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**State Bar Court of California  
Hearing Department  
San Francisco  
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p><b>Danielle Adoración Lee</b> Senior Trial Counsel 180 Howard Street San Francisco, CA 94115 (415) 538-2218</p> <p>Bar # 223675</p>	<p>Case Number(s): <b>16-O-11053-PEM</b></p> <p>kwiktag® 237 300 198</p> 	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>sf</i></p> <p><b>JAN 17 2018</b></p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Barbara Smedley</b> 5870 Stoneridge Mall Rd, Ste 210 Pleasanton CA 94588-3267 (925) 249-0313</p> <p>Bar # 122217</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: <b>BARBARA SMEDLEY</b></p> <p>Bar # 122217</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><b>ACTUAL SUSPENSION</b></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 5, 1985**.
- (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 **17** 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."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
  - (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7)  **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.

- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. Respondent has multiple instances of insufficient funds in her client trust account.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No prior record of discipline, see page 14.**

**Pretrial Stipulation, see page 14.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.
- (2)  **Probation:**
- Respondent must be placed on probation for a period of **one year**, 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 **60 days**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii.  and until Respondent does the following:

**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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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.

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(10)  The following conditions are attached hereto and incorporated:

- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions  |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation 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 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (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:**



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- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

**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.



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**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.



7. On January 13, 2016, respondent's CTA balance was \$18.20. On January 14, 2014, an electronic deposit in the amount of \$900.00 was made. That same day, respondent withdrew \$900.00, and the CTA balance fell to \$18.20.

8. On February 1, 2016, an electronic withdrawal in the amount of \$77.51 from MRCHNT PMNT PROC with a notation of WFBSPACH2 Fees was debited from respondent's CTA. The payment was honored, but left a negative balance of -\$59.31.

9. On February 2, 2016 an electronic withdrawal in the amount of \$48.53 from MRCHNT PMNT PROC with a notation of WFBSPACH2Month End was debited from respondent's CTA. The payment was honored, but left a negative balance of -\$107.84.

10. On February 8, 2016, respondent provided a written response to the January 12, 2016, and January 29, 2016, letters from the State Bar, in which she explained she practices family law, and hardly ever holds client funds, other than occasional advance fees as retainers. Respondent stated: *"I usually just collect fees by credit card that are due and owing from old clients. The overdrafts were caused exclusively by fees charged for services of providing use of charge card payments for current clients..."*

11. On May 13, 2016, respondent's CTA account had a balance of \$48.20. On June 1, 2016, an electronic withdrawal in the amount of \$6.54 from MRCHNT PMNT PROC WFBSPACH2Fees was debited from respondent's CTA, and the balance fell to \$41.66.

12. On June 2, 2016, an electronic withdrawal in the amount of \$59.50 from MRCHNT PMNT PROC with a notation of WFBSPACH2Month End was debited from respondent's CTA. The payment was honored, but left a negative balance of -\$17.84.

13. On June 28, 2016, the State Bar sent a letter to respondent requesting additional information and supporting documentation, including a detailed explanation of the December 1, 2015, and December 2, 2015, overdrafts, monthly statements, copies of checks, deposits, ledger cards, journal, and monthly reconciliations. The letter also requested that respondent explain why she had authorized the credit card processing fees to be automatically assessed from her CTA, even though she previously had had overdraft issues regarding the connection of credit card charges to her CTA where the bank reported to the State Bar similar reportable actions that resulted in resource letters.

14. On June 28, 2016, the State Bar sent a separate letter to respondent requesting information and supporting documentation, including a detailed explanation of the February 1, 2016, and February 2, 2016, overdrafts, monthly statements, copies of checks, deposits, ledger cards, journal, and monthly reconciliations. The letter also requested that respondent explain why she had authorized the credit card processing fees to be automatically assessed from her CTA, even though she previously had had overdraft issues regarding the connection of credit card charges to her CTA where the bank reported to the State Bar similar reportable actions that resulted in resource letters.

15. On June 28, 2016, the State Bar sent another separate letter to respondent requesting information and supporting documentation, including a detailed explanation of the June 2, 2016, overdraft, monthly statements, copies of checks, deposits, ledger cards, journal, and monthly reconciliations. The letter also requested that respondent explain why she had authorized the credit card processing fees to be automatically assessed from her CTA, even though she previously had had overdraft issues regarding the connection of credit card charges to her CTA where the bank reported to the State Bar similar reportable actions that resulted in resource letters.

16. On July 7, 2016, respondent wrote a check from her CTA account made out to CitiCards for \$765.73. CitiCards is respondent's personal obligation.

