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

<p>Counsel For The State Bar</p> <p><b>Eli D. Morgenstern Deputy Trial Counsel Office of the Chief Trial Counsel Enforcement 1149 S. Hill Street Los Angeles, CA 90015</b></p> <p>Bar # 190560</p>	<p>Case Number (s) <b>05-O-00678 - DFM; 05-O-01895; Investigation Case Nos. 08-O-12106; 08-O-13752</b></p>	<p>(for Court's use)</p> <p align="center"><b>FILED</b></p> <p align="center">DEC 31 2008 <i>YJC</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p align="center"><b>PUBLIC MATTER</b></p>
<p>Counsel For Respondent</p> <p><b>James I. Ham, Esq. Pansky &amp; Markle Attorneys at Law 1010 Sycamore Avenue, Suite 101 South Pasadena, CA 91030</b></p>	<p>Submitted to: <b>Settlement 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>Bar # 100849</p> <p>In the Matter Of: <b>Leroy Bishop Austin</b></p> <p>Bar # 175497</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 31, 1994**.
- (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 **23** 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".



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- (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 284, Rules of Procedure.
  - costs to be paid in equal amounts prior to February 1 for the following membership years:  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs 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.
- (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.
- (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**

**Although the current misconduct cannot be deemed "not serious," Respondent has been a member of the State Bar since December 31, 1994, and has no prior record of discipline.**

**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 1.4(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 **two (2) 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 **thirty (30) 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:**

(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 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 checked="" 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 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 321(a)(1) & (c), Rules of Procedure.**
  - No MPRE recommended. Reason:

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- (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 RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:        LEROY BISHOP AUSTIN

CASE NUMBERS:            05-O-00678 and 05-O-01895  
   Investigation Case Nos. 08-O-12106 and 08-O-13752

**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 Rules of Professional Conduct.

**Case No. 05-O-00678**

**Facts**

1. On August 22, 2001, Sharon Arnwine ("Arnwine") employed Respondent to represent her in a dissolution matter. In or about August 2001, Arnwine paid Respondent \$2,000 in advanced attorney's fees. Thereafter, Arnwine did not pay Respondent any additional legal fees.
2. On September 5, 2001, Respondent filed a Petition for Dissolution on behalf of Arnwine entitled *Sharon F. Arnwine v. Marshall L. Arnwine* Los Angeles Superior Court, case No. BD354094 (the "dissolution action"). Respondent served Marshall L. Arnwine ("Marshall") with a copy of the petition. Arnwine instructed Respondent that she wished, if possible, to resolve the dissolution proceeding through negotiation and settlement rather than through litigation. Respondent did not file any other documents with the court in the dissolution action until January 29, 2003.
3. On October 23, 2001, Respondent met with Arnwine and Marshall regarding settling the dissolution action.
4. On October 29, 2001, Arnwine wrote Respondent providing him with her counter-proposal to a settlement offer made by Marshall at the October 23, 2001 meeting. On October 29, 2001, Arnwine sent her settlement offer to Respondent by facsimile. Respondent received the October 29, 2001 facsimile. Although settlement proposals were exchanged between Arnwine and Marshall at that time, they did not reach agreement on settlement terms.

5. On February 13, 2002, Respondent served Marshall with form interrogatories. On March 5, 2002, Respondent served Marshall with a demand for production of documents.

6. On March 11, 2003, the court in the dissolution action issued a notice stating that the Trial Setting Conference (TSC) was scheduled for May 9, 2003. Respondent received notice of the TSC.

7. On March 26, 2003, Respondent wrote Marshall with a settlement offer in the dissolution action.

8. On May 9, 2003, the court held the TSC in the dissolution action. Attorney Tasha L. Baloney ("Baloney") appeared on behalf of Respondent. During the May 9, 2003 hearing, the court stated that counsel would need to file a motion to compel discovery if counsel wanted the motion heard by the court. The court stated that if the proper motion was filed with court, the court would likely grant it and award sanctions. The TSC was continued to August 27, 2003.

