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State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM

<p>Counsel For The State Bar</p> <p>Charles A. Murray Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015-2299 Tel: (213) 765-1486</p> <p>Bar # 146069</p>	<p>Case Number (s) 08-O-10983</p> <p style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</p>	<p>(for Court's use)</p> <p style="text-align: center; font-size: 1.5em;">FILED</p> <p style="text-align: center;">MAR 15 2018 </p> <p style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Arthur Margolis, Esq. Margolis & Margolis LLP 2000 Riverside Drive Los Angeles CA 90039 Tel: (323)953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: Program Judge</p> <p style="text-align: center;">STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p>	
<p>In the Matter Of: EVAN LLEWELLYN SMITH</p> <p>Bar # 101369</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 1, 1981.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 9 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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)] *3 priors. (see page 8)*
 - (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:

During the time immediately before and during the misconduct, Respondent suffered from a series of serious medical conditions that significantly impacted his personal life and his ability to work, eventually leading to severe financial stress and bankruptcy.

ATTACHMENT TO
ADP STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **EVAN LLEWELLYN SMITH** MEMBER # **101369**

CASE NUMBER: **08-O-10983**

PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A.(6), is November 15, 2009.

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct, or that he has otherwise committed acts of misconduct warranting discipline, as follows:

Facts for Case No. 08-O-10983

1. On July 15, 2003, Respondent entered into a Stipulation as to Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar case nos. 02-O-12713 & 02-O-12751.
2. On July 23, 2003, the Hearing Department of the State Bar Court filed the Stipulation and Order making disciplinary recommendations to the California Supreme Court, including a period of stayed suspension and probation on conditions including, among others, those set forth in detail below. On the same date, July 23, 2003, the Stipulation re: Facts, Conclusions of Law and Disposition and Order Approving, filed July 23, 2003, was properly served on the Respondent.
3. On November 25, 2003, the California Supreme Court filed an Order ("Order") in case no. S118758 (State Bar Court case nos. 02-O-12713 and 02-O-12751) that Respondent be suspended from the practice of law for one (1) year and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, that execution of suspension be stayed, and that he be placed on probation for three (3) years subject to the conditions of probation recommended by the Hearing Department.
4. The November 25, 2003 Order became effective on December 25, 2003, thirty days after it was filed. The Order was properly served by the Clerk of the Supreme Court.
5. Pursuant to the November 25, 2003 California Supreme Court Order and the State Bar Court Hearing Department's July 23, 2003 Stipulation and Order Approving the Stipulation, the

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Respondent was ordered to comply with the following relevant conditions of probation, among other conditions:

- a. To comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California during the period of probation;
- b. Submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent shall 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. If the first report would cover less than thirty (30) days, that report shall be submitted on the next quarter date, and cover the extended period; and,
- c. Complete six (6) hours of participatory continuing legal education courses in attorney/client relations above those required for his license and provide proof of completion within one (1) year of the effective date of the order approving the stipulation to the Probation Unit.

6. Respondent had actual knowledge of the Order and conditions of probation at all relevant times herein from the effective date of his probation and at all times during the pendency of his probation in case no. S128018.

7. On January 6, 2004, a Probation Deputy of the Office of Probation wrote a letter to the Respondent in which he reminded the Respondent of the terms and conditions of his suspension and probation imposed pursuant to the November 25, 2003 Supreme Court Order. The Probation Deputy specifically advised Respondent of his obligation to file quarterly reports with the first due date beginning April 10, 2004. The Probation Deputy specifically reminded Respondent of his obligation to complete six participatory hours of MCLE by December 25, 2004. Enclosed with the January 6, 2004 letter were, among other things, copies of the Supreme Court Order, filed November 25, 2003, the relevant portion of the Stipulation setting forth the conditions of Respondent's Probation, and a quarterly report form with instructions, that specifically included the instruction that the quarterly reports submitted "...should also contain an original signature."

8. The Probation Deputy's letter to Respondent and the enclosures thereto were mailed in a sealed envelope addressed to the Respondent at his then official State Bar membership records address [PMB 166, 324 South Diamond Bar Boulevard, Diamond Bar, California 91765] via the United States Postal Service, first class mail, postage prepaid on that same date, January 6, 2004. The letter was not returned as undeliverable by the Post Office or for any other reason. Respondent received the letter.

RESPONDENT:

(Printed: 12/11/09)

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Attachment Page 5

9. On June 25, 2004, the Probation Deputy sent a follow-up letter to the Respondent to remind him of his obligation to file the required quarterly reports, noting that he had not filed his first (April 10, 2004) quarterly report, and enclosing a copy of his January 6, 2004 letter. The June 25, 2004 letter and the enclosure thereto, was again mailed to Respondent's then official membership records address via the United States Postal Service, first class mail, postage prepaid. The letter was not returned as undeliverable by the Post Office or for any other reason. Respondent received the letter.

10. On September 21, 2004 and again, on February 3, 2005, the Probation Deputy contacted the Respondent by telephone and actually spoke to him to remind Respondent of his obligation to file his quarterly reports. Respondent filed the quarterly reports due on April 10, 2004, July 10, 2004, October 10, 2004 and January 10, 2005 on February 8, 2005.

11. The following conditions were **not met in a timely** manner by Respondent:

Quarterly by Report due April 10, 2004 - filed February 8, 2005.

Quarterly by Report due July 10, 2004 - filed February 8, 2005.

Quarterly by Report due October 10, 2004 - filed February 8, 2005.

Quarterly by Report due January 10, 2005- filed February 8, 2005.

Attendance and proof of attendance at six (6) hours of MCLE due December 25, 2004 - filed February 8, 2005.