17. On July 19, 2016, respondent provided a brief written response regarding the December 1, 2015, December 2, 2015, February 1, 2016, and February 2, 2016 insufficient funds instances. Respondent explained that some of her clients make monthly payments to her via credit card. In her July 19, 2016, response, she added: "*...I do forget to account for the fees automatically -withdrawn by the credit card companies. I never know what the fees are going to be. At the end of the month I attempt to leave enough in the account to cover the fees. Each of the transactions about which you inquired were overdrafts which were solely for credit card company fees. I apologize. Normally I am more careful, but I was hospitalized for a week and away from the office for a week after that.*"

18. On October 1, 2016, an electronic withdrawal in the amount of \$348.10 from MRCHNT PMNT PROC with a notation of WFBSPTACH2 Fees was debited from respondent's CTA. The payment was honored, but left a negative balance of -\$35.36.

19. On February 14, 2017, the State Bar sent an additional letter pointing out that respondent had not responded to the June 28, 2016, letter regarding the June 2, 2016 overdraft, and again asking for the same information.

20. On February 14, 2017, the State Bar sent a letter to respondent requesting information and supporting documentation, including a detailed explanation of the October 3, 2016, overdraft, monthly statements, copies of checks, deposits, ledger cards, journal, and monthly reconciliations. The letter also requested that respondent explain why she had authorized the credit card processing fees to be automatically assessed from her CTA, even though she previously had had overdraft issues regarding the connection of credit card charges to her CTA where the bank reported to the State Bar similar reportable actions that resulted in resource letters.

21. On March 16, 2017, respondent faxed the State Bar and stated she had been ill, which delayed her response. She stated "*the overdrafts were caused exclusively by fees charged for services of providing use of charge card payments for current clients. The June overdraft was my accounting error. The October 2016 statement reflects there was an unauthorized withdrawal to "WFB" in the amount of \$348.10.*" She also stated that she "*could find no reason for the withdrawal of \$348.10,*" and that she "*placed a notice that the charge is disputed with my bank and requesting that the money be returned to my trust account.*" Respondent provided select pages of her bank account records, but still did not provide redacted trust account journals or ledgers, or other trust account statements, such as deposit slips.

22. On April 7, 2017, the State Bar sent respondent another letter asking for copies of her written agreements with the credit card companies related to the fees charged that resulted in the overdrafts.

23. On April 18, 2017, respondent emailed the State Bar a copy of her agreement that she has with Sterling Payment Technologies.

24. On June 5, 2017, an electronic withdrawal in the amount of \$63.70 was debited from respondent's account. The debit was covered, but the balance fell to -\$56.83.

25. On July 3, 2017, an electronic withdrawal in the amount of \$63.70 was debited from respondent's CTA. The debit was covered, but the balance fell to -\$20.53.

26. The State Bar has received previous insufficient funds notices for respondent's trust account and has given respondent warning letters that did not result in a change of respondent's practices.

27. According to the California Committee on Professional Responsibility and Conduct (hereinafter "Committee" or "COPRAC"), Formal Opinion 2007-172, an attorney can accept *earned* fees by credit card and absorb the service charge debited by the credit card issuer. An attorney can also accept advanced fees by credit card as long as the deposit does not include advanced costs or expenses. However, an attorney cannot accept a deposit of advanced fees from a client by credit card *to the extent that the credit card issuer deposits funds into a merchant account that is subject to invasion.* (*Id.* at p. 3, emphasis in original.)

28. Respondent admitted that she never knows what amount the credit card processing company is going to charge her, and yet repeatedly failed to leave sufficient funds in the account to cover the fees. Respondent violated her obligations under rule 4-100(A) to protect any client funds in her CTA, because she gave the credit card processing company the authority to invade the CTA to take its processing fees, and thereby put client funds at risk because they are beyond the attorney's protection.

29. As stated above, the Committee opined that an attorney could accept earned fees by credit card because it envisioned those fees being placed in a merchant account that was not a CTA and not subject to invasion. (COPRAC Opinion 2007-172, at p. 2.) The Committee also concluded that an attorney could ethically absorb the service charge debited by the credit card issuer without violating rule 1-320's prohibition against sharing fees with a non-attorney because it characterized a service-charge debit as "the attorney's payment for a convenient method of receiving funds owed the attorney." (*Id.* at p. 3.) Because the attorney is merely paying for the service of "a convenient methods of receiving funds" provided by the credit card processing company, this service is a business or personal expense for the attorney that cannot be characterized as fees or costs. Hence, respondent's use of CTA funds to pay that expense also violates rule 4-100(A).

#### CONCLUSIONS OF LAW:

30. On July 7, 2016, by paying her personal obligation to CitiCards with personal funds held in respondent's CTA account, respondent commingled her funds in the CTA, in violation of Rules of Professional Conduct, rule 4-100(A).

31. By repeatedly allowing the credit card company to access her CTA and by repeatedly allowing the CTA to fall to a negative balance, respondent failed to operate her CTA in conformity with the Rules of Professional Conduct, in violation of Rules of Professional Conduct, rule 4-100(A).

