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State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT

Counsel For The State Bar	Case Number(s):	For Court use only
Erin McKeown Joyce **Senior Trial Counsel** **845 South Figueroa Street** **Los Angeles, California 90017-2515** **(213) 765-1356** Bar # **149946**	**13-O-17590-PEM** **14-O-00516** **14-O-02408** **14-O-02460** PUBLIC MATTER	FILED MAY 19 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent **Jason Allan Smith** **26721 Baronet** **Mission Viejo, California 92692** **(949) 444-6975** Bar # **237584**	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT **DISBARMENT** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **JASON ALLAN SMITH** Bar # **237584** 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.

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **July 31, 2005**.

(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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (**14**) 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):

☒ Costs to be awarded to the State Bar.
☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
☐ Costs are entirely waived.

(9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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 **12-O-11922, et al. See page 10 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of Respondent's prior imposition of discipline.**

(b) ☒ Date prior discipline effective **March 15, 2014**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **One count of Business and Professions Code section 6068(m) (failure to respond to client inquiries), two counts of Business and Professions Code section 6106.3 (collecting advanced fees for a loan modification) and one count of Rule of Professional Conduct 4-100(B)(3) (failure to render accounts of client funds).**

(d) ☒ Degree of prior discipline **90 day actual suspension, one-year stayed suspension and two-year probation.**

(e) ☒ If respondent has two or more incidents of prior discipline, use space provided below:

12-O-12556, et al. See page 10 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of Respondent's second prior imposition of 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. **See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of this aggravating circumstance.**

(5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of this aggravating circumstance.**

(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. **See page 10 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of this aggravating circumstance.**

(8) ☒ **Restitution:** Respondent failed to make restitution. **See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of this aggravating circumstance.**

(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.

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

Additional mitigating circumstances:

Pretrial Stipulation. See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of this mitigating circumstance.

D. Discipline: Disbarment.

E. Additional Requirements:

(1) **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.

(2) ☒ **Restitution:** Respondent must make restitution to **Bjorn Olsson** in the amount of **$ 3,531** plus 10 percent interest per year from **January 25, 2013**. If the Client Security Fund has reimbursed **Bjorn Olsson** for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than **N/A** days from the effective date of the Supreme Court order in this case.

(3) ☒ **Other: Further Restitution:**

Respondent must make restitution to the following claimants in the amounts listed below plus 10 percent interest per year from the dates listed below. If the Client Security Fund has reimbursed any of the claimants for all or any portion of the principal amount, Respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5

Payee	Principal Amount	Interest Accrues From
Stephanie Poe	$1,500	December 23, 2013
Paul Nelson	$1,806	August 3, 2013

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JASON ALLAN SMITH

CASE NUMBERS: 13-O-17590, 14-O-00516, 14-O-02408, 14-O-02460

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violating of the specified statutes and Rules of Professional Conduct.

Case No. 13-O-17590 – Complainant Bjorn Olsson

FACTS:

1. On January 25, 2013, Bjorn Olsson hired Respondent to obtain a residential loan modification for Olsson.

2. On January 25, 2013, before any work was done or completed for Olsson, Olsson paid Respondent advanced legal fees of $1,250.

3. Thereafter, Respondent submitted a loan modification package to Olsson's lender, but Respondent was unsuccessful in obtaining a loan modification acceptable to Olsson.

4. On August 8, 2013, Olsson hired Respondent to file a personal bankruptcy for Olsson.

5. That same day, Olsson paid Respondent $2,281 in advanced fees for the filing of the personal bankruptcy for Olsson.

6. In the time period from the end of August 2013 until December 2013, Olsson contacted Respondent and left messages both by email and by phone, requesting a status report on Olsson's bankruptcy matter.

7. Despite his receipt of the phone messages and email messages from Olsson, Respondent did not communicate with Olsson about the bankruptcy matter or otherwise respond to the client inquiries from Olsson.

8. Respondent did not file a bankruptcy petition for Olsson. Respondent provided no legal services to Olsson in connection with the bankruptcy matter.

9. In December 2013, Olsson left a detailed message with Respondent terminating his services and requesting a full refund of the unearned fees in Olsson's bankruptcy matter.

10. Respondent received Olsson's message terminating his services, but to date has not refunded any of the $2,281 paid by Olsson for the bankruptcy matter.

11. To date, Respondent has not refunded the $1250 advanced fees in the loan modification matter.

CONCLUSIONS OF LAW:

12. By collecting an advanced legal fee to perform residential mortgage loan modification services on behalf of Olsson in violation of Civil Code section 2944.7, Respondent wilfully violated Business and Professions Code section 6106.3.

