

(Do not write above this line.)

State Bar Court of California Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
Counsel for the State Bar MARK HARTMAN Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Telephone: (415) 538-2000 Bar # 114925	Case number(s) 05-0-03754 05-0-03755	(for Court's use) <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.1em;">AUG 11 2006</div> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per Respondent JAMES B. CANALEZ 4233 W. Sierra Madre Ave., Suite 205 Fresno, CA 93722 Telephone: (559) 276-1906 Bar # 177649	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> 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 JAMES B. CANALEZ, Bar # 177649, 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 September 8, 1995.
(date)
- (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 and order consist of 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." See pages 7 through 10.
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law." See pages 8 through 10.
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority." See page 11.
- (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. See page 10.

[Form adopted by the SBC Executive Committee (Rev. 5/5/05)]

Stayed Suspension



(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code 556086.10 & 6140.7. (Check one option only):

- (a) costs added to membership fee for calendar year following effective date of discipline
- (b) 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 282, Rules of Procedure)
- (c) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (d) 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 or a separate attachment entitled "Prior Discipline".

(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. See page 10.

(5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(Do not write above this line.)

- (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.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See page 10.
- (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) **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.

(Do not write above this line.)

- (10) **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.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances:

D. Discipline

1. Stayed Suspension.

(a) Respondent must be suspended from the practice of law for a period of 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: _____

The above-referenced suspension is stayed.

2. Probation.

Respondent is placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

(Do not write above this line.)

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 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 in each report 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.
- (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 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 type="checkbox"/> Financial Conditions

(Do not write above this line.)

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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

No MPRE recommended. Reason: _____

- (2) Other Conditions:

In the Matter of JAMES B. CANALEZ, No. 177649, A Member of the State Bar.	Case Nos. 05-O-03754 05-O-03755 STIPULATION RE FACTS, CONCLUSIONS OF LAW, AND DISPOSITION
---	--

STATE BAR CASE NUMBER 05-O-03755**Facts**

1. In February 2001, Angel Inocencio Bautista ("Bautista"), a citizen of Mexico, hired respondent for help with obtaining permanent residency status in the United States of America ("Bautista matter"). Between February and April 2001, Bautista paid respondent a total of \$1,500 in advance fees. There was no written fee agreement.
2. Respondent did some preliminary work on the Bautista matter, but stopped performing legal services after April 2001.
3. In August 2001, Bautista went to respondent's office without an appointment. Bautista wanted to find out the status of his matter. Respondent did not speak with Bautista. Respondent's assistant, Ruben Figueroa ("Figueroa"), told Bautista that respondent needed more time to complete legal services on the Bautista matter.
4. From August 2001 to early 2002, Bautista left respondent several telephone messages requesting a status update. Respondent did not reply to these messages. Figueroa, however, informed Bautista that respondent needed more time to complete legal services on the Bautista matter.
5. In early 2002, Bautista learned that respondent had not filed any documents with the immigration court on Bautista's behalf.
6. Between April 2001 and early 2002, respondent did not inform Bautista that he had done no further work on the Bautista matter.
7. In early 2002, respondent constructively terminated his employment in the Bautista matter by failing to complete legal services for Bautista. Respondent did not inform Bautista of his intent to withdraw from representation. Nor did respondent take any other steps to avoid

reasonably foreseeable prejudice to Bautista from respondent's withdrawal.

8. Bautista filed a small claims court action respondent for the return of unearned advance fees.

9. In May 2006, respondent sent a check for \$1,500 to Bautista.

Conclusions of Law

10. Respondent recklessly and repeatedly failed to perform legal services with competence insofar as he failed to complete legal services on the Bautista matter. He thus wilfully violated rule 3-110(A) of the Rules of Professional Conduct.

11. Respondent failed to keep a client reasonably informed of a significant development in the client's matter insofar as he failed to inform Bautista that he did no work on the Bautista matter between April 2001 and early 2002. He thus wilfully violated section 6068, subdivision (m) of the Business and Professions Code.

12. Respondent failed upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his clients insofar as (1) he failed to inform Bautista of his intent to withdraw from representation and (2) he failed to take any other steps to avoid reasonably foreseeable prejudice to Bautista. He thus wilfully violated rule 3-700(A)(2) of the Rules of Professional Conduct.

13. Respondent failed upon termination of employment, to refund promptly any part of a fee paid in advance that was not been earned insofar as he took more than four years to return the \$1,500 advance fee to Bautista. He thus wilfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

STATE BAR CASE NUMBER 05-O-03754

Facts

14. Maximino Mejia ("Mejia") was a friend of Bautista and a citizen of Mexico.

15. In April 2001, Mejia hired respondent for help with obtaining permanent residency status in the United States of America ("Mejia matter"). Mejia paid respondent \$1,500 in advance fees. There was no written fee agreement.

