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

<p>Counsel for the State Bar</p> <p>Johnna G. Sack Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2357</p> <p>Bar # 270534</p>	<p>Case Number(s): 17-O-01968-MC 17-O-05903</p>	<p>For Court use only</p> <p align="center">PUBLIC MATTER</p> <p align="center">FILED</p> <p align="center">FEB 21 2019</p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Jonathan I. Arons 100 Bush St Ste 918 San Francisco, CA 94104 (415) 957-1818</p> <p>Bar # 111257</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: SANDRA LYNETTE SMITH</p> <p>Bar # 172881</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 8, 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 **19** 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. It is recommended that (check one option only):

- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-third of the costs must be paid with Respondent's membership fees for each of the following years: 2020, 2021, and 2022.

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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.

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- (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. See page 15.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See page 15.
- (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 [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 Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings. See page 15.
- (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 Respondent's 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 Respondent.

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- (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 Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct. See page 15.
- (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 Respondent's control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's misconduct. See page 16.
- (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:

Pre-trial Stipulation, see page 15.

No Prior Record of Discipline, see page 15.

Community Service, see page 16.

Pro-Bono Work, see page 16.

D. Recommended Discipline:

- (1) **Actual Suspension:**

Respondent is suspended from the practice of law for one year, the execution of that suspension is stayed, and Respondent is placed on probation for one year with the following conditions.

- Respondent must be suspended from the practice of law for the first 30 days of the period of Respondent's probation.

- (2) **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first _____ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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(3) **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first _____ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
 - a. Respondent makes restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
 - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4) **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first _____ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
 - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5) **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

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- Respondent must be suspended from the practice of law for a minimum for the first _____ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
 - a. Respondent makes restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
 - b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6) **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first _____ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
 - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7) **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent is suspended from the practice of law for the first _____ of probation (with credit given for the period of interim suspension which commenced on _____).

E. Additional Conditions of Probation:

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4) **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**
 - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
 - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because _____.
- (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any

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alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

- (12) **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in **SELECT ONE** _____ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) **Other:** Respondent must also comply with the following additional conditions of probation:
- (14) **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15) **The following conditions are attached hereto and incorporated:**
- Financial Conditions Medical Conditions
- Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

F. Other Requirements Negotiated by the Parties (Not Probation Conditions):

- (1) **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because _____.
- (3) **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 _____.

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and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Atheam v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4) **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Atheam v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5) **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because
- (6) **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

8. On or about July 1, 2016, respondent received notice from the Alameda County Superior Court that the court scheduled a compliance hearing for August 16, 2016 in Ms. Webb's matter. Respondent did not appear at the hearing on August 16, 2016, so the court continued the matter to October 11, 2016 for an Order to Show Cause ("OSC") hearing regarding dismissal of Ms. Webb's cause for failure to appear.
9. On or about August 17, 2016, respondent received notice that the court scheduled the OSC hearing for October 11, 2016 and scheduled a CMC for October 17, 2016. Respondent failed to appear at both the OSC hearing and the CMC.
10. Between August 11, 2016 and October 14, 2016, respondent received five text messages and two emails from Ms. Webb requesting a status update on her case. Respondent did not respond to any of Ms. Webb's communications.
11. On October 27, 2016, Ms. Webb went to the Alameda County Superior Court to get a status update on her case. A court clerk informed Ms. Webb that respondent had not appeared at any of the scheduled court dates. Additionally, the court informed Ms. Webb that a CMC was scheduled in her case for January 23, 2017.
12. On October 31, 2016, Ms. Webb sent respondent an email inquiring about the status of her case. Ms. Webb also informed respondent that she was aware that respondent had failed to appear at all scheduled court dates, and Ms. Webb expressed her concern that the court would dismiss her case because of respondent's inaction. Respondent received Ms. Webb's email; however, she did not respond to the email.
13. After not hearing from respondent, Ms. Webb sent respondent text messages on December 12, 2016 and December 29, 2016, and sent respondent a certified letter that was delivered to respondent's office on December 20, 2016 requesting a status update on her case. Respondent received the text messages and the certified letter from Ms. Webb, but failed to respond to Ms. Webb's communications.
14. On January 23, 2017, Ms. Webb appeared at the CMC in her matter and informed the judge that she had not heard from respondent since June 2016. At the CMC, the judge informed Ms. Webb that respondent never served the defendants with the writ in Ms. Webb's matter. On or about October 24, 2016, respondent received notice of the January 23, 2017 CMC, but she did not appear at the CMC. The court continued the CMC to March 20, 2017, due to respondent's failure to appear.
15. On February 9, 2017, Ms. Webb emailed respondent seeking a refund in her case. Although Ms. Webb requested a refund, she did not terminate respondent's services. Respondent responded later that day and told Ms. Webb that she would provide her with a refund and help her find another job. Further, respondent informed Ms. Webb that she was suffering from medical issues, which is why she had not prosecuted Ms. Webb's matter, and believed she had found another attorney to help respondent with Ms. Webb's case.
16. On March 16, 2017, respondent received an email from Ms. Webb stating that she had not heard from respondent for almost two weeks and there was a hearing on March 20, 2017, that "[respondent] most likely will not show up for." Respondent received notice from the court of the

