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ORIGINAL

PUBLIC MATTER State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar Kimberly G. Anderson Senior Trial Counsel Office of the Chief Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2515 Telephone: (213) 765-1083 Bar # 150359	Case Number(s): 13-O-14110	For Court use only <p style="text-align: center;">FILED </p> <p style="text-align: center;">JUN 18 2014</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
In Pro Per Respondent Brian William Smethurst 4160 Temescal Canyon Road Suite 410 Corona, CA 92883 Telephone: (951) 603-3033 Bar # 179453	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: BRIAN WILLIAM SMETHURST Bar # 179453 A Member of the State Bar of California (Respondent)		

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.

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A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 6, 1995**.
- (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 **13** 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."

(Effective January 1, 2014)

Stayed Suspension

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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: **three billing cycles following the effective date of the Supreme Court Order.** (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (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 or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was intentional, 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. **See Attachment to Stipulation, page 10.**
- (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.

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- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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 subsequent rehabilitation.

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(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

No Prior Discipline - See Attachment to Stipulation, at page 10.
Prefiling Stipulation - See Attachment to Stipulation, at page 11.

D. Discipline:

(1) **Stayed Suspension:**

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

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), 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 **three (3) 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: .
- (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 checked="" 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:
- (2) **Other Conditions:**

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In the Matter of: BRIAN WILLIAM SMETHURST	Case Number(s): 13-O-14110
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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
Flores Family Trust	\$32,500	October 22, 2012

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

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
Flores Family Trust	\$3,000	No later than the last day of the first month of each quarter.

- 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. Respondent understands that this restitution condition of his State Bar disciplinary probation does not modify the Riverside County Superior Court's order and the State Bar does not have the authority to modify a Superior Court order.

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:

- a. 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";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BRIAN WILLIAM SMETHURST
CASE NUMBER: 13-O-14110

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. 13-O-14110 (Complainant: Ruth W. Adams)

FACTS:

1. Respondent represented Ronald Knight ("Knight"), a financial advisor who was successor trustee for the Flores Family Trust ("Trust"). The beneficiaries of the Trust were Evergreen Cemetery and the Riverside Community College District. The Trust provided for distribution as follows: "Seventy-five percent (75%) to EVERGREEN CEMETERY and Twenty-five percent (25%) to RIVERSIDE COMMUNITY COLLEGE SCHOLARSHIP FUND."
2. After the deaths of Mr. and Mrs. Flores in October 2008, Knight failed to give notice to the Trust beneficiaries, and failed to disburse any of the Trust's funds to the beneficiaries.
3. Between October 29, 2008 and January 27, 2009, Knight paid Respondent \$33,500 in legal fees.
4. By February 2011, there were no funds left in the trust estate which had included real property and bank accounts worth over \$800,000. Most of the Trust's funds had gone directly to Knight.
5. The Riverside County Public Administrator ("Public Administrator") was appointed successor trustee of the Trust by the probate court.
6. In June 2011, the Public Administrator demanded that Respondent repay to the Trust forthwith the full \$33,500 that he received from Knight. Respondent offered to repay the \$33,500 in monthly payments, but the Public Administrator rejected Respondent's payment plan.
7. Subsequent to June 2011, Respondent made no payments toward the \$33,500 and no efforts to reach an agreement with the Public Administrator.
8. In August 2012, the Public Administrator filed with the Riverside County Superior Court a Petition for Recovery of Trust Funds from Brian Smethurst.
9. In September 2012, the Riverside Community College District Foundation filed a Joinder in Petition for Recovery of Trust Funds from Brian Smethurst.

10. On October 22, 2012, the Riverside County Superior Court ordered Respondent to “pay to the Trust the sum of \$33,500.00.” The court further ordered that the sum of \$33,500 was to be distributed, by assignment of said rights, twenty-five percent (25%) to “Riverside Community College Scholarship Fund” and seventy-five percent (75%) to “Evergreen Cemetery,” subject to the lien rights of the Riverside Community College District and the Public Administrator for the sums owing to them from the Trust. Respondent received notice of the October 22, 2012 court order to pay the Trust.

11. On November 6, 2012, the Riverside Community College District Foundation obtained an abstract of judgment as assignee of record for the \$33,500 judgment against Respondent. Respondent received notice of the assignment of the judgment.

12. Respondent has not repaid the Trust or the beneficiaries, and he has not made any payments towards the sum owed voluntarily. The Trust and the beneficiaries have received minimal payments due to their collection efforts including placing liens on other probate matters in which Respondent is the attorney of record.

13. In February 2014, the Trust received \$1,000 as a result of a lien that was placed on Respondent’s attorney fees in a probate matter.

14. Although the court ordered on October 22, 2012 that Respondent repay the Trust for attorney’s fees improperly paid to him by Knight from the Trust’s assets, at no time has there ever been any determination that Respondent was complicit in misdeeds committed by Knight as Trustee of the Trust.

CONCLUSIONS OF LAW:

15. By failing to pay to the Trust the sum of \$33,500 within a reasonable period of time after the October 22, 2012 order, 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 willful violation of Business and Professions Code, section 6103.

AGGRAVATING CIRCUMSTANCES.

