

ORIGIN

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State Bar Court of California

Hearing Department
Los Angeles

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Ashod Mooradian Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004</p> <p>Bar # 194283</p>	<p>Case Number (s) 08-O-12070-RAH</p>	<p>(for Court's use)</p> <p>FILED</p> <p>DEC 08 2009</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Stephen Borrelli 9854 National Blvd., #405 Los Angeles, CA 90034 (626) 818-6884</p> <p>Bar # 143746</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter Of: STEPHEN BORRELLI</p> <p>Bar # 143746</p> <p>A Member of the State Bar of California (Respondent)</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>	

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 11, 1989**.
- (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."



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- (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: **Total costs added to membership fee for one (1) calendar year following effective date of discipline.** (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. **Respondent's misconduct significantly harmed the client Selinger and the administration of justice. Respondent's misconduct resulted in one Selinger lawsuit being dismissed. Further, Respondent's failures to communicate regarding the status of these cases misled and deprived Selinger of the time he would have otherwise had to move to set aside the dismissal or take other action. In addition, the failure of Respondent to appear when ordered by the court, to respond to motions properly served upon him resulted in sanctions from the court and in each circumstance thereby occasioning the waste of judicial time and resources was a significant harm to the administration of justice. Finally, Respondent's misconduct demonstrated a lack of respect for the authority of the court by an officer of the court resulting in harm to the public's respect for the legal profession.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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. **While not demonstrating any pattern of misconduct, Respondent's misconduct evidences multiple acts of wrongdoing including two failures to perform, two failures to inform his client of significant developments, a failure to respond to client's status inquiry, a failure to obey court orders and a failure to withdraw when mandatory.**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

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 has no prior record of discipline. Respondent's misconduct in this matter did not begin until 2007 and consequently it can be said that Respondent practiced law free of ethical violations for nearly eighteen (18) years. Respondent is therefore entitled to significant mitigation for his prior good record.**
- (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 has shown spontaneous candor and cooperation to the State Bar during disciplinary investigation and proceedings. Further, Respondent has also cooperated in that he has stipulated to facts, conclusions of law and level of discipline.**
- (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. **Respondent has expressed directly to the State Bar his remorse for his misconduct and especially for the fact that his wrongdoing has harmed a client. The State Bar is satisfied that Respondent's remorse is genuine and demonstrates that Respondent has taken a significant first step towards ensuring that ethical misconduct will not recur in the future.**
- (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.

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- (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

None

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **Two (2) 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 (2) 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:
 - Substance Abuse Conditions
 - Law Office Management Conditions

Medical Conditions

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 954-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

No MPRE recommended. Reason:

(2) **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, 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 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, 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:**

MCLE CREDIT: Respondent will not receive Minimum Continuing Legal Education (MCLE) credit for attending the State Bar Ethics School as required pursuant to paragraph E.(8) above. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar of California.)

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: STEPHEN BORRELLI, SBN 143746

CASE NUMBER(S): 08-O-12070-RAH

A. WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY:

The parties waive any variance between the Notice of Disciplinary Charges (“NDC”) filed on June 22, 2009, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

B. FACTS AND CONCLUSIONS OF LAW.

Stephen Borrelli (“Respondent”) admits that the following facts are true and that he is culpable of violations of the specified statutes and/or *Rules of Professional Conduct*.

Facts:

1. Respondent was admitted to the practice of law in the State of California on December 11, 1989, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Barton Properties Lawsuit

2. On November 9, 2006, Steve Selinger (“Selinger”) employed Respondent to represent Selinger’s company, Barton Properties, in a lawsuit against the City of Los Angeles, Los Angeles County Superior Court, case no. BC 311407, entitled *Barton Properties, Inc. v. City of Los Angeles, et al.* (“Barton Properties Lawsuit”).

3. In approximately August, 2007, Respondent informed Selinger that Respondent had been suffering from depression over a child custody dispute.