9. On May 9, 2003, Baloney prepared a memorandum for Respondent reporting on the results of the May 9, 2003, hearing, including the court's statement regarding the motion to compel. Respondent received the May 9, 2003 memorandum from Baloney.

10. In or about August 2003, Marshall employed attorney Robert Randall ("Randall") to represent him in the dissolution action.

11. On November 19, 2003, Respondent and Randall appeared at the TSC in the dissolution action. The court continued the matter to December 3, 2003.

12. On November 20, 2003, Randall wrote Respondent regarding the discovery, custody, and support issues pending in the dissolution action. Randall properly mailed the letter. Respondent received the letter but did not respond in writing.

13. On August 18, 2004, Respondent and Arnwine met to discuss the dissolution action. Arnwine understood Respondent to have told her at the meeting that a hearing was scheduled for August 24, 2004, in the dissolution action. In fact, a hearing was not scheduled for August 24, 2004.

14. On August 24, 2004, Arnwine appeared in court and learned that her matter was not on calendar and that Respondent was not at the court.

15. On August 25, 2004, Arnwine wrote Respondent regarding what she perceived as delays in her dissolution action. In her August 25, 2004 letter, Arnwine told Respondent that she



was in court on August 24, 2004, and her matter was not on the court's calendar. In the letter, Arnwine insisted that her matter move forward. Respondent received the August 25, 2004 letter but did not respond to that letter in writing.

16. For the next month, Arnwine called Respondent's office daily leaving messages inquiring about the status of her case. Respondent did not respond to Arnwine's messages.

17. As of September 2004, Arnwine had been unable to contact Respondent. As a result, on September 10, 2004, Kiyo D. Oden ("Oden"), Arnwine's nephew and an attorney, wrote Respondent regarding Arnwine's inability to contact Respondent. In the September 10, 2004 letter, Oden stated that Arnwine was unaware of the status of her matter and asked Respondent to contact her immediately to discuss the status of the dissolution action. In the September 10, 2004 letter, Oden told Respondent that if Respondent could not give Arnwine's case the time and attention it required, then he should advise her of this so that she could retain new counsel. Respondent received Oden's letter but did not respond to it.

18. On September 22, 2004, Arnwine was able to contact Respondent regarding the dissolution action. During the September 22, 2004 conversation, Respondent told her that he could attempt to at least get Arnwine divorced and work towards settling any remaining issues at a later time.

19. In or about October 2004, Arnwine employed a new attorney to handle her dissolution action.

20. On October 21, 2004, Arnwine wrote Respondent terminating his services in the dissolution action as of October 11, 2004. In the October 21, 2004 letter, Arnwine requested her file, a billing statement, and any balance remaining on the retainer. Respondent received the letter but failed to respond.

21. On October 25, 2004, the new attorney substituted into the dissolution action.

22. On April 21, 2005, the parties in the dissolution action filed a settlement agreement.

### **Conclusions of Law**

By not responding to Arnwine's August 25, 2004, letter and Oden's September 10, 2004 letter, and by not responding to Arnwine's telephone calls during August and September 2004, and by not responding to Arnwine's request for a billing statement in the October 21, 2004 letter

terminating his services, Respondent failed to respond to reasonable status inquiries of a client in wilful violation of Business and Professions Code section 6068(m).