13. By failing to perform any legal services to Olsson in connection with the bankruptcy matter, after he agreed to undertake the representation, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

14. By failing to respond to the multiple messages left by Olsson requesting a status report on his legal 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 wilful violation of Business and Professions Code section 6068(m).

15. By failing to return any of the advanced attorney fees paid to Respondent for the bankruptcy matter to Olsson, Respondent failed to return unearned attorney fees in wilful violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 14-O-00516 – Complainant Stephanie Poe

FACTS:

16. On December 23, 2013, Stephanie Poe hired Respondent to obtain a residential loan modification for Poe.

17. Before any work was done or completed for Poe on the residential loan modification legal matter Respondent was hired to perform, Poe paid Respondent advanced legal fees of $1,500.

18. Respondent failed to perform any legal services for Poe after receiving the $1,500 on December 23, 2013.

19. To date, Respondent has failed to return the $1,500 advanced attorney fees he collected from Poe for the residential loan modification.

CONCLUSIONS OF LAW:

20. By collecting an advance attorney fee to perform residential loan modification services on behalf of Poe in violation of Civil Code section 2944.7, Respondent wilfully violated Business and Professions Code section 6106.3.

Case No. 14-O-02408 – Complainant Christian Panaitescu

FACTS:

21. On March 24, 2011, Christian Panaitescu hired Respondent to file a Chapter 7 bankruptcy petition.

22. Panaitescu paid Respondent $2,000 in advanced fees for the filing of the Chapter 7 bankruptcy for Panaitescu.

23. On May 20, 2011, Respondent filed the bankruptcy petition for Panaitescu.

24. Respondent performed no additional legal services for Panaitescu related to the bankruptcy matter for which he was hired.

25. On May 10, 2011, Panaitescu completed the pre-bankruptcy counseling course online and received a certificate of completion. The certificate of completion was also mailed to Respondent.

26. Respondent received the certificate of completion of the pre-bankruptcy counseling course. After Respondent received a deficiency notice from the bankruptcy, Respondent filed the certificate.

27. On July 16, 2011, Panaitescu completed the post-bankruptcy credit counseling course. The certificate of completion was sent to both Respondent and Panaitescu. The certificate should have been filed with the court. Respondent knew he was required to file the certificate.

28. Respondent never filed the post-bankruptcy credit counseling certificate of completion with the bankruptcy court.

29. On January 26, 2012, the bankruptcy petition filed by Respondent on behalf of Panaitescu was dismissed since Respondent had not filed the post-bankruptcy certificate of completion.

30. The court sent notice of the dismissal to Respondent.

31. Despite receiving notice of the dismissal of Panaitescu's bankruptcy petition, Respondent took no steps to reinstate the bankruptcy petition or to otherwise perform additional services for Panaitescu.

CONCLUSIONS OF LAW:

32. By filing the bankruptcy petition on behalf of Panaitescu, and then failing to file the certificate of completion of the post-bankruptcy counseling course, and failing to take any steps to reinstate the petition after receiving notice of the dismissal, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rule of Professional Conduct 3-110(A).

Case No. 14-O-02460 – Complainant Paul Nelson

FACTS:

33. On June 6, 2013, Paul Nelson hired Respondent to file a Chapter 7 bankruptcy petition.

34. Nelson paid Respondent $1,250 in advanced fees for the filing of the personal bankruptcy for Nelson, plus $306 for the filing fees.

35. On July 16, 2013, Respondent filed a bankruptcy petition for Nelson, but failed to file any of the necessary schedules.

36. The bankruptcy court issued several deficiency notices to Respondent concerning the failure of Respondent to file the required schedules with the bankruptcy petition.

37. Despite his receipt of the deficiency notices, Respondent failed to file the bankruptcy schedules in the Nelson bankruptcy matter.

38. On July 23, 2013, the bankruptcy petition filed by Respondent on behalf of Nelson was dismissed since Respondent failed to file the required schedules.

39. The court sent notice of the dismissal to Respondent.

40. Respondent received notice of the dismissal, and then notified Nelson that since the first petition was dismissed due to his failure to file the schedules, Respondent would re-file the bankruptcy and file a motion to quash a subpoena issued for Nelson's wife's financial records, if Nelson paid $1,500, plus another $306 for filing fees.

41. On August 3, 2013, Nelson paid Respondent $1,806 to re-file the bankruptcy petition and to file a motion to quash a subpoena for Nelson's wife's financial records.

42. On September 4, 2013, Respondent filed a second bankruptcy petition for Nelson, without the required schedules.

43. After he filed the second deficient bankruptcy petition, Respondent took no further action on Nelson's bankruptcy matter or to quash the subpoena for the financial records of Nelson's wife.