4. On August 20, 2007, defendant filed and served a “Motion to Compel Responses to Set of Special Interrogatories and for Award of Monetary Sanctions.” Respondent had previously received the Special Interrogatories properly served on him by defendant but had failed to respond to them and failed to inform Selinger of them. At or about that same time, defense counsel also filed a “Motion to Compel Response to Second Demand for Production of Documents and for Award of Monetary Sanctions.” Respondent had previously received the Second Demand for Production of Documents properly served on him by defendant but had

failed to respond to them and failed to inform Selinger of them. Respondent received said motions but did not prepare or file an opposition to either motion. Respondent did not inform Selinger of the defendant's Motions to Compel.

5. On September 26, 2007, defendant filed and served a "Motion to Compel Supplemental Responses to First Set of Form Interrogatories and to First Set of Special Interrogatories and for Award of Monetary Sanctions." Respondent had previously received the First Set of Form Interrogatories and the First Set of Special Interrogatories properly served on him by defendant but had failed to adequately respond to them and failed to inform Selinger of them. Respondent received said motion but did not prepare or file an opposition to the motion. Respondent did not inform Selinger of the defendant's Motion to Compel.

6. Although Respondent was properly served with all three Motions to Compel listing the hearing date, and although Respondent was aware of the hearing date, on November 28, 2007, Respondent failed to appear for the hearing on the discovery motions. The Court granted the motions and sanctioned Barton Properties and Respondent a total of \$1,750.00 for reasonable attorneys' fees in connection with both motions. Respondent never informed Selinger of the hearing date, the rulings, or the resulting sanction orders.

7. On December 3, 2007, Respondent received a copy of the Notice of Entry of Order Regarding Discovery Motions. In approximately December, 2007, Respondent admitted to Selinger that Respondent's depression over the loss of his child custody dispute had caused him to become inattentive to his work. Respondent promised to provide Selinger a declaration for the Court, in which Respondent would assume fault for the inattention to the discovery motions. Respondent never provided that declaration to Selinger. Respondent never paid the sanctions the Court ordered him to pay.

Sunset Lawsuit

8. In early October 2007, Selinger employed Respondent to represent Selinger's company, Sunset Drive Corporation ("Sunset"), in United States Court of Appeals for the Ninth Circuit ("9th Circuit") case no. 07-55017, entitled *Sunset Drive Corporation v. City of Redlands* ("Sunset Lawsuit") and to file a Reply Brief in that case which was due October 15, 2007. Prior to Sunset's employment of Respondent, attorney William J. Davis had been representing Sunset. Selinger had informed Respondent that Sunset's Reply Brief in the appeal was due by October 15, 2007.

9. On October 4, 2007, Selinger informed Davis that Sunset had retained new counsel to file the Reply Brief in the Sunset Lawsuit. Selinger asked Davis to request a 45 day extension of time for new counsel to prepare and file the Reply Brief.

10. On October 8, 2007, Respondent called Davis and informed him that Respondent would be taking over the Sunset Lawsuit on Selinger's behalf. Respondent asserted to Davis that he needed a 45 day extension of time to prepare and file the Reply Brief, and told Davis that he would fax to Davis a substitution of attorney form for Davis's signature.

11. Davis then requested and obtained a 45 day extension of time from the Court for Sunset to substitute Respondent in as counsel, and to file a Reply Brief, to be due on November 29, 2007. On November 1, 2007, Selinger signed a substitution of attorney and provided the signed document to Respondent.

12. From October through early November 2007, Davis contacted Respondent by U.S. mail, fax, email, and phone, inquiring about the status of the substitution of attorney form Davis had provided to Respondent. During this time, Respondent repeatedly represented to Davis that he would send him the substitution of attorney form. At no time did Respondent ever provide the signed substitution of attorney form to Davis or file it with the Court.

13. From October 23, 2007, through December 14, 2007, Respondent sent Selinger at least four email messages asserting that Respondent was working on the Reply Brief. Respondent never informed Selinger that the Reply Brief was overdue.