**Case No. 05-O-01895**

**Facts**

1. On May 15, 2000, Sandra Guadalupe Rodriguez (“Rodriguez”) was hit by an automobile. Rodriguez was four years old at the time of the accident. Rodriguez’s mother, Sandra Acosta (“Acosta”), claimed to have witnessed her daughter’s accident.
2. In or about June 2000, Acosta employed Respondent to handle the personal injury matter on behalf of Rodriguez and Acosta’s potential claim for infliction of emotional distress.
3. On July 13, 2000, Respondent wrote Mercury Insurance Company stating that he was representing both Rodriguez and Acosta in their respective matters. Mercury Insurance was the carrier for Pascual Ramirez, the driver who hit Sandra Guadalupe Rodriguez.
4. On July 28, 2000, Rondalyn Spurlock (“Spurlock”), a claims examiner for Mercury Insurance, wrote Respondent acknowledging receipt of his letter of representation.
5. On August 18, 2000, Spurlock spoke to Respondent’s employee, Florence, who scheduled a time for Acosta to provide a statement to Mercury Insurance. The parties subsequently agreed that the interview would take place on September 20, 2000.
6. On or about September 20, 2000, Mercury Insurance interviewed Acosta about her daughter’s personal injury matter. Acosta stated that she did not witness the automobile hitting her daughter, but did see her thrown into the air from the impact.
7. On or about May 14, 2001, Respondent filed a civil complaint alleging negligent infliction of emotional distress on behalf of Acosta entitled *Sandra Rodriguez v. Pascual Neri Ramirez*, Los Angeles Superior Court, case No. 01K09033 (the “personal injury action”).
8. At no time has Respondent filed a complaint on behalf of Rodriguez in connection with her personal injury claim. Rodriguez is still a minor, and the statute of limitations is tolled until Rodriguez reaches majority.
9. On June 12, 2001, counsel filed a response in the personal injury action on behalf of defendant Pascual Ramirez.

10. On July 26, 2001, defense counsel properly served Respondent with interrogatories and a demand for production, inspection, and copying of documents. Respondent received the discovery requests but did not inform Acosta that she had been served with discovery requests.

11. As of November 2, 2001, Respondent had not responded to the discovery served by the defendant on July 26, 2001, and had not contacted defense counsel regarding an extension. Therefore, on November 2, 2001, defense counsel wrote Respondent regarding the discovery. In the November 2, 2001 letter, defense counsel unilaterally granted Respondent a ten-day extension to comply with the discovery requests. Respondent had not requested this extension. Respondent received the November 2, 2001 letter but failed to respond.

12. By November 2, 2001, Respondent had concluded that, in his legal judgment, Acosta did not have a viable cause of action for infliction of emotional distress because she had not actually witnessed the accident. Respondent therefore decided that he would not prepare answers to the outstanding discovery. Respondent did not advise Acosta that he had determined that she did not have a viable cause of action, that she had been served with discovery requests, and that he did not intend to prepare answers to the discovery.

13. On November 8, 2001, the court held an OSC in the personal injury action. Respondent did not appear at the November 8, 2001 OSC, and the court continued the OSC to December 11, 2001. In addition, the court ordered a trial setting memorandum be filed by the parties by December 6, 2001. Respondent received the court's November 8, 2001 minute order. The Court did not sanction Respondent for his failure to appear at the November 8, 2001 OSC.

14. On November 21, 2001, Respondent filed the trial setting memorandum in the personal injury action. However, the plaintiff's address in the memorandum did not match the address previously submitted to the court on behalf of Acosta. Therefore, on December 3, 2001, the court in the personal injury action asked Respondent to submit a new trial setting memorandum. Respondent received the court's December 3, 2001 notice.

15. On or about December 11, 2001, Respondent appeared at the OSC in the personal injury action. The court took the OSC off calendar.

16. As of January 14, 2002, Respondent had not filed a new memorandum to set the case for trial. Therefore, on or about January 14, 2002, the court set an OSC for October 2, 2002, regarding Respondent's failure to file the memorandum. Respondent received the court's notice.

17. On or about February 8, 2002, defense counsel in the personal injury action filed a motion to compel responses to the inspection demand and filed a motion to compel responses to the interrogatories. The hearing regarding the motions to compel was scheduled for March 7,

2002. Respondent received the motions to compel. Respondent did not file a response to the motions.

18. On March 7, 2002, the court held a hearing regarding the motions to compel filed by the defendant in the personal injury action. Respondent did not appear at the March 7, 2002 hearing. On March 7, 2002, the court granted the motions to compel and ordered Acosta to pay sanctions in the amount of \$523.