44. The bankruptcy court issued several deficiency notices to Respondent concerning the failure of Respondent to file the required schedules with the second bankruptcy petition.

45. Despite his receipt of the deficiency notices in connection with the second bankruptcy petition, Respondent failed to file the bankruptcy schedules in the Nelson bankruptcy matter.

46. On September 25, 2013, the second bankruptcy petition filed by Respondent on behalf of Nelson was dismissed since Respondent failed to file the required schedules.

47. The court sent notice to Respondent of the dismissal of the second bankruptcy petition.

48. Despite receiving notice of the dismissal of Nelson's second bankruptcy petition, Respondent took no steps to reinstate the bankruptcy petition or to otherwise perform additional services for Nelson.

49. Respondent never filed the motion to quash the subpoena for Nelson's wife's financial records. Respondent did not earn the fees advanced for the second bankruptcy matter, nor the fees for the motion to quash.

50. In October 2013, Nelson left a detailed message for Respondent in which he terminated Respondent and requested that Respondent refund the unearned advanced attorney fees paid to Respondent to file the motion to quash the subpoena for Nelson's wife's financial records.

51. Despite his receipt of the request for a refund, and the notice of termination, Respondent has not refunded the $1,806 paid by Nelson for the second bankruptcy petition and for the motion to quash to date.

CONCLUSIONS OF LAW:

52. By filing the two bankruptcy petitions on behalf of Nelson, and then failing to file the required schedules, failing to file the motion to quash the subpoena for Nelson's wife's financial records, and failing to take any steps to reinstate Nelson's second petition after receiving notice of the dismissal, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rule of Professional Conduct 3-110(A).

53. By failing to return any of the advanced attorney fees paid to Respondent for the bankruptcy matter and the motion to quash to Nelson in the amount of $1,806, Respondent failed to return unearned attorney fees in wilful violation of Rule of Professional Conduct 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES

Prior Record of Discipline (Stds. 1.5(a) and 1.8(b)): Respondent has two prior records of discipline, both from 2013. Respondent's first discipline involved five client matters (Decision filed October 8, 2013), wherein Respondent received a 90 day actual suspension, one year stayed suspension and two years' probation. In those five matters, Respondent was found to have wilfully violated Business and Professions Code section 6106.3 (collecting an advance fee for loan modification services in violation of Civil Code section 2944.7) [two counts]; Business and Professions Code section 6068(m) (failure to respond to client inquiries[one count]; and Rule 4-100(B)(3) (failure to render account of client funds)[one count]. The misconduct in the first discipline occurred between June 2011 and April 2012.

In the second discipline filed December 13, 2013, Respondent stipulated to multiple counts of misconduct in 17 client matters including, but not limited to, failing to perform with competence (Rule 3-110(A)[11 counts]; failing to communicate (Business and Professions Code section 6068(m)[10 counts]; failing to return the client file (Rule of Professional Conduct 3-700(D)(1) [one count]; failing to refund unearned fees (Rule of Professional Conduct 3-700(D)(2) [six counts]; and collecting an advance fee for loan modification services in violation of Civil Code section 2944.7 (Business and Professions Code section 6106.3)[six counts]. The misconduct in the second discipline occurred between March 2010 and June 2013.

Multiple Acts of Misconduct (Std. 1.5(b): Respondent committed multiple acts of misconduct in the four present matters. This is considered serious aggravation. (*See e.g. In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar of California 498, 555; *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Court Rptr. 139.

Pattern of Misconduct (Std. 1.5(c): Respondent's misconduct began in 2011. Respondent's misconduct demonstrates a clear pattern of misconduct by and through the habitual disregard of his clients' interests. Typically, a pattern of misconduct requires serious misconduct over a sufficient period of time to demonstrate the pattern and may require a common thread between the instances of the misconduct. (*See Young v. State Bar* (1990) 50 Cal. 3d 1204, 1216-1217.) This is Respondent's third discipline. In each of Respondent's prior disciplines there is a recurring theme where Respondent takes money, does little or no work of value for the client, then fails to return advanced unearned fees. Respondent continued to collect advanced fees for loan modification legal services into December 2013, after a trial in the first discipline, and after stipulating to the wrongfulness of the misconduct less than a month beforehand.

Harm (Std. 1.5(f) Respondent's misconduct caused significant harm to four clients. Olsson paid substantial attorney fees for a bankruptcy and loan modification, and never received services ($2,281 for the bankruptcy and $1,250 for the loan modification). Poe paid Respondent $1,500 for a loan modification, at a time when she was already in grave financial distress. Panaitescu paid Respondent $2,000 for a bankruptcy which was not timely completed. Nelson paid for a bankruptcy, which was filed, but then dismissed due to Respondent's failing to file the required schedules, and also for a motion to quash a subpoena for his wife's financial records, which Respondent never filed. Each of the four clients was in financial distress, and because of Respondent's misconduct, did not receive the protections they sought under bankruptcy laws.