14. Respondent never made an appearance for Sunset in the Sunset Lawsuit. On November 20, 2007, Davis filed a motion seeking to withdraw as counsel for Sunset in the Sunset Lawsuit on the grounds that Respondent had not yet entered his appearance on Sunset's behalf, had not provided the promised substitution of attorney, and that Davis had stopped working on the case in early October 2007, based on Respondent's representations.

15. On December 20, 2007, Selinger sent Respondent an email asking whether Respondent had filed the Reply Brief. Respondent received the email but did not respond to it.

16. On January 2, 2008, Selinger sent Respondent an email asking why Respondent had not replied to Selinger's December 20 email. Respondent received the email but did not respond to it.

17. Between January 2, 2008 and January 9, 2008, Selinger learned that Respondent had never filed a substitution of attorney or filed the Reply Brief in the Sunset Lawsuit.

18. On January 9, 2008, Selinger sent Respondent an email terminating Respondent's services and asking Respondent to prepare a declaration in support of Selinger's request to file a late Reply Brief. Respondent received the email but did not respond to it.

Conclusions of Law:

19. By not serving discovery responses in the Barton Properties Lawsuit, by not responding to defense counsel's properly served Motions to Compel, by not appearing at the hearing on the Motions to Compel, and by not providing the declaration to Selinger, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of *Rules of Professional Conduct*, rule 3-110(A).

20. By not forwarding Sunset's Substitution of Attorney to Davis, and by not filing the Reply Brief in the Sunset Lawsuit, Respondent intentionally, recklessly, or repeatedly failed

to perform legal services with competence in wilful violation of *Rules of Professional Conduct*, rule 3-110(A).

21. By not replying to Selinger's emails sent on December 20, 2007, January 2, 2008, and January 9, 2008, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of *Business and Professions Code*, section 6068(m).

22. By not informing Selinger of the defendant's discovery requests; and by not informing Selinger that the defendant had filed motions to compel discovery responses, and by not informing Selinger that Respondent had not filed oppositions to the defendant's discovery motions, and by not informing Selinger of the sanctions awarded against Selinger and Respondent as a result of the discovery motions, and by not informing Selinger that the Reply Brief was overdue, and by not informing Selinger that Respondent had neither appeared in the Sunset Lawsuit on Selinger's behalf nor filed the substitution of attorney, Respondent willfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of *Business and Professions Code*, section 6068(m).

23. By not informing Selinger that the Reply Brief was overdue; and by not informing Selinger that Respondent had neither appeared in the Sunset Lawsuit on Selinger's behalf nor filed the substitution of attorney, Respondent willfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of *Business and Professions Code*, section 6068(m).

24. By not paying the \$1,750 in discovery sanctions the court ordered him to pay at the hearing on November 28, 2007, Respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear in wilful violation of *Business and Professions Code*, section 6103.

25. By not withdrawing from employment when he became aware that his depression over the loss of his child custody dispute was causing him to neglect his duties to Selinger, Respondent willfully failed to withdraw from employment when his mental or physical condition rendered it unreasonably difficult for him to carry out the employment effectively in wilful violation of *Rules of Professional Conduct*, rule 3-700(B)(3).

C. AUTHORITIES SUPPORTING DISCIPLINE.

Applicable Standards:

The determination of discipline begins "by looking to the purpose of sanctions for attorney misconduct."¹ "The primary purposes of disciplinary proceedings...are the protection of the public, the courts[,] and the legal profession; the maintenance of high professional standards by attorneys[;] and the preservation of public confidence in the legal profession."²

¹ *In re Morse* (1995) 11 Cal.4th 184, 205.

² *Standard* 1.3.

The standards provide guidance and deserve “great weight.”³ “[A]dherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct.”⁴ The California Supreme Court accepts a disciplinary recommendation resulting from application of the standards unless it has “grave doubts” about the recommendation’s propriety.⁵

Standard 1.6(a) provides that if two or more acts of misconduct are found in the same proceeding, the sanction imposed shall be the more or most severe of the different applicable sanctions. Standard 1.6(b) provides that a greater or lesser degree of discipline than the appropriate sanction prescribed by these standards shall be imposed or recommended, depending on the net effect of the aggravating and mitigating circumstances, if any.