March 20, 2017 CMC in Ms. Webb's matter on or about January 24, 2017. Ms. Coleman appeared at the CMC on March 20, 2017; however, respondent did not attend the March 20, 2017 hearing. The court continued the matter to May 22, 2017, to allow for service of defendants and for Ms. Webb to hire a new attorney.

17. On May 22, 2017, neither respondent nor Ms. Webb appeared at the CMC; however, the court never served respondent with notice for the May 22, 2017 CMC.

18. On June 17, 2017, respondent served the Petition for Writ of Administrative Mandate in the matter of *Donnetta Webb v. County of Alameda, Civil Service Commission; County of Alameda Probation Department*, Alameda County Superior Court case number RG15789336, on the defendants.

19. On June 23, 2017, respondent refunded Ms. Webb all legal fees that she paid respondent to represent her in the matter of *Donnetta Webb v. County of Alameda, Civil Service Commission; County of Alameda Probation Department*, Alameda County Superior Court case number RG15789336.

20. Respondent continued to represent Ms. Webb, at no cost, in the matter of *Donnetta Webb v. County of Alameda, Civil Service Commission; County of Alameda Probation Department*, Alameda County Superior Court case number RG15789336, until the case resolved on October 12, 2017.

CONCLUSIONS OF LAW:

21. By failing to timely serve the defendants with the writ in the matter of *Donnetta Webb v. County of Alameda, Civil Service Commission; County of Alameda Probation Department* within 60 days of filing the writ, and by failing to appear at seven scheduled case management conferences, a compliance hearing, and an OSC hearing, respondent repeatedly failed to perform legal services with competence in willful violation of former rule 3-110(A) of the Rules of Professional Conduct.

22. By failing to promptly respond to 12 written reasonable status inquiries from Ms. Webb requesting status updates on her case, respondent failed to promptly respond to reasonable status inquiries of a client thereby willfully violating Business and Professions Code, section 6068(m).

State Bar Case No. 17-O-05903 (Complainant: Karen Coleman)

FACTS:

23. On April 15, 2016, the Board of Registered Nursing moved to revoke Karen Coleman's nursing license effective May 13, 2016. In July 2016, Ms. Coleman hired respondent in a limited capacity to draft a petition for writ of administrative mandate for Ms. Coleman to sign as a pro per litigant and file in the Alameda County Superior Court.

24. Respondent drafted the petition for writ of administrative mandate requesting a stay of the revocation of Ms. Coleman's nursing license and an order from the court setting aside the default order revoking Ms. Coleman's license. Then, respondent had Ms. Coleman sign the petition for writ of administrative mandate as a pro per litigant, and filed it for Ms. Coleman in the Alameda County Superior Court on July 13, 2016.