19. On March 8, 2002, defense counsel filed a Notice of Ruling regarding the March 7, 2002 hearing setting forth the court's rulings and sanctions order. Respondent received the March 8, 2002 Notice of Ruling.

20. Respondent did not inform Acosta of the Court's March 7, 2002 rulings.

21. On April 19, 2002, defense counsel filed a motion for terminating sanctions based on plaintiff's failure to comply with the court's discovery order. The hearing regarding defendant's motion for terminating sanctions was scheduled for May 16, 2002. Respondent received the motion but did not file an opposition.

22. On May 16, 2002, the court in the personal injury action held a hearing on the defendant's motion for terminating sanctions and granted the motion, dismissing the personal injury action. Respondent did not appear at the May 16, 2002 hearing.

23. On May 17, 2002, defense counsel filed and served on Respondent a Notice of Ruling regarding the May 16, 2002 hearing setting forth the court's rulings. Respondent received the May 17, 2002 notice of ruling. Acosta was not informed that her case had been dismissed.

24. On April 28, 2005 and May 19, 2005, the State Bar contacted Respondent in writing regarding allegations of misconduct being investigated by the State Bar related to Acosta's complaint. In the State Bar's letters, Respondent was asked about the services he performed on behalf of Acosta.

25. On August 1, 2005, Respondent wrote the State Bar regarding Acosta's matter. In his August 1, 2005 letter to the State Bar, Respondent admitted that he had filed a complaint for negligent infliction of emotional distress on behalf of Acosta. Respondent also stated that "we dismissed that complaint when we realized that there was no viable cause of action." In fact, the complaint in Acosta's action had been dismissed by the court due to Respondent's failure to comply with discovery.

### **Conclusions of Law**

By failing to oppose the motion to compel discovery and the motion for terminating sanctions, Respondent repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

By failing to inform Acosta that she had been served with discovery, by failing to inform Acosta that motions to compel had been filed in the personal injury action, by failing to inform Acosta that the court had ordered her to comply with discovery, by failing to inform Acosta that she had been ordered to pay \$523 in sanctions, and by failing to inform Acosta that the personal injury action had been dismissed by the court, Respondent failed to keep a client reasonably informed of a significant development in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

By failing to provide accurate information to the State Bar's written inquiries concerning the Acosta matter, Respondent failed to cooperate in a State Bar investigation in wilful violation of Business and Professions Code section 6068(i).

### **Case No. 08-O-12106**

#### **Facts**

1. On June 30, 2006, Eloise Lee ("Lee") employed Respondent to represent her in a breach of contract matter involving a construction company that she had hired to build two homes and to remodel a third home in Desert Hot Springs. On that date, Lee paid Respondent \$5,000 in advanced attorneys fees. On July 18, 2006, Lee paid Respondent an additional \$2,500 in advanced attorneys fees. In total, Lee paid Respondent \$7,500 in advanced fees.

2. In or about July 2006, Respondent prepared a draft complaint on behalf of Lee. Thereafter, Respondent reviewed the complaint with Lee during a meeting at his office. During the meeting, Lee made several minor changes to the complaints, such as changing dates and the names of people or companies referenced in the complaint.

3. In November or December 2006, Respondent and Lee met in Desert Hot Springs and examined her properties.

4. For the remainder of 2006, Lee spoke with Respondent a several times on the telephone.

5. Thereafter, Lee was unable to speak or meet with Respondent until March 17, 2008, despite her visits to his office and telephone messages that she had left with Respondent's receptionist.

6. On March 17, 2008, Lee spoke with Respondent on the telephone. During the conversation, she asked whether Respondent had filed and served the complaint. She also requested a copy of one of the contracts that was at issue in her complaint against the construction company. Respondent indicated that he did not know the status of the complaint and that he would advise her of the status when he had determined the answer.

7. On March 18, 2008, Respondent sent Lee a copy of the contract via facsimile that she had requested a day earlier. Thereafter, Respondent stopped communicating with Lee in any manner.