Indifference (Std. 1.5(g)): Respondent still owes the Trust over \$30,000 on a matter in which he is aware that his client stole hundreds of thousands of dollars to which the beneficiaries are entitled. Respondent has made no attempt to repay the Trust since the court’s issuance of its order more than one year ago. This failure to pay is evidence of Respondent’s indifference toward rectification of his misconduct. The weight of this aggravating circumstance is somewhat diminished by the fact that Respondent previously attempted to establish a payment plan which was rejected by the Public Administrator.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

No Prior Discipline: Although Respondent’s misconduct is serious, he is entitled to mitigation for having practiced law for seventeen years without discipline prior to the commencement of the current misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Prefiling Stipulation: Respondent stipulated to facts, conclusions of law, and disposition in order to resolve this disciplinary proceeding as efficiently as possible, prior to the filing of charges, thereby avoiding the necessity of a trial and saving State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence 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. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.8 provides that “[d]isbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member’s practice of law, the attorney’s oath, or the duties required of an attorney under Business and Professions Code section 6068(a)-(h).” Standard 2.8 applies to Respondent’s misconduct which consists of a single violation of a court order in one matter.

While standard 2.8 calls for disbarment or actual suspension, under the current circumstances, there is a compelling justification and reason to deviate from standard 2.8 and impose lesser discipline. (See, *In re Silverton, supra*, 36 Cal.4th at p. 92.) Standard 1.7(c) states that “[mitigating circumstances] should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard.” As stated above, Respondent’s misconduct is aggravated by the fact that he has demonstrated indifference toward rectification for the misconduct. However, Respondent is entitled to significant mitigation for his seventeen years of discipline-free practice prior to the commencement of the current misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.) The fact that Respondent practiced law for seventeen years with no prior discipline indicates that

the current misconduct is aberrational. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.) It is important to note that Respondent was ordered to repay the Trust for attorney's fees which were improperly paid to him by the trustee from the Trust's assets. There has never been any determination that Respondent was complicit in the misdeeds committed by the trustee, or any determination that Respondent failed to perform any of his duties as the attorney hired to administer the trust. Respondent did offer to make payments to the Public Administrator, but his payment plan was rejected, and Respondent made no attempts to pay since the Public Administrator obtained the October 22, 2012 court order for Respondent to pay.

Accordingly, based on standard 2.8 and the totality of circumstances, a one (1) year stayed suspension and a three (3) year period of probation with conditions will be sufficient to protect the public, the courts, and the legal profession. (Std. 1.1.) Respondent must also make restitution to the Trust, and the three-year period of probation will give Respondent time to do that. Respondent understands that the fact that he has been given three years to pay restitution at a minimum of \$3,000 per month as a condition of his State Bar disciplinary probation in this matter does not equate with Respondent's compliance with the Riverside County Superior court's orders as the State Bar does not have authority to modify superior court orders.

The requested level of discipline is consistent with case law. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, Riordan was found culpable of failing to perform competently, to obey court orders and to timely report judicial sanctions. Riordan's misconduct was aggravated because it involved multiple acts of misconduct and significantly harmed the administration of justice. Riordan's mitigation consisted of a seventeen-year career with no record of discipline, three and one-half years of successful post-misconduct practice, good character (afforded diminished weight in mitigation), and cooperation with the State Bar. The Review Department noted that they were most concerned that this case arose in the area of appointed representation in a death penalty case, "where so very much is at stake for the defendant and for the fair and effective administration of justice." (*Id.* at 53.) Although the Review Department rejected Riordan's good faith argument, it held that under the "unique confluence of circumstances," stayed suspension was appropriate. (*Id.*) Much as Riordan was "not a classic case of client abandonment," this case is not a classic case of willful disobedience of a court order. Riordan received a six-month stayed suspension and probation for one year. The misconduct in *Riordan* was more egregious than the misconduct in the present case. However, a similar level of discipline is warranted in this case, with a longer period of probation given the amount of restitution owed.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 7, 2014, the prosecution costs in this matter are approximately \$2,992. 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.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: BRIAN WILLIAM SMETHURST	Case Number(s): 13-O-14110
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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.

On page 12 of the stipulation, second paragraph, the reference to the restitution being paid monthly is modified to reflect that the restitution is to be paid quarterly, as set forth on page 7.

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.)**

June 13, 2014
Date


GEORGE E. SCOTT, JUDGE PRO TEM
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 June 18, 2014, 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:

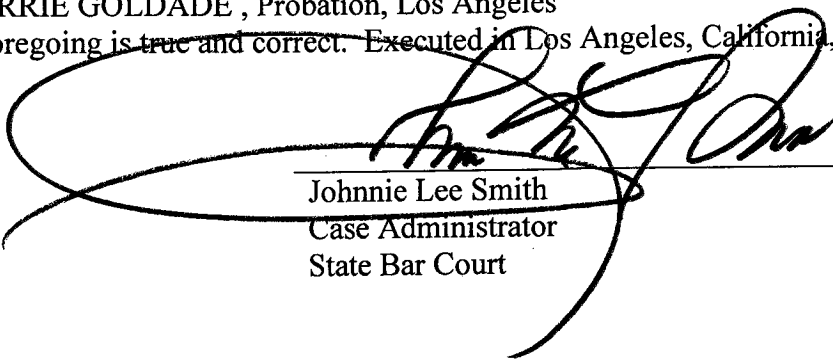
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRIAN W. SMETHURST
LAW OFFICES OF BRIAN W. SMETHURST
4160 TEMESCAL CANYON RD
STE 410
CORONA, CA 92883

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

KIM ANDERSON, Enforcement, Los Angeles
TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 18, 2014.



Johnnie Lee Smith
Case Administrator
State Bar Court