

ORIGINAL

**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

<p>Counsel For The State Bar Katherine Kinsey Deputy Trial Counsel State Bar of California 1149 S. Hill Street Los Angeles, CA 90015 213-765-1503 Bar # 183740</p>	<p>Case Number(s): 10-O-07850 10-O-02913 10-O-05117 10-O-05773 10-O-08797 10-O-08798 10-O-11322 PUBLIC MATTER</p>	<p>For Court use only FILED AUG - 5 2011 <i>[Signature]</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent Thomas James Bayard 556 N. Diamond Bar Blvd Ste 300 Diamond Bar, CA 91765 909-861-8300 Bar # 226247</p>	<p>Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Thomas James Bayard Bar # 226247 A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION <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 August 13, 2003.
- (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 17 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2012, 2013. (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
 - (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.

- (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:

In an effort to mitigate the harm to Lorraine Minick and Terry Thompson, Respondent has agreed to pay them restitution in the amounts of \$36,500 and \$32,000, respectively.

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 Four (4) 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 Sixty (60) 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:

(Do not write above this line.)

- (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 the 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 checked="" type="checkbox"/> Financial Conditions

F. Other Conditions Negotiated by the Parties:

(Effective January 1, 2011)

Actual Suspension

- (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 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: _____
- (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:** See attachment page 15

(Do not write above this line.)

In the Matter of: Thomas James Bayard	Case Number(s): 10-O-07850; 10-O-02913; 10-O-05117, 10-O-05773; 10-O-08797; 10-O-08798; 10-O-11322
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Herminio Academia	\$5,600	September 1, 2009
Donna Keller	\$3,000	March 3, 2010

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than Three (3) months from the effective date of the Supreme Court order in this matter.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- 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.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Thomas James Bayard

CASE NUMBER(S): 10-O-07850; 10-O-02913; 10-O-05117; 10-O-05773; 10-O-08797; 10-O-08798;
10-O-11322

FACTS AND CONCLUSIONS OF LAW:

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.

Case No. 10-O-02913 (Complainant: Jimmy Moore)

FACTS:

1. In December 2007, Jimmy Moore (Moore) hired Respondent for a collection matter. Moore paid Respondent \$10,000 in advanced fees.
2. On April 16, 2007, Respondent filed a civil action on Moore's behalf but thereafter failed to litigate and complete the matter.
3. In December 2009, Moore filed a State Bar complaint against Respondent and his law firm partners, and all parties agreed to go to mediation.
4. In December 2009, the parties agreed to settle, and Respondent and his law partners agreed to pay Moore \$4,000 in unearned attorney's fees.
5. By March 2011, Moore had received approximately \$1,333 of the \$4,000 but had not received any funds from Respondent. Therefore, Moore contacted the State Bar regarding pursuing his complaint.
6. On May 16, 2011, a State Bar Investigator wrote Respondent regarding the allegations in the Moore matter. Respondent received the State Bar letter but did not respond.
7. On June 7, 2011, the State Bar Investigator wrote Respondent again regarding the allegations in the Moore matter. Respondent received the letter but did not respond.
8. In or about June 2011, Respondent refunded the remaining attorney's fees to Moore as agreed to in the mediation.

CONCLUSIONS OF LAW:

By not promptly refunding the attorney's fees to Moore despite his requests and despite agreeing to do so in mediation, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

By not providing a written response to the allegations in the Moore matter or otherwise cooperating in the investigation of the Moore matter, Respondent failed to cooperate and participate in disciplinary investigation pending against Respondent in willful violation of Business and Professions Code, section 6068(i).

