

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

Counsel For The State Bar Allen Blumenthal The State Bar of California 180 Howard Street San Francisco, CA 94105 (415) 538-2228 Bar # 110243	Case Number (s) 07-O-10909	(for Court's use) PUBLIC MATTER FILED <i>RW</i> FEB 06 2008 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Keith W. Lusk PO Box 26238 Fresno, CA 93729-6238 (559) 449-8093 Bar # 82379	Submitted to: Settlement Judge	
In the Matter Of: Keith W. Lusk Bar # 82379 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <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 **November 29, 1978**.
- (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."



(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):
- 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: **2009 and 2010.**
(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.
- (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. **Respondent was admitted to practice law in California on November 29, 1978 and has no prior record of discipline.**
- (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

At the time of the stipulated acts respondent suffered physical difficultites which, while not extreme, contributed to respondent's state of mind at the time of the misconduct. The difficulties

were not the result of any illegal conduct or substance abuse and have been corrected by medication.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one (1) year**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **thirty (30) days**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

(1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <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:**

(Do not write above this line.)

Attachment language begins here (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Keith W. Lusk

CASE NUMBER(S): 07-O-10909 ET AL.

FACTS AND CONCLUSIONS OF LAW.

A. FACTS

In 2006 and 2007, respondent Keith W. Lusk (hereinafter "respondent") was employed by International Credit Recovery, dba ICR (hereinafter "ICR") to represent it in recovering debts owed them. ICR is in the business of purchasing from creditors debts owed them and pursuing, as assignee, those debts, including filing lawsuits if necessary. Respondent represents ICR in its lawsuits to recovery those debts.

From September 18, 2006 until March 1, 2007, respondent was administratively suspended from the practice of law for failure to comply with his Mandatory Continuing Legal Education requirements ("MCLE"). As discussed post, despite this suspension, respondent continued to file lawsuits on behalf of ICR and continued to represent them in their matters.

On or about July 13, 2006, the State Bar of California's Member Services Department sent respondent a 60-day non-compliance letter, notifying respondent that he was not in compliance with his MCLE requirements. Respondent received this July 13, 2006 letter, but failed to provide the State Bar evidence of his having complied with his MCLE requirements. On or about July 20, 2006, a State Bar Member Services employee telephoned respondent's office and spoke with respondent's assistant about respondent's MCLE requirements, again advising him of his need to provide evidence of his compliance with his MCLE requirements. Respondent's assistant informed respondent of this communication and of the State Bar's need for him to comply with his MCLE requirements. Respondent, however, failed to provide the State Bar with evidence of his MCLE compliance.

On August 18, 2006, the State Bar's Member Services sent respondent a final notice, by certified mail, which contained a warning letter stating that if respondent failed to comply with the MCLE requirements by September 15, 2006, the State Bar would place respondent on inactive status. On or about August 28, 2006, respondent's wife, attorney Martha Lusk, received this August 18, 2006 letter from Member Services and signed to confirm the letter's delivery. She informed respondent of this letter. Respondent knew that he was going to be suspended by September 18, 2006 if he did not comply with his MCLE requirements and provide evidence of that compliance to the State Bar.

Subsequently, respondent failed to comply with his MCLE requirements and failed to

provide the State Bar with evidence of his compliance. On September 18, 2006, respondent was administratively suspended from the practice of law for failure to comply with his MCLE requirements. He was placed on inactive status and, thus, not entitled to practice law or hold himself out as entitled to practice law in California.

On September 25, 2006, the State Bar sent respondent a letter informing him that he had been suspended from the practice of law and placed on inactive status. Respondent received this September 25, 2006 letter by September 30, 2006.

On or about October 2, 2006, respondent mailed an MCLE compliance card to the State Bar stating "I have complied with the 25-hour MCLE requirement." On October 3, 2006, the State Bar sent to respondent a letter informing him that his reinstatement submission was incomplete because he failed to provide documentation to support his MCLE compliance. Subsequently, respondent failed to submit proper documentation to the State Bar. Respondent remained on suspension and inactive status until March 2, 2007.

On or about February 16, 2007, respondent completed his MCLE compliance statement and sent his proof of study credit, verified by his wife, to the State Bar. On March 5, 2007, the State Bar notified respondent in writing that his active status was reinstated, effective March 2, 2007.

However, from September 18, 2006 through March 1, 2007, respondent, while suspended from the practice of law, had filed 49 lawsuits on behalf of ICR and continued to represent ICR in several other matters already filed. He also continued to file pleadings in those lawsuits and make appearances.