16. Respondent did some preliminary work on the Mejia matter, but stopped performing

legal services after May 2001.

17. In early 2002, Mejia learned that respondent had not filed any documents with the immigration court on Mejia's behalf.

18. Between June 2001 and early 2002, respondent did not inform Mejia that he had done no further work on the Mejia matter.

19. In early 2002, respondent constructively terminated his employment in the Mejia matter by failing to complete legal services for Mejia. Respondent did not inform Mejia of his intent to withdraw from representation. Nor did respondent take any other steps to avoid reasonably foreseeable prejudice to Mejia from respondent's withdrawal.

20. Mejia filed a small claims court action respondent for the return of unearned advance fees.

21. In September 2005, Mejia agreed to accept \$1,200 from respondent for unearned advance fees. Respondent paid this amount to Mejia.

Conclusions of Law

22. Respondent recklessly and repeatedly failed to perform legal services with competence insofar as he failed to complete legal services on the Mejia matter. He thus wilfully violated rule 3-110(A) of the Rules of Professional Conduct.

23. Respondent failed to keep a client reasonably informed of a significant development in the client's matter insofar as he failed to inform Mejia that he did no work on the Mejia matter between June 2001 and early 2002. He thus wilfully violated section 6068, subdivision (m) of the Business and Professions Code.

24. Respondent failed upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his clients insofar as (1) he failed to inform Mejia of his intent to withdraw from representation and (2) he failed to take any other steps to avoid reasonably foreseeable prejudice to Mejia from his withdrawal. He thus wilfully violated rule 3-700(A)(2) of the Rules of Professional Conduct.

25. Respondent failed upon termination of employment, to refund promptly any part of a fee paid in advance that was not been earned insofar as he took more than three years to return \$1,200 in unearned advance fees to Mejia. He thus wilfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES

Respondent's misconduct involved multiple acts of wrongdoing and significantly harmed his clients, whose matters were not properly handled.

MITIGATING CIRCUMSTANCE

Respondent cooperated with the State Bar by entering into this stipulation.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

On July 24, 2006, the State Bar faxed respondent a letter disclosing any pending investigation or proceeding not resolved by this stipulation.

ESTIMATED PROSECUTION COST

The estimated prosecution cost of State Bar case numbers 05-O-03754 and 05-O-03755 ("the current cases") is \$2,955.00. This sum is only an estimate. If the current stipulation is rejected or if relief from the current stipulation is granted, the prosecution cost of the current cases may increase because of the cost of further proceedings.

SUPPORTING AUTHORITY

The Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct, standards 1.3, 1.4, 1.5, 1.6, 2.4, and 2.6 support the discipline recommended in the current stipulation. Cf. *Vaughn v. State Bar* (1972) 6 Cal.3d 847; *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

ESTIMATED PROSECUTION COST

The estimated prosecution cost of State Bar case numbers 05-O-03754 and 05-O-03755 ("the current cases") is \$2,955.00. This sum is only an estimate. If the current stipulation is rejected or if relief from the current stipulation is granted, the prosecution cost of the current cases may increase because of the cost of further proceedings.

SUPPORTING AUTHORITY

The Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct, standards 1.3, 1.4, 1.5, 1.6, 2.4, and 2.6 support the discipline recommended in the current stipulation. Cf. *Vaughn v. State Bar* (1972) 6 Cal.3d 847; *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

(Do not write above this line.)

In the Matter of JAMES B. CANALEZ, No. 177649, A Member of the State Bar.	Case number(s): 05-0-03754 05-0-03755
--	---

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.

8-4-06
Date

James B. Canalez
Respondent's signature

JAMES B. CANALEZ
Print name

Date

Respondent's Counsel's signature

Print name

Aug. 7, 2006
Date

Mark Hartman
Deputy Trial Counsel's signature
by
Sherril B. Meditchie

MARK HARTMAN
Print name

(Do not write above this line.)

In the Matter of JAMES B. CANALEZ, No. 177649, A Member of the State Bar.	Case number(s): 05-0-03754 05-0-03755
--	---

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 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 953(a), California Rules of Court.)

August 11, 2006
Date

Pat McElroy
Judge of the State Bar Court

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 San Francisco, on August 11, 2006, 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:


- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JAMES B CANALEZ
4233 W SIERRA MADRE AVE #205
FRESNO CA 93722**

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

MARK HARTMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 11, 2006.


George Hue
Case Administrator
State Bar Court