Standard 2.4 provides that culpability of a member for wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6(a) provides that culpability of a member for “...violation of any of the following provisions of the *Business and Professions Code* 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 forth in standard 1.3:

- (a) Sections 6067 and 6068;
- (b) Sections 6103 through 6105...”

Aggravating Circumstances:

Standard 1.2(b) provides for a greater degree of sanction than set forth in the *Standards* where aggravating circumstances exist. In this matter, the following two circumstances should be considered aggravating.

First, while not demonstrating any pattern of misconduct, Respondent’s misconduct evidences multiple acts of wrongdoing.⁶ In this matter, Respondent’s misconduct includes two failures to perform, two failures to inform his client of significant developments, a failure to respond to client’s status inquiry, a failure to obey court orders and a failure to withdraw when mandatory.

Second, Respondent’s misconduct significantly harmed the client Selinger and the administration of justice.⁷ Respondent’s misconduct resulted in one Selinger lawsuit being dismissed. Further, Respondent’s failures to communicate regarding the status of these cases misled and deprived Selinger of the time he would have otherwise had to move to set aside the dismissal or take other action. In addition, the failure of Respondent to appear when ordered by

³ *In re Silvertown* (2005) 36 Ca.4th 81, 92; *In re Morse*, supra, 11 Cal.4th at p. 205; *In re Naney* (1990) 51 Cal.3d 186, 190; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 933, fn. 5.

⁴ *In re Naney*, supra, 51 Cal.3d at p. 190; see also *In re Brown* (1995) 12 Cal.4th 205, 220.

⁵ *In re Morse*, supra, 11 Cal.4th at p. 206; *In re Lamb* (1989) 49 Cal.3d 239, 245.

⁶ *Standard 1.2(b)(ii)*

⁷ *Standard 1.2(b)(iv)*.

the court, to respond to motions properly served upon him resulted in sanctions from the court and in each circumstance thereby occasioning the waste of judicial time and resources was a significant harm to the administration of justice. Finally, Respondent's misconduct demonstrated a lack of respect for the authority of the court by an officer of the court resulting in harm to the public's respect for the legal profession.

Mitigating Circumstances:

Standard 1.2(e) provides for a more lenient degree of sanction than set forth in the *Standards* where mitigating circumstances exist. In this case, there are three mitigating circumstances.

First, Respondent has no prior record of discipline.⁸ Respondent's misconduct in this matter did not begin until 2007 and consequently it can be said that Respondent practiced law free of ethical violations for nearly eighteen (18) years. Respondent is therefore entitled to significant mitigation for his prior good record.

Second, Respondent has shown spontaneous candor and cooperation to the State Bar during disciplinary investigation and proceedings.⁹ Further, Respondent has also cooperated in that he has stipulated to facts, conclusions of law and level of discipline.

Third, Respondent has expressed directly to the State Bar his remorse for his misconduct and especially for the fact that his wrongdoing has harmed a client.¹⁰ The State Bar is satisfied that Respondent's remorse is genuine and demonstrates that Respondent has taken a significant first step towards ensuring that ethical misconduct will not recur in the future.

Given the nature and scope of Respondent's misconduct, and considering evidence of aggravating and mitigating circumstances, the appropriate level of discipline under the *Standards* is a period of actual suspension of 30 days "to deter the recalcitrant attorney from future wrongdoing."¹¹

Caselaw:

In *King v. State Bar*¹², a case involving two client matters, the attorney was found culpable of failing to perform competently, failing to communicate, and failing to return client files. In one client matter the attorney filed a complaint in a personal injury action and then failed to serve the complaint on the defendants. Five years later, the court dismissed the action. During that five year period, the attorney failed to take any action to prosecute the complaint. In response to the client's repeated requests for the status of the case, the attorney assured him the case would be going to trial. Then, he failed to return the client's file at the client's request. The client received a default judgment against the attorney for malpractice, which went unpaid.

