

State Bar Court of California
Hearing Department
San Francisco

<p>Counsel For The State Bar</p> <p>Esther Rogers State Bar of California Office of the Chief Trial Counsel 180 Howard Street San Francisco, CA 94105 (415)538-2445</p> <p>Bar # 148246</p>	<p>Case Number (s) 07-O-10369</p>	<p>(for Court's use)</p> <p style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em;">FILED <i>[Signature]</i></p> <p style="text-align: center;">DEC 19 2007</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Vicki H. Young Law Office of Vicki Young 706 Cowper Street, Suite 205 Palo Alto, CA 94301 (415)421-4347</p> <p>Bar # 73261</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>In the Matter Of: Arturo Marquez</p> <p>Bar # 59704</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 **June 18, 1974**.
- (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 **12** 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: (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 **90-O-17255**
 - (b) Date prior discipline effective **April 30, 1992**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **4-1001; 4-100(B)(4); 6-101(A)(2)**
 - (d) Degree of prior discipline **Six month suspension, stayed, two years probation**
 - (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. **Respondent agreed to the imposition of discipline without requiring a hearing and cooperated with the State Bar investigation.**
- (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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **two 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 **(30) thirty 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:
- | | |
|---|---|
| <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 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: _____

(Do not write above this line.)

- (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: Arturo Marquez

CASE NUMBER(S): 07-O-10369

FACTS AND CONCLUSIONS OF LAW.

Count One

On or about February 17, 2005, Moe Haughey ("Haughey"), hired respondent to appeal a decision of the Labor Board awarding Haughey's former employee, Kathy Mahaney ("Mahaney") unpaid overtime wages and interest totaling \$7,315.73.

On or about March 8, 2005, respondent filed a Notice of Appeal on behalf of Haughey in the matter *Kathy Mahaney v. Moe Haughey*, Superior Court of California, County of Yuba, case no. CVG 05-61. The court required Haughey to post a bond for \$7,315.73, the amount of Mahaney's award. On April 29, 2005, the State of California Labor Commissioner informed the court that they would represent the plaintiff and would seek attorney's fees from Haughey if plaintiff prevailed on appeal.

On May 20, 2005, the court filed and properly served on respondent a Case Management Order. The Case Management Order required respondent to file and serve a settlement conference statement at least five judicial days before the settlement conference set for July 29, 2005. Thereafter, respondent failed to file a settlement conference statement at least five judicial days before the settlement conference. On July 29, 2005, respondent appeared at the settlement conference. The parties did not settle the matter.

On or about August 1, 2005, the court filed a Settlement Conference Order requiring the parties to file and serve a statement of facts, pretrial motions and motions in limine, a list of proposed exhibits, a trial witness list and a trial brief at least five days before the August 31, 2005 trial date. In or about the end of August 2005, the court continued the trial until September 2, 2005. The case was continued less than five judicial days before the August 31, 2005 trial date. Respondent failed to file any documents as ordered by the court, within five judicial days before the August 31, 2005 trial date.

On or about September 2, 2005, the court vacated the September 2, 2005 trial date. On September 12, 2005, the court issued a Notice of Court Trial and re-set the matter for trial to

commence on December 1, 2005. The court clerk properly served respondent with a copy of the Notice of Trial. The Notice of Court Trial stated that trial briefs were due five days before the scheduled trial. Thereafter, respondent failed to file a trial brief.

As of on or about September 12, 2005, respondent knew or should have known that the trial was going forward on December 1, 2005. On or about November 30, 2005, court clerk Lisa Sparks telephoned respondent's office and left a voice mail message stating to respondent that his trial brief, witness list, exhibit list and any motions in limine were overdue since the trial was scheduled to commence the following day.

Thereafter, respondent failed to appear at the December 1, 2005 trial. At the December 1, 2005 trial, the Court found in favor of plaintiff.

Conclusions of Law

By failing to file a trial brief, exhibit list, and witness list, and by failing to appear for trial on December 1, 2005, respondent recklessly and repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

Count Two

Facts

Count One is incorporated by reference as if fully set forth herein.