Case No. 10-O-05117 (Complainant: Herminio Academia)

FACTS:

1. On March 4, 2009, Herminio Academia (Academia) employed Respondent to file a lawsuit against Wells Fargo to stop a foreclosure.
2. In March 2009, Academia paid Respondent \$3,000 in advanced fees and then made periodic payments for the months of June through September 2009, for a total amount of \$8,310 in attorney's fees paid to Respondent.
3. On May 4, 2009, Respondent filed the lawsuit against Wells Fargo on Academia's behalf. The Academia lawsuit was set for a hearing on demurrer on October 28, 2009.
4. On June 3, 2009, Academia was served with an unlawful detainer action by Wells Fargo and the matter was set for trial in August 2009 ("unlawful detainer action").
5. Respondent received notice of the trial date. Respondent filed an Answer to the unlawful detainer lawsuit, but thereafter did no further legal work of value to defend Academia against the unlawful detainer action. In addition, Respondent did not appear at trial.
6. As a result, on August 25, 2009, default was entered against Academia in the unlawful detainer action. On September 3, 2009, Respondent filed a motion to set aside the default in the unlawful detainer action, which was denied. On September 20, 2009, Academia received a "Notice to Vacate" and was subsequently evicted.
7. Academia terminated Respondent's services on October 13, 2009. On January 20, 2010, Academia requested a refund of unearned fees. Respondent did not earn all the advanced fees paid by Academia. To date, Respondent has not provided any refund or unearned fees.
8. Respondent agrees that he owes Academia \$5,600 in unearned fees.

CONCLUSIONS OF LAW:

By failing to properly perform in the unlawful detainer action, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

By not promptly refunding unearned attorney's fees to Academia despite his request, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 10-O-05773 (Complainant: Terry Thompson)

FACTS:

1. Respondent represented Rosemary Pike in civil action in San Bernardino Superior Court. Although Terry Thompson ("Thompson") never hired Respondent, Respondent added Thompson as a plaintiff to the lawsuit in the civil action without her consent.
2. In March 2006, Thompson asked Respondent to remove her name from the lawsuit but her name was not removed until November 2006. The property associated with the underlying action was sold, and the defendants in the action retained \$32,500 in funds belonging to Thompson to cover legal fees incurred in the civil action.
3. In March 2007, Respondent acknowledged responsibility for improperly adding Thompson's name to the lawsuit and agreed to reimburse her for the damages she suffered as a result of the misconduct.
4. The defendants in the underlying action filed a malicious prosecution complaint against Thompson, and Thompson paid additional amounts to the defendants to resolve the action.

CONCLUSIONS OF LAW:

By filing a civil action on Terry Thompson's behalf without her knowledge or authority, Respondent willfully violated Business and Profession Code, section 6104.

Case No. 10-O-07850 (Complainant: Lorraine Minick)

FACTS:

1. In 2006, Lorraine Minick's ("Minick") claim for disability benefits with the Social Security Administration ("SSA") was rejected. Thereafter, Barbara Case (Case) from a non-profit agency entitled Compassion in Action referred Minick to Respondent in order to pursue an appeal with SSA on Minick's behalf.
2. On September 8, 2006, Minick hired Respondent to pursue the appeal with the SSA. On December 7, 2006, Minick paid Respondent \$350 for filing fees in her matter.

3. On December 11, 2006, Respondent filed a complaint against SSA entitled *Lorraine Minnick v. Jo Anne Barnhart, Commissioner of Social Security*, United States District Court case no. 2:06-cv-07838-SJO-JC (the "Minick action").

4. On February 2, 2007, the court in the Minick action issued an Order to Show Cause ("OSC") ordering Respondent to show cause by February 28, 2007 why the Minick action should not be dismissed due to Respondent's failure to file a proof of service.

5. On April 19, 2007, Respondent served the Social Security Administration and the United States Attorney General with the Summons, Complaint and Notice of Interested Parties in the Minick action.

6. On December 14, 2007, the court in the Minick action noted that the joint stipulation was overdue and ordered it to be filed no later than fourteen days from the date of the court's December 14, 2007 order. On December 14, 2007, the court served the order on Respondent by mail. Respondent received the court's order but did not file the joint stipulation.

