigation, case no. 06-O-12517, (the "Tobar matter").

13. On June 14, 2006, a State Bar investigator sent a letter to Respondent regarding the allegations in the Tobar matter. The letter was sent to Respondent's Membership Records address. The letter was returned by the U.S. Post Office as "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." Respondent did not change her Membership Records address until on or about August 28, 2007.

14. On November 6, 2006, the investigator then received a telephone call from

Respondent and was given a new address to send mail to Respondent that was not Respondent's Membership Records address. On or about November 6, 2006, the State Bar investigator sent a letter to Respondent at the new address regarding the allegations in the Tobar matter. The investigator included the State Bar investigation letter dated June 14, 2006. Respondent received the letter.

15. Respondent did not respond to the investigator's November 6, 2006, letter.

Conclusions of Law

16. By failing to represent her client regarding the issues of child custody, visitation and support, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional conduct, rule 3-110(A).

17. By failing to promptly refund the undisputed portion of Tobar's advanced fees upon her termination of employment, Respondent failed to refund promptly, upon termination of employment, any part of a fee paid in advance that has not been earned, in wilful violation of Rules of Professional conduct, rule 3-700(D)(2).

18. By not maintaining Tobar's disputed advanced funds in her Union Bank CTA, Respondent failed to maintain client funds in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation of Rules of Professional conduct, rule 4-100(A).

19. By failing to provide a written response to the allegations from the investigator as requested in the investigator's June 14, 2006, letter that was included in the investigator's November 6, 2006 letter regarding the Tobar matter, or otherwise cooperating in the investigation of the Tobar matter, Respondent failed to cooperate in a disciplinary investigation, in wilful violation of Business and Professions Code section 6068(i).

Case No. 06-O-12518

Facts

20. On or about April 28, 2005, Michael J. Smith ("Smith") employed Respondent to represent him in a marital dissolution action, Riverside Superior Court case no. RID 209223 ("the Smith matter").

21. In or about May 2005, Smith paid Respondent \$3,500.00 in advanced fees.

22. On June 15, 2005, Respondent filed a Response to Dissolution in the Smith matter.

23. On July 28, 2005, Respondent was served by petitioner's attorney with form interrogatories and Notice for Production of Documents in the Smith matter. Respondent did not respond by sending completed form interrogatories or documents to the petitioner's attorney.

24. As October 4, 2005, Respondent maintained \$2,253.75 on behalf of Smith as a credit balance from the fees.

25. In November or December 2005, Respondent advised Smith by letter that she would be closing her law office due to illness. From December 2005 through March 2006, Smith was unable to speak with Respondent, obtain his client file, or receive a return of unearned fees.

26. On March 7, 2006, Smith employed attorney Robert M. Dykes ("Dykes") to substitute into the Smith matter in place of Respondent. In April 2006, Dykes spoke to Respondent who agreed to send a signed substitution form to Dykes or to file it with the court.

27. On June 22, 2006, Respondent sent Dykes a signed Substitution of Attorney for filing with the court.

28. To date, Respondent has not turned over Smith's client file to Smith or his attorney and has not refunded any portion of the advanced fees paid to her by Smith.

29. On April 20, 2006, the State Bar opened an investigation, case no. 06-O- 12518, ("the Dykes matter").

30. On June 27, 2006, a State Bar investigator sent a letter to Respondent regarding the allegations in the Dykes matter. Respondent received the letter.

31. Respondent failed to respond to the investigator's June 27, 2006, letter.

Conclusions of Law

32. By failing to respond to discovery in Smith's case, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional conduct, rule 3-110(A).

33. By failing to turn over the Smith client file when she notified Smith that she was unable to represent him further, and by failing to ever turn over Smith's file to Smith or Dykes, Respondent failed to release promptly, upon termination of employment, to a client, at the request of the client, all client papers and property, in wilful violation of Rules of Professional conduct, rule 3-700(D)(1).

34. By failing to return at the time of her withdrawal from employment, the undisputed balance of fees advanced by her client, Respondent failed to refund promptly, upon termination of employment, any part of a fee paid in advance that has not been earned, in wilful violation of Rules of Professional conduct, rule 3-700(D)(2).