Indifference (Std. 1.5(g): Respondent has demonstrated great unwillingness to recognize his professional obligations to his clients and a great lack of insight into his misconduct. This is amply demonstrated by his failure to return fees, but even more importantly, by his accepting advanced fees for a loan modification from an unsuspecting client in December 2013 (after his first disciplinary trial and after he signed the disciplinary stipulation in the second discipline). Respondent has demonstrated his inability or unwillingness to conform to ethical strictures.

Failure to Make Restitution (Std. 1.5(i): Respondent owes restitution to three of the four clients in the matters which are the subject of his current disciplinary proceeding.

MITIGATING CIRCUMSTANCES

Pretrial Stipulation: Respondent met with the State Bar trial counsel, admitted his misconduct, and entered this Stipulation fully resolving these matters. Respondent's cooperation has saved the State Bar significant resources and time. Respondent's stipulation to the facts, culpability, and discipline is a mitigating circumstance. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigating credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521).

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, sts. 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 the level of discipline. (*In re Silverton* (2005) 36 Cal. 4th 81, 92, quoting *In re Brown* (1995) 11 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.)

In determining whether to impose a greater or lesser sanction than that specified in a given Standard, in addition to the factors specified in a given 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).

In this matter, Respondent is culpable of committing eight acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

In this matter, the most severe sanction applicable to Respondent's misconduct is found in Standards 1.8(b) and 2.5(a). Standard 1.8(b) applies since Respondent has two or more prior disciplines. Under Standard 1.8(b):

> (b) If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:
>
> 1. Actual suspension was ordered in any one of the prior disciplinary matters;
>
> 2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
>
> 3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

The misconduct in the two other matters started after Respondent participated in a four day disciplinary trial in the first disciplinary case, and after he signed the stipulation involving misconduct in 17 additional matters. Because Respondent's misconduct evidences a pattern of misconduct, and that Respondent has not shown an ability or willingness to conform to ethical norms, disbarment is appropriate.

A pattern of misconduct is "egregious aggravation" and generally warrants disbarment. (*Twohy v. State Bar* (1989) 48 Cal. 3d 502, 512-513 [An attorney's record that "evidences a serious pattern of misconduct involving recurring types of wrongdoing"..."clearly warrants disbarment in the absence of the most compelling mitigating circumstances."]; See also, *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal State Bar Ct Rptr. 498, 566 ["when an attorney commits multiple acts of similar misconduct or recurring types of wrongdoing...the gravity of each successive violation increases"].)

Standard 2.5(a) provides that "[d]isbarment is appropriate for failing to perform legal services with clients, demonstrating a pattern of misconduct." Respondent has established a pattern of failing to perform for clients in a variety of legal matters since 2011. His recent conduct continues this pattern. The unambiguous pattern to date has been for Respondent to take client money, perform little or no work of value for his clients, fail to communicate and then fail to return unearned fees.

Respondent has little in the way of mitigation that would explain or excuse his misconduct in these four matters. There are, in contrast, several aggravating factors present, including two prior records of discipline, multiple acts of misconduct, significant harm, a pattern of misconduct, indifference, and Respondent's failure to make restitution.

Under Standard 1.7(b), considering these aggravating factors alone and in balance with the mitigating factors present, since the aggravating factors far outweigh the mitigating factors, and since the net effect

demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline; it is appropriate to recommend a greater sanction under Standard 1.7(b). Since Respondent has a prior discipline of 90 days' actual suspension and another of two years' actual suspension and considering the extent of Respondent's misconduct, the serious aggravating factors and the absence of significant and compelling mitigation, the appropriate discipline to impose is disbarment, which will protect the public, the legal profession, and uphold the purposes of attorney discipline.

In the Matter of:	Case number(s):
JASON ALLAN SMITH	13-O-17590, 14-O-00516, 14-O-02408, 14-O-02460

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.

4/21/2015		Jason Allan Smith
Date	Respondent's Signature	Print Name
Date	Respondent's Counsel Signature	Print Name
April 21, 2015		Erin McKeown Joyce
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: JASON ALLAN SMITH	Case Number(s): 13-O-17590, 14-O-00516, 14-O-02408, 14-O-02460

DISBARMENT ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☑ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☑ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 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.)**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

May 19, 2015
Date

Pat E. McElroy
PAT E. 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 May 19, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

JASON A. SMITH
26721 BARONET
MISSION VIEJO, CA 92692

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

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 19, 2015.

Lauretta Cramer
Case Administrator
State Bar Court