For example, on or about November 20, 2006, respondent filed an opposition to a motion to set aside default and default judgement filed by defendants, Jonathan and Deborah Aroz, in a matter entitled *Metzler v. Aroz*, Fresno Superior Court Case No. 04CECL 07453. He also appeared at a hearing via telephone on November 28, 2006 in that matter. The court ordered the defendants' motion re-filed. When it was, respondent, on January 30, 2007, again filed an Opposition to Motion to set Aside Default and Default Judgement. On February 6, 2007, respondent appeared at a hearing via court call on the Aroz' motion. He did all this while suspended from the practice of law.

B. CONCLUSIONS OF LAW

By filing pleadings, making appearances, and remaining the counsel of record in at least 49 civil cases while suspended and enrolled inactive for MCLE non compliance, respondent wilfully violated the law by practicing law in California without being an active member of the State Bar, in violation of Business & Professions Code section 6068(a) by violating Business & Professions Code, sections 6125 & 6126.

By filing pleadings and making appearances, when respondent was not entitled to practice law or hold himself out as entitled to practice law, respondent misrepresented his status

to the Superior Court and, thus, engaged in acts of moral turpitude, in wilful violation of Business & Professions Code, section 6106.

SUPPORTING AUTHORITY

Both the Standards for Attorney Sanctions for Professional Misconduct (hereinafter “Standards”) and case law support a period fo actual suspension. Standard 2.6 of the Standards states:

Culpability of a member of a violation of any of the following provisions [6125 and 6126] of the Business and Professions Code shall result in disbarment or suspension depending on the gravity or harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

Standard 2.3 states:

Culpability of a member of an act of moral turpitude, fraud, intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.

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 Silvertan* (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 Silvertan*, 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 a period of actual suspension. For example, in *the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, an attorney received a 30 day actual suspension for engaging in the unauthorized practice of law by representing one client in a bankruptcy matter while suspended for nonpayment of dues. In aggravation, the court found that Trousil had three prior records of discipline.

In *Chasteen v. State Bar* (1985) 40 Cal.3d 586, an attorney who practiced law while suspended for over a year, failed to act competently and commingled and misappropriated funds, was suspended for five years, stayed, including 60 days actual suspension. Chasteen also had a prior record of discipline. In mitigation, the court found that Chasteen suffered from alcoholism and severe depression.

In *Farnham v. State Bar* (1976) 17 Cal.3d 605, an attorney who engaged in the unauthorized practice of law, violated his oath and duties as an attorney, and committed acts involving moral turpitude and dishonesty, was suspended for two years, stayed, including six months actual suspension. Farnham had a prior record of discipline. In *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, an attorney was disbarred for failure to perform and communicate and failure to return client files and unearned fees and for engaging in the unauthorized practice of law while suspended for nonpayment of membership dues. The court found that “practicing law while suspended has resulted in a range of discipline from suspension to disbarment, depending on the circumstances of the misconduct, including the nature of any companion charges and the existence and gravity of prior disciplinary proceedings.” *Id.* at 580.

The recommended discipline for this matter is well within the Standards and case law. In recommending 30 days actual suspensions the parties took into account that respondent had no record of prior discipline in 29 years of practicing law, that respondent’s violations involved the unauthorized practice of law in numerous civil cases, and respondent was suffering from health problems when he engaged in the misconduct. Thus, although the number of filings is greater than in *Trounsil*, respondent’s lack of priors and all the circumstances here, make respondent’s case most like *Trounsil*’s misconduct and, therefore, the parties agree he should receive a similar discipline. Respondent has acknowledged his misconduct and is aware that should he not comply with the conditions for his discipline, he will receive a significant period of actual suspension. Likewise, any future misconduct could lead to very significant discipline being imposed.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was December 13, 2007.

STATE BAR ETHICS SCHOOL.

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

(Do not write above this line.)

In the Matter of Keith W. Lusk, SBN 82379	Case number(s): 07-O-10909
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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>12/27/07</u> Date	<u>Keith W. Lusk</u> Respondent's Signature	<u>Keith W. Lusk, in pro per</u> Print Name
<u>1/11/08</u> Date	<u>Allen Blumenthal</u> Deputy Trial Counsel's Signature	<u>Allen Blumenthal</u> Print Name

(Do not write above this line.)

In the Matter Of Keith W. Lusk, SBN 82379	Case Number(s): 07-O-10909
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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.)**

2/5/08
Date

Jay A. ...
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 February 6, 2008, 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:

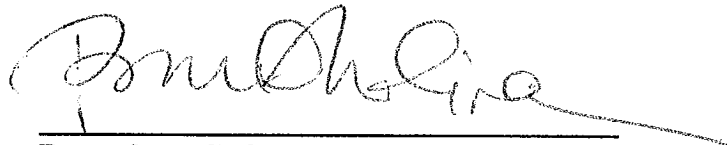
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**KEITH WILLIAM LUSK
P O BOX 26238
FRESNO, CA 93729 - 6238**

- 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 **February 6, 2008**.



Bernadette C. O. Molina
Case Administrator
State Bar Court