Conclusions of Law

By failing to: (1) file and serve a settlement conference statement; and (2) by failing to file and serve trial brief, a list of proposed exhibits and a trial witness list in advance of the August 31, 2005 trial date, in violation of the court's orders, respondent wilfully violated an order of the court requiring him to do an act in the course of respondent's profession which he ought in good faith do, in wilful violation of Business and Professions Code section 6103.

SUPPORTING AUTHORITY

Standard 2.4(b) states “[c]ulpability of a member of wilfully failing to perform services with competence 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 2.6(b) states that a member found culpable of Business and Professions Code §6103 “shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set for in standard 1.3.”

Standard 1.7(a) states “if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of 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 discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

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

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 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.

Case law also supports actual suspension here. For example, in *Sorenson v. State Bar* (1991) 52 Cal.3d 1036, an attorney who failed to obey a court order and breached his duty to maintain such actions only as appear to him legal or just, received a 30 day actual suspension. In *Franklin v. State Bar* (1986) 41 Cal.3d 700, an attorney who failed to perform and communicate in two matters and made misrepresentations to the State Bar was suspended for one year, stayed, including 45 days actual suspension. Franklin had no prior record of discipline in 14 years of practice.

In *Harris v. State Bar* (1990) 51 Cal.3d 1082, an attorney received a 90 day actual suspension for failing to perform in one matter and improper withdrawal. In aggravation, the court found a lack of candor and indifference toward the consequences of his misconduct. The attorney had no prior record of discipline in 20 years of practice.

In *Stuart v. State Bar* (1985) 40 Cal.3d 838, an attorney was actually suspended for 30 days for failing to perform and improper withdrawal in one matter. He had previously been privately reprovved for encouraging a third party to cash two checks that Stuart issued but later failed to honor.

In *Layton v. State Bar* (1990) 50 Cal.3d 889, an attorney was suspended for three years, stayed, with 30 days actual suspension for failing to perform in one matter involving an estate. He acted as both executor and attorney for the estate. Layton had no priors in 30 years of practice.

The recommended discipline for this matter is well within the Standards and case law. In recommending 30 days actual suspension the parties considered respondent's record of prior discipline.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was November 14, 2007.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 14, 2007, the costs in this matter are approximately \$2,000. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

RESTRICTIONS WHILE ON ACTUAL SUSPENSION.

1. During the period of actual suspension, respondent shall not:
 - a. Render legal consultation or advice to a client;
 - b. Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
 - c. Appear as a representative of a client at a deposition or other discovery matter;
 - d. Negotiate or transact any matter for or on behalf of a client with third parties;
 - e. Receive, disburse, or otherwise handle a client's funds; or

f. Engage in activities which constitute the practice of law.

2. Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the Probation Unit, pertaining to periods in which the respondent was actually suspended from the practice of law.

(Do not write above this line.)

In the Matter of Arturo Marquez, SBN 59704	Case number(s): 07-O-10369
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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.

11/26/07
Date


Respondent's Signature

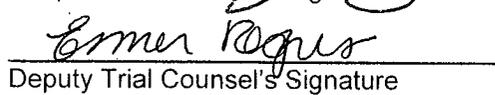
Arturo Marquez
Print Name

11/28/07
Date


Respondent's Counsel Signature

Vicki Young
Print Name

11/29/07
Date


Deputy Trial Counsel's Signature

Esther Rogers
Print Name

(Do not write above this line.)

In the Matter Of Arturo Marquez, SBN 59704	Case Number(s): 07-O-10369
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ORDER

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

12-18-07
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 San Francisco, on December 19, 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:

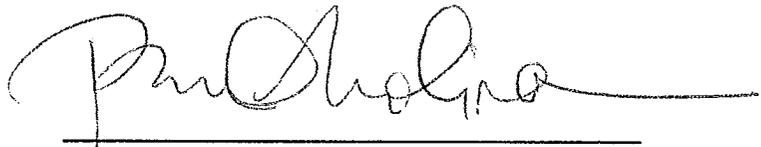
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**VICKI HUI-WEN YOUNG
LAW OFFICE OF VICKI YOUNG
706 COWPER STREET, SUITE 205
PALO ALTO, CA 94301**

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

ESTHER ROGERS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 19, 2007**.



Bernadette C. O. Molina
Case Administrator
State Bar Court