⁸ *Standard* 1.2(e)(i).

⁹ *Standard* 1.2(e)(v).

¹⁰ *Standard* 1.2(e)(vii).

¹¹ *In Re Silverton* (2005) 36 Cal. 4th 81, 95.

¹² (1990) 52 Cal.3d 307.

In the second client matter, a client hired the attorney to close probate on a case. The client made numerous inquiries about the status of the probate matter but many of the inquiries went unanswered. The attorney took no significant action to close probate. Then, he failed to turn over the client's file until seven months after she had requested that he do so.

In mitigation, the attorney had no prior discipline. In aggravation, the first client suffered a significant financial loss and the attorney failed to appreciate the severity of his misconduct. The court ordered, *inter alia*, the attorney suspended for four years, stayed, an actual suspension of ninety (90) days and four years probation.

In *Matter of Greenwood*¹³, the attorney was charged with two instances of reckless failure to perform legal services which resulted in the dismissal of his client's civil lawsuits and failure to cooperate with the State Bar investigation. The Review Department held that this misconduct warranted a discipline recommendation of 18-months stayed suspension, two years probation and a 90-day actual suspension.

Comparison:

In this matter, like the attorneys in *King* and *Greenwood*, Respondent has repeatedly failed to perform legal services with competence. In addition, like the attorneys in *King* and *Greenwood*, Respondent has also failed to keep his client reasonably informed of significant developments and has also failed to respond to his client's status inquiries. Finally, like the attorneys in *King* and *Greenwood*, Respondent also has mitigation. However, Respondent's mitigation is significant. As discussed above, Respondent has no prior record of discipline, displayed candor and cooperation with the State Bar and has shown remorse. Respondent's prior record of good conduct together with candor, cooperation and remorse that calls for a different outcome than attorneys in *King* and *Greenwood*.

Therefore, Respondent's actual suspension from the practice of law for 30 days is a level of discipline consistent with the applicable standards and caselaw.

D. PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A. (7) was November 16, 2009.

E. COSTS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of November 18, 2009, the estimated prosecution costs in this matter are approximately \$2,422.56. Respondent acknowledges that this figure is an estimate only. 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.

¹³ (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6068.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in *Business and Professions Code*, section 6140.7 and as a money judgment unless relief has been granted under rule 286 of the *Rules of Procedure of the State Bar of California*.

In the Matter of
STEPHEN BORRELLI

Case number(s):
08-O-12070-RAH

A Member of the State Bar

Law Office Management Conditions

- a. Within **90** days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ months/**One (1)** years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **Six (6)** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for **two (2)** year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

(Do not write above this line.)

In the Matter of STEPHEN BORRELLI	Case number(s): 08-O-12070-RAH
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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.

11-20-09

Date


Respondent's Signature

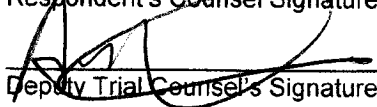
Stephen Borrelli
Print Name

Date

11-24-09

Date

Respondent's Counsel Signature


Deputy Trial Counsel's Signature

Print Name

Ashod Mooradian
Print Name

(Do not write above this line.)

In the Matter Of STEPHEN BORRELLI	Case Number(s): 08-O-12070-RAH
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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.)**

12/8/09
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 December 8, 2009, 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:

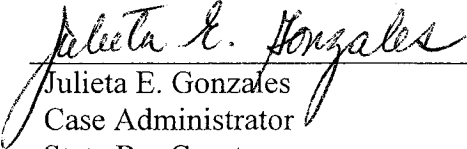
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

STEPHEN T BORRELLI ESQ
LAW OFFICE OF STEVE T BORRELLI
9854 NATIONAL BLVD #405
LOS ANGELES, CA 90034

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

Ashod Mooradian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 8, 2009.



Julieta E. Gonzales
Case Administrator
State Bar Court