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

<p>Counsel For The State Bar</p> <p>Mark Hartman Deputy Trial Counsel 180 Howard St., 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2558</p> <p>Bar # 114925</p>	<p>Case Number(s): 10-O-05630; 10-O-06078</p> <p>RECEIVED</p> <p>AUG 04 2011</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>AUG 24 2011</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Peter D. Manning 941 W. Hedding Street San Jose, CA 95126 Telephone: (408) 286-9360</p> <p>Bar # 169358</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: PETER D. MANNING</p> <p>Bar # 169358</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 14, 1993.
- (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 11 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."



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- (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):
- Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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 07-O-11715
 - (b) Date prior discipline effective June 23, 2011
 - (c) Rules of Professional Conduct/ State Bar Act violations: Section 6068, subdivision (l), of the Business and Professions Code
 - (d) Degree of prior discipline Public reproof
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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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.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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(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 one 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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is 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.)

E. Additional Conditions of Probation:

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

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

(3) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

(5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: In June 2011, Respondent completed Ethics School.
- (8) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: The recommended discipline is a stayed suspension.
- (2) **Other Conditions:**

**ATTACHMENT TO STIPULATION TO FACTS,
CONCLUSIONS OF LAW, AND DISCIPLINE**

In the Matter of: **Peter D. Manning**
Membership No.: **169358**
State Bar Case Nos.: **10-O-05630 and 10-O-06078**

RESOLUTION OF THE CURRENT CASES

The State Bar of California (“the State Bar”) and respondent Peter D. Manning (“respondent”) enter into this Stipulation As to Facts, Conclusions of Law, and Discipline (“Stipulation”) in order to resolve case numbers 10-O-05630 and 10-O-06078 (“the current cases”).

FACTS

Respondent admits that the following facts are true:

Case Number 10-O-05630

1. In June 2008, Mr. Jose Abella hired respondent to represent him in his dissolution (“Abella matter”).
2. On November 14, 2008, respondent failed to appear at a hearing in the Abella matter.
3. On November 17, 2008, the Alameda County Superior Court issued an Order to Show Cause (“OSC”) as to why it should not impose sanctions on respondent for failing to appear at the hearing on November 14, 2008. The court set the OSC hearing for December 12, 2008, and properly sent a notice to the address that respondent had given the court: 1150 N. First Street, Suite 170, San Jose, California 95112 (“prior address”).
4. On December 12, 2008, respondent appeared. The court adopted custody arrangements; ordered respondent to submit the order after hearing (“OAH”); and set the next hearing for February 17, 2009.
5. The court later rescheduled the next hearing for April 29, 2009.
6. Respondent did not submit the OAH covering the December 12, 2008, hearing until March 5, 2010.

7. At the hearing on April 29, 2009, a stipulation was read into the record; and a settlement conference was scheduled for August 6, 2009. Also, the court ordered respondent to submit the OAH covering the April 29, 2009, hearing.

8. On August 6, 2009, respondent appeared at the settlement conference; and the court set a status conference for December 3, 2009.

9. Respondent failed to submit the OAH covering the April 29, 2009, hearing and to appear at the December 3, 2009, settlement conference.

10. On December 3, 2009, the court issued an OSC as to why it should not impose sanctions on respondent for failing to appear at the December 3, 2009, hearing and failing to file an OAH covering the April 29, 2009, hearing. The court set the OSC hearing for February 2, 2010.

11. Without informing the court, respondent had changed his address to 941 W. Hedding Street, San Jose, California 95126 ("current address").

12. The court sent respondent notice of the February 2, 2010, hearing to his prior address; and the notice was returned to the court.

13. On February 2, 2010, respondent failed to appear at the OSC hearing. The court ordered him to pay sanctions of \$1,000.00 and scheduled a hearing for March 2, 2010.

14. On its own, the court discovered respondent's current address.

15. On February 4, 2010, the court sent notices of the sanctions order and the February 2, 2010, hearing to respondent's prior address and current address.