25. On September 7, 2016, Ms. Coleman was supposed to appear at a CMC in her case, but she failed to appear, so the court continued the CMC to November 8, 2016. On November 8, 2016, Ms.

Coleman again failed to appear at the scheduled CMC; and, as a result, the court ordered Ms. Coleman to appear in person on December 13, 2016 to show cause as to why the court should not dismiss her matter. After receiving notice of the December 13, 2016 court date, Ms. Coleman reached out to respondent for assistance. Respondent agreed to represent Ms. Coleman in her matter.

26. On December 12, 2016, a day before the OSC hearing, respondent emailed a substitution of attorney form to Ms. Coleman with instructions for her to file it with the court on December 13, 2016.

27. Respondent was not able to appear at the December 13, 2016 OSC hearing due to health issues, so she advised Ms. Coleman to let the court know that she had retained counsel and to ask the court for a continuance since respondent was unable to appear. Further, respondent told Ms. Coleman to ask the court to set the matter for hearing on the petition for writ of administrative mandate.

28. Ms. Coleman appeared at the December 13, 2016 OSC hearing, and attempted to file the substitution of attorney form with the court. However, Ms. Coleman was unable to file the substitution of attorney form with the court because respondent failed to sign it. The court scheduled a further CMC and OSC hearing for March 14, 2017, and ordered either Ms. Coleman or her attorney to appear.

29. That same day, the court sent a notice of the March 14, 2017 OSC hearing to Ms. Coleman, and not to respondent, because respondent was not yet Ms. Coleman's attorney of record. Ms. Coleman, however, informed respondent that the CMC had been continued to March.

30. On December 13, 2016, Ms. Coleman emailed respondent to let her know she did not sign the substitution of attorney form. On December 15, 2016, respondent sent Ms. Coleman the signed substitution of attorney. Ms. Coleman filed the signed substitution of attorney form with the Alameda County Superior Court on December 16, 2016.

31. In her email to Ms. Coleman on December 15, 2016, respondent wrote, "I will contact the court next week to set a hearing...before the continued conference in March." On January 7, 2017, respondent sent another email to Ms. Coleman stating that she would be setting the hearing on the writ for the following week. Respondent failed to contact the court to set a hearing on the petition for writ of administrative mandate in Ms. Coleman's matter. Further, respondent stopped communicating with Ms. Coleman about her matter.

32. Neither respondent nor Ms. Coleman appeared at the OSC hearing in Ms. Coleman's matter on March 14, 2017, so the court dismissed Ms. Coleman's case. Ms. Coleman believed respondent was going to attend the March 14, 2017 OSC hearing on her behalf, since respondent was now representing her in the case.

33. Respondent never followed up with the court regarding the status of Ms. Coleman's matter, so she was not aware that the court dismissed the case. The court never served Ms. Coleman or respondent with the minutes from the March 14, 2017 hearing showing that the case had been dismissed. Both respondent and Ms. Coleman learned that Ms. Coleman's matter had been dismissed during the State Bar's investigation.

CONCLUSIONS OF LAW:

34. By failing to appear at the March 14, 2017 OSC hearing in Ms. Coleman's matter, which resulted in the court dismissing Ms. Coleman's case, and failing to take any subsequent actions on Ms. Coleman's matter after the court dismissed the case, respondent recklessly failed to perform legal services with competence in willful violation of former rule 3-110(A) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Significant Harm to Client (Std. 1.5(j)): Ms. Coleman lost the ability to appeal the Board of Registered Nursing's decision to revoke her nursing license because respondent allowed Ms. Coleman's case to be dismissed. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [loss of case constitutes significant harm, even if the amount of damages would have been relatively modest].)

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's failure to communicate and failure to perform legal services with competence in two client matters constitutes multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving the State Bar Court time and resources. (See *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].)