35. By failing to provide a written response to the allegations from the investigator as requested in the investigator's letter of June 27, 2006, for the Dykes matter, or otherwise cooperating in the investigation of the Dykes matter, Respondent failed to cooperate in a disciplinary investigation, in wilful violation of Business and Professions Code section 6068(i).

Case No. 06-O-14218

Facts

36. On February 1, 2006, Respondent issued a check for \$176.75 made payable to Brent Miller, drawn upon Respondent's client trust account no. 8970019341 at Union Bank of California (the "Union Bank CTA") against insufficient funds. The memo section of the check stated: "Return of Remainder of Unused Client Funds." The balance of the Union Bank CTA at the time the check was presented for payment on February 21, 2006, was approximately \$98. Union Bank paid the check.

37. On February 21, 2006, Respondent deposited \$100 of her personal funds into the Union Bank CTA.

38. On September 14, 2006, the State Bar opened an investigation, case no. 06-O- 14218, (the "State Bar matter").

39. On October 5, 2006, a State Bar investigator sent a letter to Respondent regarding the allegations in the State Bar matter. Respondent received the letter.

40. Respondent failed to respond to the investigator's October 5, 2006, letter.

41. On October 20, 2006, the State Bar investigator sent a second letter to Respondent regarding the allegations in the State Bar matter. The investigator included the State Bar investigation letter dated October 5, 2006. The letter was returned by the U.S. Post Office "ATTEMPTED - NOT KNOWN UNABLE TO FORWARD." The investigator then received a telephone call from Respondent and was given a new mailing address by Respondent. On November 6, 2006, the State Bar investigator sent a third letter to Respondent's new mailing address regarding the allegations in the State Bar matter.

67. Respondent failed to respond to the investigator's November 6, 2006, letter.

42. As of on or about August 27, 2007, Respondent's Membership Records address was still listed as the 11th street address.

Conclusions of Law

43. By issuing a CTA check against insufficient funds and by depositing her personal funds into the Union Bank CTA to cover the Miller check, Respondent commingled personal funds in her Union Bank CTA and otherwise misused her Union Bank CTA, a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import.

44. By failing to provide a written response to the allegations from the investigator as requested in the investigator's letters of October 5, 2006, October 20, 2006, and November 6, 2006, for the State Bar matter, or otherwise cooperating in the investigation of the State Bar matter, Respondent failed to cooperate in a disciplinary investigation.

45. By not providing a correct address to the State Bar of California Membership Records office, Respondent failed to comply with the requirements of Business and Professions Code, section 6068(j) by failing to comply with section 6002.1.

RESTITUTION

<u>To</u>	<u>Amount</u>	<u>Plus interest at the rate of 10% from</u>
Jeishyel Tobar	\$1,126.85	April 20, 2006
Michael Smith	\$2,253.75	October 4, 2005

PENDING PROCEEDINGS.


The disclosure date referred to, on page one, paragraph A.(7), was ~~February 14, 2008.~~ *March 26* ✓ / *MT*

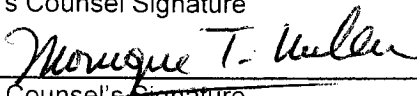
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In the Matter of LORI SMITH	Case number(s): 06-O-12517; 06-O-12518; 06-O-14218
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SIGNATURE OF THE PARTIES

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>3/14/2008</u>	<u></u>	<u>LORI SMITH</u>
Date	Respondent's Signature	Print Name

<u>3/26/2008</u>	<u></u>	<u>MONIQUE T. MILLER</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter Of LORI SMITH	Case Number(s): 06-O-12517; 06-O-12518; 06-O-14218
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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 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.

*Respondent's correct date of admission should read:
June 26, 1998 - not 1996. [Stipulation, p.1.]*

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.)

September 4, 2008
Date


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 Los Angeles, on September 11, 2008, I deposited a true copy of the following document(s):

CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS

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

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

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

LORI SMITH, ESQ.
1401 ALLENDALE DR
RIVERSIDE, CA 92507


- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

MONIQUE MILLER, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 11, 2008.



Rose Luthi
Case Administrator
State Bar Court