16. On March 2, 2010, respondent appeared at the hearing.

17. On March 5, 2010, respondent submitted the OAH covering the December 12, 2008, hearing.

18. Respondent did not submit the OAH covering the April 29, 2009, hearing.

19. Respondent did not report the \$1,000.00 sanctions to the State Bar.

Case Number 10-O-06078

20. In April 2001, Mr. and Mrs. Frank Vera Cruz hired respondent to represent them in an immigration matter.

21. At the end of January 2010, Mr. and Mrs. Vera Cruz terminated respondent's employment.

22. In February 2010, Mr. and Mrs. Vera Cruz requested their file from respondent.

23. Respondent did not return his clients' file because he had lost it.

CONCLUSIONS OF LAW

Respondent admits that the following conclusions of law are true:

Case Number 10-O-05630

1. By failing to appear at three hearings in the Abella matter (i.e., the hearings on November 14, 2008; December 3, 2009; and February 2, 2010) and by failing to inform the court of his current address, respondent repeatedly failed to provide legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

2. By failing to submit the December 12, 2008, OAH for more than 14 months and by failing to submit the April 29, 2009, OAH, respondent failed to obey court orders in the course of his profession which he ought in good faith to have obeyed, in willful violation of section 6103 of the Business and Professions Code.

3. By failing to report the \$1,000.00 sanctions to the State Bar, respondent failed to report sanctions of \$1,000.00 or more in writing to the State Bar within 30 days of the time when he learned of the sanctions, in willful violation of section 6068, subdivision (o)(3) of the Business and Professions Code.

Case Number 10-O-06078

4. By failing to return the clients' file to Mr. and Mrs. Vera Cruz, respondent failed to release client papers promptly upon request from the clients after the termination of his employment, in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

AGGRAVATION

Prior Record of Discipline

In a stipulation filed on June 2, 2010, concerning case number 07-O-11715 ("prior case"), respondent accepted a public reproof for having failed to comply with the requirements of an Agreement in Lieu of Discipline ("ALD") during 2009. Although respondent has a record of discipline in the prior case, this record warrants diminished weight in the current cases because his current ethical violations overlapped his misconduct in the prior case. (*In the Matter of Hunter* (Review Dept 1994) 3 Cal. State Bar Ct. Rptr 63, 80.)

Multiple Acts of Misconduct

Respondent's misconduct in the current cases involved the violation of several ethical requirements.

MITIGATION

Candor/Cooperation

Respondent has displayed candor to, and cooperation with, the State Bar in resolving the current cases by entering into this Stipulation.

SUPPORTING AUTHORITY

Standards 2.4(b), 2.6(b), and 2.10 indicate that a one-year stayed suspension is reasonable. Two instructive cases are *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 [six-month stayed suspension for failure to provide competent legal services in a single matter] and *In the Matter of Riordan* (2007) 5 Cal. State Bar Ct. Rptr. 41 [six-month stayed suspension for failure to provide competent legal services, obey court orders, and report sanctions in a single matter where the attorney proved good character, cooperated with the State Bar, practiced law for seventeen years without misconduct before his wrongdoing, and practiced law for three and one-half years without misconduct after his wrongdoing].

ESTIMATED PROSECUTION COST

The estimated prosecution cost of the current cases is approximately \$ 4,618.00. This sum is only an estimate, and the final cost may differ from the estimated cost. If this Stipulation is rejected or if relief from this Stipulation is granted, the prosecution cost of the current cases may increase because of the cost of further proceedings.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

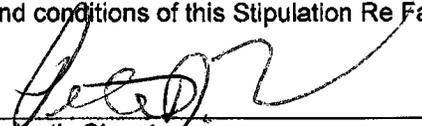
On July 28, 2011, the State Bar sent a disclosure letter by e-mail and fax to respondent. In this letter, the State Bar advised him of any pending investigations or proceedings against him other than the current cases.

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In the Matter of: PETER D. MANNING, No. 169358, A Member of the State Bar.	Case number(s): 10-O-05630 10-O-06078
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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 Facts, Conclusions of Law, and Disposition.

<u>8/1/2011</u> Date	 Respondent's Signature	<u>PETER D. MANNING</u> Print Name
<u>8/3/11</u> Date	<u>Mark Hartman</u> Deputy Trial Counsel's Signature	<u>MARK HARTMAN</u> Print Name

(Do not write above this line.)

In the Matter of: PETER D. MANNING, No. 169358 A Member of the State Bar	Case Number(s): 10-O-05630 10-O-06078
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STAYED SUSPENSION 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.

P. 6, F. (1) Delete the box re "No MPRE recommended" and check the box for Multistate Professional Responsibility Exam. (See Segretti v. State Bar (1976) 15 Cal.3d 878, 891.)

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 5.58(E) & (F), 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.)**

Aug. 23, 2011
Date


LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 August 24, 2011, 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:

PETER D. MANNING
LAW OFC PETER D MANNING
941 W HEDDING ST
SAN JOSE, CA 95126

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

MARK HARTMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 24, 2011.



Laine Silber
Case Administrator
State Bar Court