No Prior Record of Discipline. Respondent was admitted to the practice of law on December 8, 1994. Thus, respondent had 21 years of discipline free practice prior to December 2015, when the misconduct began. (See *In the Matter of Friedman* (1990) 50 Cal.3d 235, 245 [more than 20 years of unblemished record is "highly significant"]; *Hawes v. State Bar* (1990) 51 Cal. 3d 587, 596 [over 10 years is worth significant weight in mitigation].)

Extreme Emotional Difficulties (Std. 1.6(d)): At the time of the misconduct, respondent suffered from stress-related symptoms of anxiety and depression due to a stressful and hostile work environment, and she was not receiving the necessary therapy to treat her anxiety and depression. Since June 2018, respondent has been receiving therapy to deal with her anxiety and depression and has made significant progress, as attested to by her therapist. Further, respondent resigned from the position that caused her depressive and anxiety episodes. (See *In the Matter of Deireling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561 [despite the absence of complete rehabilitation, mitigation for emotional difficulties was afforded to attorney who demonstrated steady progress towards rehabilitation].)

Spontaneous Candor and Cooperation (Std. 1.6(e)): In respondent's response to the State Bar regarding Ms. Webb's matter, respondent acknowledged that she "did not perform as required on serving the writ, and bringing the matter to a hearing." Respondent stated that she thought she had referred Ms. Webb's case to another attorney, but actually did not. Further, concerning Ms. Webb's case, respondent acknowledged that she made "a huge error and failing." In addition, respondent displayed candor with the State Bar regarding Ms. Coleman's matter, and acknowledged that she should have followed up with Ms. Coleman and the court regarding Ms. Coleman's case.

Good Character (Std. 1.6(f)): Respondent presented seven character letters from a wide range of individuals—including her minister, friends, colleagues, family members, and attorneys—who are fully aware of the misconduct at issue and who attest to respondent’s good character, honesty, integrity, trustworthiness, and her dedication to community service and pro bono work.

Community Service: Respondent has performed substantial community service and donated her time to various committees, organizations, and boards. Respondent was a board member and volunteer with Parents of Children of African Descent, an organization for assisting Berkeley High School’s African American students with graduation and college counseling, from 1998 – 2013; a volunteer teacher’s assistant at an elementary school in Oakland from 2010 to 2015; an alumni mentor for Hastings Law students from 1997 to 2001; a volunteer with the State Bar’s Volunteers in Parole program from 1996 to 1999; and a moot court coach at Castlemont High School from 1995 to 1996. Since 2010, respondent has performed substantial community service with her church as a practitioner by volunteering her time to pray with other congregates and teaching courses in spirituality. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [attorney’s community service is mitigating].)

Pro Bono Work: Respondent has performed substantial pro bono work for non-profit organizations in the Bay Area. Between 2011 and 2015, respondent provided pro-bono representation to the Bay Area Consortium for Quality Health Care in an effort to raise the level of understanding of residents and patient rights, and help those at risk of poor and inadequate health care access quality health care. Since 1996, respondent has provided pro-bono services upon request to the churches of which she has been a member. Most recently, since 2017, respondent has provided pro-bono legal services to her church regarding its non-profit status, tax issues, and landlord/tenant matters. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [attorney’s pro bono work is mitigating].)

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 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).)

Standard 1.7(s) provides that, "If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed." Here, respondent has committed four separate acts of misconduct. The most severe sanction applicable to respondent's misconduct is Standard 2.7(b) for failure to perform in multiple client matters. Standard 2.7(b) states: "Actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests."