7. As of April 24, 2008, Respondent had not filed the joint stipulation with the court. Therefore, on April 24, 2008, the court ordered the parties to respond by May 15, 2008 to the court's OSC regarding their failure to comply with the court's order. On April 24, 2008, Respondent was properly served with the OSC but failed to file a response.

8. Therefore, on June 10, 2008, the court in the Minick action issued an order dismissing the action with prejudice. On or about June 17, 2008, Respondent was properly served notice of the dismissal by mail but did not promptly inform Minick that her case had been dismissed.

9. On November 13, 2008, Minick emailed Respondent asking to meet with him soon regarding her case. Respondent received the November 13, 2008 email but failed to respond.

10. On December 1, 2008, Case emailed Respondent to inform him that Minick had been trying to reach him and asking him if there was anything further on the matter. In the email, Case noted that it had been two years since the filing, and the court should be issuing a decision. Respondent received the December 1, 2008 email but failed to respond.

11. On December 2, 2008, Minick again emailed Respondent regarding the status of her case and again asking to meet Respondent. Minick mentioned that she thought something was wrong because she had contacted the Social Security office, and they told her case was closed. Respondent received the December 2, 2008 email.

12. On December 3, 2008, Respondent emailed Minick and told her that he could meet during the next week. However, Respondent failed to meet with Minick and failed to provide Minick with the status of her matter.

13. On April 15, 2009, Respondent met with Case, Minick and Minick's husband and admitted that he failed to timely file documents in the Minick action, which led to the dismissal of the case.

14. In December 2009, to resolve any possible malpractice claims, Respondent and Minick entered into a settlement agreement in which Respondent agreed to pay Minick \$45,000 at \$2,500 per

month until the full amount was paid. Respondent made a total of \$8,500 payment to Minick and agrees that he owes Minick the remaining \$36,500.

CONCLUSIONS OF LAW:

By failing to timely serve the defendants in the Minick action, by failing to respond to the court's April 24, 2008 OSC, by failing to file the joint stipulation in the Minick action and by failing to monitor the status of the Minick action despite repeated requests for updates from Minick and from Case on Minick's behalf, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

By failing to respond to Minick's requests for an update on her matter, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

Case No. 10-O-08797 (Complainant: David Brien)

FACTS:

1. On November 4, 2009, David Brien ("Brien") hired Respondent to file a lawsuit against JPMorgan Chase ("defendants"). Attorney Walter Hackett, of counsel to Respondent's firm, was brought in to assist on Brien's matter.
2. On December 17, 2009, Respondent filed a lawsuit on Brien's behalf. On January 19, 2010, the defendants removed the case to federal court and filed a motion to dismiss on January 26, 2010. Respondent prepared a motion to remand, and filed it on February 17, 2010. Respondent did not appear at the remand hearing and gave no notice to the court of any reason for the nonappearance.
3. On March 22, 2010, the motion for remand was denied. On April 1, 2010, the motion to dismiss was granted, and the court gave Brien twenty-one days to file a First Amended Complaint ("FAC"). Respondent filed the First Amended Complaint late, but it was accepted.
4. On June 1, 2010, the defendants filed a motion to dismiss the FAC. On July 10, 2010, Respondent prepared and filed opposition to the motion to dismiss late. The Court granted the motion to dismiss as to two of the seven causes of action, and leave to amend the other five.
5. From in or about April 2010 through July 6, 2010, Brien contacted Respondent and Hackett numerous times by telephone and by email regarding the status of his matter. In addition, Brien asked Respondent and Hackett to respond to specific questions regarding his legal matter. Respondent received the messages from Brien but failed to respond.
6. On July 18, 2010, Brien terminated Respondent and requested an accounting and his client file. Respondent sent an email to Brien providing an accounting. Respondent has not provided the client file to Brien.

CONCLUSIONS OF LAW:

By not responding to Brien's telephone calls and emails seeking status updates on his matter, Respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of Business and Professions Code, section 6068(m).

