

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

<p>Counsel For The State Bar</p> <p>Mark Hartman Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2558</p> <p>Bar # 114925</p>	<p>Case Number(s):</p> <p>11-N-11115</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p>JUN 10 2011 <i>df</i></p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Thomas Scott Simons 3721 Hearst Castle Way Plano, TX 75025 Telephone: (415) 548-0344</p> <p>Bar # 226484</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of:</p> <p>THOMAS SCOTT SIMONS</p> <p>Bar # 226484</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 October 9, 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 9 pages, not including the order.



(Do not write above this line.)

- (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: (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 06-O-14505 and 06-O-15080
  - (b)  Date prior discipline effective May 30, 2010
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Rule 4-200(A) of the Rules of Professional Conduct and sections 6068(a) and 6106 of the Business and Professions Code
  - (d)  Degree of prior discipline Stayed suspension for three years and actual suspension for ninety days and until a motion to terminate his actual suspension is granted. If respondent remains actually suspended for two years or more, he must prove his rehabilitation, fitness to practice law, and learning and ability in the general law pursuant to standard 1.4(c)(ii) before his actual suspension will be terminated.
  - (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.

(Effective January 1, 2011)

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- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

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

- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of three 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 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 two years.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**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 type="checkbox"/> Financial Conditions

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

No MPRE recommended. Reason: In disciplinary order number S180527, which was effective May 30, 2010, the California Supreme Court ordered respondent to provide proof of passage of the MPRE within the period of actual suspension in State Bar Court case numbers 06-O-14505 and 06-O-15080. He is actually suspended and will remain so until a motion to terminate his actual suspension is granted.

- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:**

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

In the Matter of:     **Thomas Scott Simons**

Membership No.:     **226484**

State Bar Case No.:   **11-N-11115**

**RESOLUTION OF THE CURRENT CASE**

The State Bar of California (“State Bar”) and respondent Thomas Scott Simons (“respondent”) enter into this Stipulation As to Facts, Conclusions of Law, and Discipline (“Stipulation”) in order to resolve case number 11-N-11115 (“the current case”).

**WAIVERS**

The parties waive all variances between the facts and conclusions of law asserted in the Notice of Disciplinary Charges covering the current case and the facts and conclusions of law contained in this Stipulation.

**FACTS**

Respondent admits that the following facts are true:

1. On April 30, 2010, the California Supreme Court filed disciplinary order number S180527 (“disciplinary order”) in State Bar Court case numbers 06-O-14505 and 06-O-15080.
2. The disciplinary order required respondent to comply with rule 9.20 of the California Rules of Court (“rule 9.20”) 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 disciplinary order.
3. Notice of the disciplinary order was properly served upon respondent in the manner prescribed by rule 9.18(b) of the California Rules of Court, i.e., at the address which he maintained with the State Bar pursuant to section 6002.1, subdivision (a) of the Business and Professions Code.
4. On May 30, 2010, the disciplinary order became effective.
5. Since May 30, 2010, the disciplinary order has remained in full force and effect.

6. The deadline for filing the required declaration of compliance with rule 9.20(c) was July 9, 2010.

7. Respondent willfully violated rule 9.20(c) by not timely filing the required declaration of compliance.

### **CONCLUSION OF LAW**

Respondent admits that by not timely filing the required proof of compliance with rule 9.20(c), he failed to comply with the disciplinary order and thus failed to obey a court order 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.

### **AGGRAVATION**

Respondent has a prior record of discipline in State Bar Court case numbers 06-O-14505 and 06-O-15080.

### **MITIGATION**

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

### **SUPPORTING AUTHORITY**

Standards 1.7(a) and 2.6 and *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382 support the stipulated discipline.

### **ESTIMATED PROSECUTION COST**

The estimated prosecution cost of the current cases is approximately \$1,641.00.

### **DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING**

On May 16, 2011, the State Bar sent a disclosure letter by e-mail to respondent. In this letter, the State Bar advised respondent of any pending investigations or proceedings against respondent other than the current case.

(Do not write above this line.)

In the Matter of:  THOMAS SCOTT SIMONS, No. 226484,  A Member of the State Bar.	Case number(s):  11-N-11115
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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>5/18/11</u> Date	<u><i>T. Scott Simons</i></u> Respondent's Signature	<u>THOMAS SCOTT SIMONS</u> Print Name
<u>5/23/11</u> Date	<u><i>Mark Hartman</i></u> Deputy Trial Counsel's Signature	<u>MARK HARTMAN</u> Print Name

(Do not write above this line.)

In the Matter of: THOMAS SCOTT SIMONS, No. 226484	Case Number(s): 11-N-11115
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### ACTUAL 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.
1. On page 2 of the stipulation paragraph B.(1)(a) , add Supreme Court order no. S180527; and
  2. On page 4 of the stipulation, the "X" in the box next to paragraph D.(1)(a)(i) is deleted.

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.)**

Date June 10, 2011 Pat McElroy  
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 June 10, 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:

THOMAS S. SIMONS  
3721 HEARST CASTLE WAY  
PLANO, TX 75025

- 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:

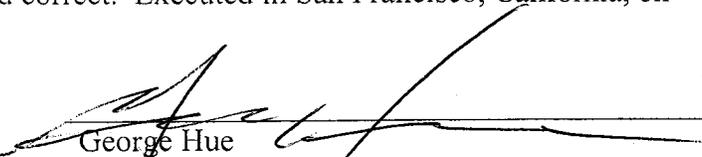
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

Mark Hartman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 10, 2011.

  
George Hue  
Case Administrator  
State Bar Court