12. On August 23, 2005, the Probation Deputy contacted Respondent by telephone and actually spoke to him to inform him that the quarterly report, due on July 10, 2005, had not been filed. Respondent advised the Deputy that he would do so. Respondent did not file the report in response to this call (see 14a. below, report faxed on February 15, 2006, but original not delivered).

13. On December 13, 2005, the Probation Deputy sent a follow up letter to the Respondent reminding him of his obligation to file the July 10, 2005 quarterly report, and now, also the October 10, 2005 quarterly report, which was late. The Probation Deputy also reminded the Respondent that his next report was due between January 1, 2006 and January 10, 2006. The letter was properly mailed to Respondent's then official membership records address via the United States Postal Service, first class mail postage prepaid. The letter was not returned as undeliverable by the Post Office or for any other reason. Respondent received the letter. Respondent filed the July 10, 2005, October 10, 2005 and January 10, 2006 reports on February 15, 2006, by facsimile only. On January 6, 2004 the Probation Deputy had, among other things, provided Respondent written instructions in approximately size 18 font that "The report should also contain an original signature." Respondent knew or was grossly negligent in not knowing that he was required to file reports bearing an original signature, not fax copies.

14. Thus, the following conditions(s) were not met in a timely manner by Respondent:
 - a. Quarterly report [original] due July 10, 2005 - filed February 15, 2006 by fax only.
 - b. Quarterly report [original] due October 10, 2005 - filed February 15, 2006 by fax only.
 - c. Quarterly report [original] due January 10, 2006 - filed February 15, 2006 by fax only.
 - d. Attendance and proof of attendance at six (6) hours of MCLE due December 25, 2004 - filed February 8, 2005.
15. On May 17, 2006, the Probation Deputy spoke to Respondent by telephone requesting the missing original/hard copies of the previously late faxed reports and a now late May 10, 2006 report.
16. On July 18, 2007, the Probation Deputy contacted Respondent by telephone and spoke with him. The deputy advised Respondent that he had received only the fax copies of the quarterly reports due July 10, 2005, October 10, 2005 and January 10, 2006, and that they had not received any form of the remainder of the quarterly reports.
17. On July 18, 2007, the Probation Deputy sent a follow up letter to the Respondent. The letter was sent to Respondent at what was at that time the former membership records address for Respondent. Respondent had properly advised Membership Records of an address change, but had not inform the Office of Probation [also a condition of his probation]. The letter was properly mailed via U.S. Postal Service, first class mail, postage pre-paid. It was not returned as undeliverable or for any other reason. Respondent received the letter. The letter confirmed the conversation of the same date with the Respondent that the Office of Probation had not received his original quarterly reports for July 10, 2005, October 10, 2005 and January 10, 2006 nor any quarterly reports (fax or original) due by April 10, 2006, July 10, 2006, October 10, 2006, and the final report December 25, 2006.
18. The following condition(s) have not been met by Respondent to date:
 - a) The original (hard) reports due July 10, 2005, October 10, 2005 and January 10, 2006.
 - b) Quarterly reports due April 10, 2006, July 10, 2006, October 10, 2006 and the final report due December 25, 2006.

Conclusions of Law for Case No. 08-O-10983

19. By his filing of late reports, by his filing of late reports by facsimile only, by his failure to file the balance of his quarterly reports as hereinabove described, and by failing to timely notify the Office of Probation of his change of address, Respondent violated the conditions of his probation in case no. S118758 in willful violation of Section 6068(k) of the California Business and Professions Code.

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20. By his failure to comply timely or at all with conditions specified above in connection with his probation in case no. S118758, Respondent disobeyed or violated an order of the court requiring him to do an act connected with or in the course of his profession in willful violation of Section 6103 of the California Business and Professions Code.

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE:

Case No. 98-O-00580: Effective October 21, 1999.

Violation: RPC 4-100(a) (trust account violation
(P-10 NSF Reportable Action – bounced check).

Discipline: Private reproof with conditions for one (1) year.

Case No. (S099259) 00-H-14843: Effective November 2, 2001.

Violation: (Rules of Professional Conduct, rule 1-110)
(failure to comply with conditions of reproof).

Discipline: Suspension for thirty (30) days, stayed; one (1) year probation with conditions.

Case No. (S118758) 02-O-12713; 02-O-12751: Effective December 25, 2003.

Violation: B&P Code Section 6068(k) (failure to comply with conditions of probation;
B&P Code Section 6068(i) (failure to cooperate with a State Bar investigation);
Rules of Professional Conduct, rule 3-110(A) (failure to perform competently).

Discipline: Suspension for one (1) year & until rehabilitation, stayed; Three (3) years
probation with conditions, MPRE within one (1) year, and costs.

The current matters constitute the fourth imposition of discipline in ten years for this Respondent.

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In the Matter of EVAN LLEWELLYN SMITH	Case number(s): 08-O-10983
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

12/14/2009
Date


Respondent's Signature

EVAN L. SMITH
Print Name

12/16/09
Date


Respondent's Counsel Signature

ARTHUR L. MARGOLIS
Print Name

12/16/09
Date


Deputy Trial Counsel's Signature

CHARLES A. MURRAY
Print Name

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In the Matter Of EVAN LLEWELLYN SMITH	Case Number(s): 08-O-10983
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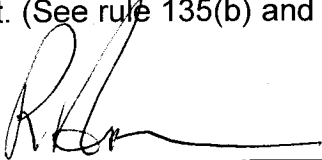
ORDER

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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

3-25-10
Date


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 Los Angeles, on March 24, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

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

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 24, 2010.



Cristina Potter
Case Administrator
State Bar Court