By not promptly returning the client file to Brien despite his requests, Respondent failed to release promptly, upon termination of employment, to his client, at the request of the client, all client papers and property in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

Case No. 10-O-08798 (Complainant: Donna Keller)

FACTS:

1. On March 3, 2010, Donna Keller ("Keller") hired Respondent and paid him \$3,000 in advanced fees for ongoing litigation against Keller's lender. On March 4, 2010, Respondent substituted into Keller's case.
2. Previously, a demurrer had been filed by the lender in Keller's action, and the hearing on demurrer was set for March 23, 2010. Respondent had notice of the demurrer and the hearing. The opposition to the demurrer was due no later than March 10, 2010. Respondent did not file an opposition to the demurrer.
3. On March 23, 2010, attorney Walter Hackett specially appeared for Respondent telephonically to ask for additional time to file opposition to the demurrer. The judge granted the request and rescheduled the hearing on the demurrer for April 13, 2010. The opposition was now due no later than April 1, 2010. Respondent had notice of the new dates. Respondent did not file opposition to the demurrer and sent an associate to the hearing.
4. On April 13, 2010, the court dismissed Keller's action with prejudice. Respondent thereafter failed to take any action to set aside the dismissal, despite assurances to Keller that he would so. Keller subsequently terminated Respondent and hired another attorney.
5. On May 12, 2011, Keller requested a refund of unearned fees and requested the return of her client file by May 22, 2011. To date, Respondent has not refunded any of unearned the fee and has not returned her client file.

CONCLUSIONS OF LAW:

By failing to perform in Keller's civil action, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

By not promptly returning the client file to Keller despite her request, Respondent failed to release promptly, upon termination of employment, to his client, at the request of the client, all client papers and property in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

By not promptly refunding the attorney's fees to Keller despite her request, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 10-O-11322 (Complainant: Victor and Linda Lopez)

FACTS:

1. On February 6, 2010, Victor and Linda Lopez hired Respondent to file a Chapter 13 bankruptcy petition and paid him \$2,500 in advanced legal fees.
2. Respondent filed the Chapter 13 bankruptcy on the Lopezes' behalf and assigned an associate in his office to handle the Lopez bankruptcy.
3. A 341(a) meeting of creditors was set for March 24, 2010. No one appeared on behalf of the Lopezes at the March 24, 2010 hearing. The creditor's meeting, the Trustee informed the Lopezes that their bankruptcy filing was substandard.
4. In or about July 2010, the Lopezes terminated Respondent.
5. In or about 2010, Respondent's associate was experiencing personal problems, and Respondent acknowledged that he was not involved in the day to day activity of the Lopez matter.

CONCLUSIONS OF LAW:

By failing to supervise his associate and the handling of the Lopez matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was July 19, 2011.

AUTHORITIES SUPPORTING DISCIPLINE:

Standard 2.4(a): Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to 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.

ADDITIONAL RESTITUTION:

Respondent must pay restitution to the following individuals in the amounts set for below:

<u>Case number</u>	<u>Party Owed</u>	<u>Principal Amount</u>
10-O-02913	Lorraine Minick	\$36,500
10-O-05773	Terry Thompson	\$32,000

Respondent must pay the above-referenced restitution to the parties at a minimum payment amount of \$4,900 per quarter until paid in full.

Restitution must be paid to each party as set forth on a quarterly, rotating basis and commencing within the second quarter following the effective date of discipline in these matters, starting with the first party on the list. After payments have been made, in turn, to each party on the list above, Respondent will again make payment to the first and then second party on the list, and continue in such manner until all the principal owed to each party is paid in full.

With each written quarterly report required herein, Respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by Respondent during that quarter or applicable reporting period. Such proof must be in a form satisfactory to the Office of Probation.

To the extent that Respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceedings, Respondent will be given credit for such payments provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.

FEE ARBITRATION:

Within ten (10) days from the date Respondent of the effective date of discipline in these matters, Respondent shall:

Send clients/complaining witnesses Victor and Linda Lopez a letter, notifying them that Respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration, and that the purpose of the arbitration is to determine whether Respondent had earned all fees and/or costs paid by the client to Respondent in the matter.