32. By using her CTA to pay credit card processing fees, respondent used her CTA to pay her personal expenses, in violation of Rules of Professional Conduct, rule 4-100(A).

33. By refusing to turn over any redacted CTA journals or client ledgers, respondent refused to cooperate with a State Bar investigation, in violation of Business and Professions Code, section 6068(i).

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## ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**No prior record of discipline:** Respondent is entitled to significant mitigation for her discipline free practice of over 30 years. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [20 years of discipline free practice highly significant])

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

## AUTHORITIES SUPPORTING DISCIPLINE.

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

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

In this matter, respondent admits to committing four acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to respondent’s misconduct is found in standard 2.2(a), which applies to respondent’s violation(s) of rule 4-100(A). Standard 2.2(a) provides that actual suspension of three months is the presumed sanction for commingling.

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

Guidance on proper handling of a CTA is found in the Committee on Professional Responsibility And Conduct's Formal Ethics Opinion, No. 2007-172. As stated above, an attorney cannot allow a third party merchant to have the authority to invade the client trust account, because to do so puts clients funds at risk, because they are beyond the attorney's protection.

Case law is also instructive:

In *Palomo v. State Bar* (1984) 36 Cal.3d 785, an attorney endorsed a partial settlement check that had been made out to the client by simulating the client's signature, and the check was mistakenly deposited into the payroll account, and the error was not found for months. The attorney admitted that he ceded control over his payroll and trust accounts to his office manager, gave her no supervision, never instructed her on trust account requirements and procedures, and never examined either her records or the bank statements for any of the office accounts. (*Id.* at p. 796.) The Supreme Court found the attorney's actions amounted to a pattern of gross negligence involving serious violations of an attorney's duty to oversee client funds entrusted to his care, and to keep detailed records and accounts thereof. (*Id.*, citing *Weir v. State Bar* (1979) 23 Cal.3d 564, 573-574.) Here, the fact that respondent admits that she does not know how much the processing fees are going to be, is repeatedly getting the amount wrong, which leads to repeated negative balances, and has allowed a credit card company access to her CTA demonstrates gross negligence.

Respondent's multiple acts of misconduct and her gross negligence have to be balanced with her 30 years of discipline free practice and pretrial stipulation. When an attorney has practiced for many years with no prior record of discipline, significant weight in mitigation is typically afforded. (Std. 1.6(a) [mitigation for absence of prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur].) However, when an attorney has not shown that the misconduct is unlikely to recur, only moderate mitigation is warranted. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur]; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218.) Due to respondent's complete lack of insight into her misconduct, and her continued insistence that the overdrafts are insignificant, even though they occurred in her CTA, respondent's misconduct is likely to reoccur. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [limited mitigating weight assigned for 12-year record of discipline-free practice where respondent showed lack of insight by offering ill-founded explanations for misconduct].) Here, respondent allowed repeated insufficient funds events, even after resource letters.

Giving respondent moderate mitigation for her 30 years of discipline free practice and pretrial stipulation, and acknowledging that there does not appear to be any client harm, a slight downward deviation from the three month actual suspension suggested in Standard 2.2 is warranted. On balance, a 60 day actual suspension is appropriate for her mismanagement of her client trust account and will adequately protect the public.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 28, 2017, the discipline costs in this matter are \$3,758. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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**EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT**

Respondent may not receive MCLE credit for completion of **State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension].** (Rules Proc. of State Bar, rule 3201.)




(Do not write above this line.)

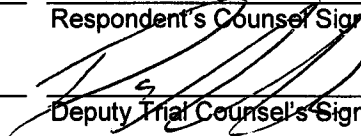
In the Matter of: <b>BARBARA SMEDLEY</b>	Case number(s): <b>16-O-11053-PEM</b>
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**SIGNATURE OF THE PARTIES**

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, Conclusions of Law, and Disposition.

12/28/17            Barbara Smedley  
Date                      Respondent's Signature                      Print Name

\_\_\_\_\_  
Date                      Respondent's Counsel Signature                      Print Name

12/28/17            Danielle Adoración Lee  
Date                      Deputy Trial Counsel's Signature                      Print Name

(Do not write above this line.)

In the Matter of: BARBARA SMEDLEY	Case Number(s): 16-O-11053-PEM
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### ACTUAL SUSPENSION ORDER


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

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

On p. 11 of the stipulation, par. 7, there's a minor typo: "January 14, 2014" should be corrected to read "January 14, 2016."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Jan. 17, 2018  
Date

  
LUCY ARMENDARIZ  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on January 17, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

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

BARBARA SMEDLEY  
5870 STONERIDGE MALL RD  
STE 210  
PLEASANTON, CA 94588 - 3267

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:

Danielle A. Lee, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 17, 2018.



George Hue  
Case Administrator  
State Bar Court