Case law is instructive. In *Bach v. State Bar* (1991) 52 Cal.3d 1201, the Supreme Court imposed a 30-day actual suspension on an attorney who failed to perform legal services for a client in an uncontested marital dissolution proceeding. Bach failed to communicate with his client, withdrew from the case without the client's consent or court approval, failed to refund unearned fees, and failed to cooperate in the State Bar's investigation. The court found no factors in mitigation. In aggravation, the court found that Bach displayed a "persistent lack of insight into the deficiencies of his professional behavior." (*Id.* at p. 1208) Bach denied "any responsibility for the inordinate delay and substantial cost, anxiety, and inconvenience imposed on [his client] by his nonperformance, refused to participate in mandatory fee arbitration proceedings on specious grounds, and declined to respond to successive requests the the State Bar." (*Ibid.*)

In *Layton v. State Bar* (1990) 50 Cal.3d 889, the Supreme Court imposed a 30-day actual suspension on an attorney who, over a five-year period, failed to conserve the assets and obtain the distribution of an estate for which he was the attorney and executor. Due to his neglect, the probate court removed the attorney as the executor of the estate. Layton's misconduct significantly harmed the beneficiary of the estate by depriving her of her distribution from the trust at a time when she was experiencing extreme financial difficulties. Layton was indifferent toward rectification or atonement. In mitigation, Layton practiced for over 30 years without a prior record of discipline.

While respondent's misconduct involves failing to perform competently in two client matters, unlike *Bach* and *Layton* which involve single client matters, respondent has substantially more mitigation than either attorney in *Bach* or *Layton*.

Unlike both the attorneys in *Bach* and *Layton*, respondent has acknowledged her misconduct and accepted responsibility for her actions by entering into a pre-trial stipulation. At the time of the misconduct, respondent was suffering from extreme emotional difficulties, which caused her to fail to perform in Ms. Webb's and Ms. Coleman's matters. Since then, respondent received treatment for her anxiety and depression, and removed the stressor from her life that caused her to suffer from depression and anxiety. Further, respondent displayed candor with her clients about her health issues and her failings in their matters; she tried to rectify her wrongdoings in Ms. Webb's matter by continuing to represent her and seeing her case through to the end. Additionally, respondent was forthright with the the State Bar about her wrongdoings during its investigation. Respondent practiced law for 21 years without any record of discipline prior to the current misconduct and demonstrated good character through her performance of community service and pro-bono work. Therefore, a 30-day actual suspension is the appropriate sanction that serves the primary purpose of discipline: public protection and the integrity of the legal profession.

DISMISSALS.

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
17-O-05903	Four	Business and Professions Code, section 6068(m)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 29, 2019, the prosecution costs in this matter are \$4,910. 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.

EXCLUSION FROM MCLE CREDIT.

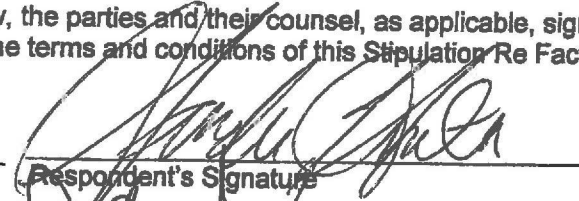


Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: SANDRA LYNETTE SMITH	Case Number(s): 17-O-01968-MC; 17-O-05903
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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.

January 30 2019 Date		Sandra L. Smith Print Name
January 30, 2019 Date		Jonathan I. Arons Print Name
January 31 2019 Date		Johnna G. Sack Print Name

(Do not write above this line.)

In the Matter of: SANDRA LYNETTE SMITH	Case Number(s): 17-O-01968; 17-O-05903-MC
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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.

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order.** (See Cal. Rules of Court, rule 9.18(a).)

Date

Feb. 21, 2019


PAT E. McELROY, JUDGE PRO TEM
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 Court Specialist 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 February 21, 2019, 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:

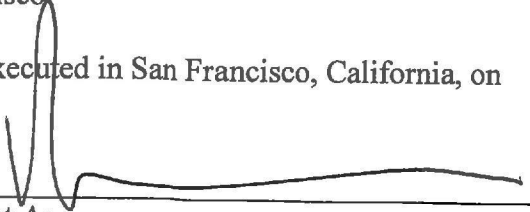
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JONATHAN IRWIN ARONS
LAW OFC JONATHAN I ARONS
100 BUSH ST STE 918
SAN FRANCISCO, CA 94104

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

Johnna G. Sack, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 21, 2019.



Vincent Au
Court Specialist
State Bar Court