Send client/complaining witness David Brien (or his counsel) a letter, notifying him that Respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration, and that the purpose of the arbitration is to determine whether Respondent had earned all fees and/or costs paid by the client to Respondent in the matter.

Respondent will timely and fully participate in any resulting fee arbitration and abide by any final arbitration award. Within five (5) days of his receipt of a decision of the arbitrator, Respondent shall in writing advise the Office of Probation of the State Bar Court of the decision and provide a complete and exact copy of it. If it is found that Respondent owes the client/complaining witness any funds, in addition to any fee arbitration provisions that may apply, the amount owed shall also be considered as restitution owed to the client/complaining witness and its payment shall also become a part of this disciplinary resolution.

Respondent also waives the expiration of any time to resolve this dispute by fee arbitration. Respondent shall not make any claims for further payment from client beyond that which he/she has already received.

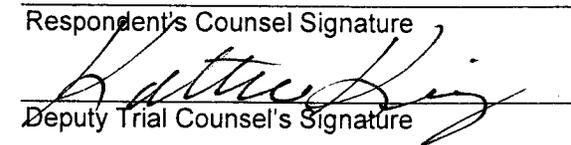
Respondent understands and agrees that his failure to write the letter, or to initiate, pay for, and participate in fee arbitration upon the client's agreement to do so, or to abide by any final arbitration order, shall constitute a violation of his probation conditions.

(Do not write above this line.)

In the Matter of: Thomas James Bayard	Case number(s): 10-O-07850; 10-O-02913; 10-O-05117, 10-O-05773; 10-O-08797; 10-O-08798; 10-O-11322
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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.

Date <u>7/19/11</u>	Respondent's Signature 	Thomas James Bayard Print Name
Date <u>7/19/11</u>	Respondent's Counsel Signature 	Katherine Kinsey Print Name

(Do not write above this line.)

In the Matter Of THOMAS JAMES BAYARD	Case Number(s): 10-O-02913 (10-O-05117; 10-O-05773; 10-O-07850; 10-O-08797; 10-O-08798; 10-O-11322
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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.

1. On page 2 of the stipulation, paragraph A.(8), in the option marked with an "X", "2012 and 2013" is deleted, and in its place is inserted "2013 and 2014";
2. On page 5 of the stipulation, the "X" in the box next to paragraph E.(1) is deleted;
3. On page 6 of the stipulation, the "Other Conditions" referenced in paragraph F.(5) constitute additional conditions of probation. Consequently, respondent's failure to comply with any of the conditions referenced in paragraph F.(5) may result in revocation of respondent's probation or other discipline;
4. On page 14 of the stipulation, in the first line under the heading "Authorities Supporting Discipline", "Standard 2.4(a)" is deleted, and in its place is inserted "Standard 2.10"; and
5. On page 15 of the stipulation, in the first line under the heading "Fee Arbitration", "from the date Respondent of the effective date of discipline" is deleted, and in its place is inserted "after the effective date of discipline".
6. The Court also considered Stds. 2.4(b) and 2.6, and Matthew v. State Bar (1989) 49 Cal.3d 784.

(Do not write above this line.)

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.)**

8-5-11

Date



Richard A. Honn
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 Los Angeles, on August 5, 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 Los Angeles, California, addressed as follows:

THOMAS J. BAYARD
ALESSI & BAYARD
556 N DIAMOND BAR BLVD STE 300
DIAMOND BAR, CA 91765

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

by overnight mail at _____, California, addressed as follows:

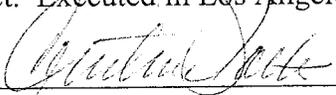
by fax transmission, at fax number _____. No error was reported by the fax machine that I used.

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

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

Katherine D. Kinsey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 5, 2011.



Cristina Potter
Case Administrator
State Bar Court