8. By ceasing all communications with Lee after March 18, 2008, Respondent constructively withdrew from his employment with Lee.

9. Respondent did not inform Lee of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to her.

10. On December 3, 2008, after Lee had filed a State Bar complaint against him, Respondent reimbursed Lee the entire \$7,500 in advanced fees that she had paid to him.

### **Conclusions of Law**

By not informing Lee of his intent to withdraw from employment, Respondent improperly withdrew from employment of a client in wilful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

### **Case No. 08-O-13752**

### **Facts**

1. On August 18, 2006, Aide Hernandez ("Hernandez") employed Respondent to represent her in connection with her dissolution, child custody, visitation, support, and related proceedings through judgment. On the same date, Hernandez paid Respondent \$2,500 in advanced attorneys fees.

2. On August 21, 2006, Respondent filed a response on behalf of Hernandez in the dissolution matter entitled *Gonzalez v. Gonzalez*, Los Angeles County Superior Court, Case No. BD 450161 (the "dissolution matter").

3. On September 11, 2006, Respondent served form interrogatories on Petitioner's counsel. On September 20, 2006, Respondent served a demand for production of documents on Petitioner's counsel.

4. On or about December 18, 2006, Petitioner's counsel served responses to both discovery requests on Respondent. Thereafter, Respondent reviewed and analyzed the discovery responses and discussed their content with Hernandez.

5. In or about January 2008, Hernandez terminated her employment of Respondent and hired a different counsel to represent her in the dissolution matter.

6. On January 31, 2008, Hernandez's new counsel wrote Respondent a letter requesting a billing statement detailing all of the services that Respondent had performed on Hernandez's behalf. Respondent received the letter; however, he did not respond to it.

7. On March 4, 2008, Hernandez's new counsel wrote Respondent a second letter requesting a billing statement. Respondent received the letter; however, he did not respond to it.

### **Conclusions of Law**

By not responding to Hernandez's counsel's letter requesting that he provide a billing statement, Respondent failed to respond to the reasonable status inquiries of a client in wilful violation of Business and Professions Code section 6068(m).

### **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<b><u>Case No.</u></b>	<b><u>Count</u></b>	<b><u>Alleged Violation</u></b>
05-O-00678	ONE	Rule 3-110, Rules of Professional Conduct
05-O-00678	THREE	Rule 4-100(B)(3), Rules of Professional Conduct
05-O-00678	FOUR	Business and Professions Code section 6068(m)
05-O-01895	SEVEN	Business and Professions Code section 6106

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY.**

The parties waive any variance between the Notice of Disciplinary Charges filed on July 16, 2008, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was December 16, 2008.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 16, 2008, the estimated prosecution costs in this matter are \$4,153. The costs are to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the Supreme Court Order.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.)

**AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 2.4(b) of the Standards For Attorney Sanctions For Professional Misconduct, Title IV of the Rules of Procedure ("Standards") provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6(a) states that culpability of a member of a wilful violation of Business and Professions Code section 6068(m) shall result in suspension or disbarment depending on 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.



The appropriate level of discipline for a violation of rule 3-700(A)(2) is not specified by the Standards. Under Standard 2.10, the appropriate level of discipline for a violation of a rule not specified in the Standards is a reproof or suspension, according to the gravity of the offense or the harm, if any, to the victim, with due regard for the purposes of imposing discipline set forth in Standard 1.3.

In this matter, Respondent's clients were not irreparably harmed by his wilful failure to perform or communicate. As such, the imposition of a 30 days suspension in this matter remains consistent with the purposes for imposing discipline as set forth in Standard 1.3.

#### **AGGRAVATING CIRCUMSTANCES.**

Respondent's failure to cooperate in the State Bar investigation of Case No. 05-O-01895 is an aggravated violation of Business and Professions Code section 6068(i). During his representation of Acosta, Respondent determined that Acosta did not have a viable cause of action in the personal injury action. However, in his August 1, 2005 letter, Respondent relied upon information provided to him by his staff that the case had been dismissed and did not advise the State Bar that the court had dismissed the case. Respondent did not take satisfactory measures to verify the information provided to him by his staff. But, Respondent did not intend to deceive the State Bar.

Nonetheless, the effect of the August 1, 2005 letter was to delay, rather than to assist, the State Bar's investigation.

#### **MITIGATING CIRCUMSTANCES.**

Although the instant misconduct cannot be deemed "not serious", Respondent has been a member of the State Bar since December 31, 1994, and has no prior record of discipline.

#### **CASE LAW.**

In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the attorney represented a client in a marital dissolution case, worked on the matter for the first five months, submitted a proposed settlement agreement to the opposing side; and thereafter, failed to communicate with his client, take action on the matter, or withdraw. The Supreme Court determined that the misconduct warranted a six-month stayed suspension.

In *Stuart v. State Bar* (1985) 40 Cal.3d 838, the attorney failed to answer interrogatories which caused his client's personal injury matter to be dismissed. The attorney also was found to have lost his client's file and inadequately communicated with the client. The attorney had a

prior private reproof. The Supreme Court ordered that the attorney be actually suspended for 30 days as part of a one-year probation.

In *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267, the attorney failed to perform and communicate in two client matters, and refund unearned fees in one of the matters. The Review Department recommended a 30-day actual suspension.

In the Matter of  
Leroy B. Austin

Case number(s):  
05-O-00678 - DFM; 05-O-01895;  
Investigation Case Nos. 08-O-12106; 08-O-13752

A Member of the State Bar

### 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

- 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

#### 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.

In the Matter of  
Leroy B. Austin

Case number(s):  
05-O-00678 - DFM; 05-O-01895;  
Investigation Case Nos. 08-O-12106; 08-O-13752

A Member of the State Bar

### Law Office Management Conditions

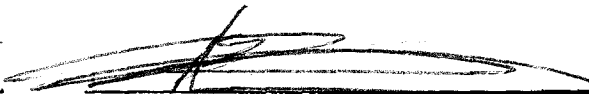

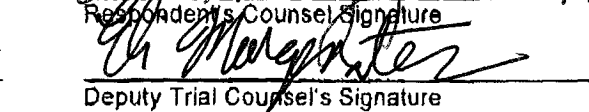
- a.  Within        days/        months/        years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b.  Within ~~30 days~~/6 months/~~1 year~~ of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for        year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

(Do not write above this line.)

In the Matter of LEROY B. AUSTIN	Case number(s): 05-O-00678 - DFM; 05-O-01895; Investigation Case Nos. 08-O-12106; 08-O-13752
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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 Fact, Conclusions of Law and Disposition.

Date <u>12-16-08</u>		LEROY B. AUSTIN Print Name
Date <u>12/23/08</u>		JAMES I. HAM Print Name
Date <u>12/23/08</u>		ELI D. MORGENSTERN Print Name

(Do not write above this line.)

In the Matter Of <b>LEROY B. AUSTIN</b>	Case Number(s): <b>05-O-00678 - DFM; 05-O-01895;</b> <b>Investigation Case Nos. 08-O-12106; 08-O-13752</b>
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**ORDER**

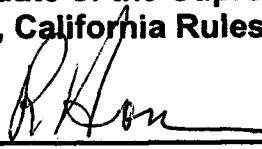
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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. Remove the "X" at paragraph A(8). (See discussion of costs at page 16.)
2. Remove the "X" at paragraph B(8). (See discussion of aggravation on page 17.)

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.)**

12/24/08  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court  
**RICHARD A. HONN**

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; 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 December 31, 2008, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION**

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:

**ELLEN ANNE PANSKY  
PANSKY & MARKLE  
1010 SYCAMORE AVE #101  
SOUTH PASADENA, CA 91030**

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

**ELI MORGENSTERN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 31, 2008.



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Tammy Cleaver  
Case Administrator  
State Bar Court