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**State Bar Court of California  
Hearing Department  
San Francisco  
DISBARMENT**

Counsel For The State Bar  Allen Blumenthal  Bar # 110243	Case Number(s): 02-C-13863-PEM	For Court use only  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>ms</i>  FEB 24 2012  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent  Horace Siino  Bar # 40569		
In the Matter of: George S Kellner  Bar # 111670  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT  <b>DISBARMENT</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**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 12, 1983.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (15) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Effective January 1, 2011)



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- (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):
- Costs to be awarded to the State Bar.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) **ORDER OF INACTIVE ENROLLMENT:**  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If respondent has two or more incidents of prior discipline, use space provided below:
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. Respondent's conduct leading to his convictions and their circumstances involved dishonesty and moral turpitude. In addition, in 1997 when responding to an inquiry by the EDD, respondent gave the false impression that he had no business relationship with his brother, Matthew Kellner, when in fact, although they were in different offices and operating independently of each other, they were still doing it under the same corporation, Family Entertainment Group of California (FEG) and its bond.
- (3)  **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Respondent's misconduct resulted in \$40,000 of unpaid corporate tax liabilities to the Franchise Tax Board and the existence of Family Entertainment Group of California, Inc. ("FEG") allowed Tiano to continue his misconduct.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. There were six felony counts.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. Although not promptly, respondent has acknowledged his misconduct in this stipulation.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct. At the time of the misconduct, respondent was suffering from financial issues that affected his judgment. As a result of the recession of the early 1990's, the purchase of expensive telemarketing/campaigning technology which failed during the relevant time periods, growth beyond their ability to manage respondent's company, SBP, failed. Respondent poured most of his personal assets into SBP which still failed leading respondent and his brother to file bankruptcy. Efforts at starting anew with FEG were hampered by a reputation damaged by the failure of SBP and difficult economic times. The stress of losing SBP, filing bankruptcy, trying to start a new company with officers angry at each other, resulted in an enormous stress filled period.

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- (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. At the time of the misconduct, respondent was going through a divorce that affected his behavior.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. In spite of the financial difficulties and personal respondent was experiencing during the 1990s, respondent developed a good reputation by a wide range of references as an honorable attorney.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation. The misconduct stopped in April of 2001 when respondent and/or other responsible persons failed to file a corporate tax return for FEG for year 2000. Respondent was indicted in 2002 and under law enforcement supervision until July 2008. Since release from supervision in July of 2008, respondent has worked at reestablishing his life and reputation for good moral character.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

Although respondent's misconduct was serious, at the time of the conduct leading to the conviction, respondent had no priors and been an attorney for about 10 years. In addition, respondent did not personally profit from his perjury and tax evasion. Nor did his conduct arise directly out of his practice of law. Although he did represent some of the entities here, he was not representing them as an attorney in dealing with the CF-2s or FEG's tax returns. Further, during many of the tax years for which FEG failed to file and pay taxes FEG did not make any income and thus were only required to pay a tax of \$800.

Part of the problems leading to the misconduct were the result of a strained relationship between respondent and his brother. The relationship between respondent and corporate officer Matthew Kellner (respondent's brother) during the relevant periods grew so strained, emotional and upsetting that respondent intentionally distanced himself emotionally and by geography, moving to Stockton and eliminating all but essential family contact with Matthew. What had at one time been an effective successful team between the brothers disappeared. As to the conduct that led to Armand Tiano and his brother's convictions, respondent trusted that his brother fully knew all aspects of fundraising and would act honestly and appropriately. Respondent had no knowledge of the inner workings of the Santa Clara County fundraising scandal or that Armand Tiano, a two time candidate for sheriff, a board member of National law enforcement organizations and a board member for years of his union of sheriffs, was anything other than honorable.

**D. Discipline: Disbarment.**

**E. Additional Requirements:**

- (1) **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.
- (2)  **Restitution:** Respondent must make restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_. If the Client Security Fund has reimbursed \_\_\_\_\_ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than \_\_\_\_\_ days from the effective date of the Supreme Court order in this case.
- (3)  **Other:** Pursuant to rule 5.442(B) of the Rules of Procedure, respondent shall receive full credit for the time he has served on interim suspension from April 9, 2005 to present.

Also, the parties agree that the costs as a result to this matter will be paid over a three year period as follows one half by July 15, 2013 and the remaining balance by January 15, 2015. This agreed payment plan is based on respondent's current financial hardship and special circumstances. (See rule 5.132 of the Rules of Procedure.) Respondent has health insurance, medical expenses, housing, auto, utility and other expenses necessary to live which exceed his income. Respondent is without savings, significant assets and lives a humble life. Respondent is diligently in pursuit of employment with which to meet the necessities of life and hopefully provide a better standard of living while realistically in an economic environment where good jobs are scarce and hard to come by. At present, respondent is unable to pay costs associated with this disciplinary action.

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Attachment language (if any):

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                                 George S. Kellner

CASE NUMBER(S):                                 02-C-13863

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that his conviction involves moral turpitude warranting discipline.

Case No. 02-C13863 (Conviction Proceedings)

**PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:**

1. This is a proceeding pursuant to §§ 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On July 26, 2002, respondent, his brother, Matthew, their mother, Lovie Nicoletti, Armand Tiano, and ten others were indicted by the San Jose District Attorney's Office for numerous offenses including violating Penal Code § 129 and several felony counts of violating Revenue and Taxation Code § 19706, and conspiracy. On December 15, 2003, the San Jose District Attorney's Office filed a Second Amended Indictment against the defendants, including respondent.

3. On December 1, 2004, respondent was convicted of Penal Code § 129 (perjury - - false return required under oath), and five (5) felony counts of violating Revenue and Taxation Code § 19706 (Unfiled/False/Fraudulent Tax return with intent to evade Tax).

4. Subsequently, respondent filed a motion for a new trial, which was denied.

5. On May 25, 2005, respondent was sentenced to six years and four months as follows: three years for his violation of Penal Code § 129 and 40 months for his five counts of violating Revenue and Taxation Code § 19706. The time to be served consecutive. Respondent was also ordered to pay \$7,200 in restitution fines and \$139,182.65 in restitution to the Franchise Tax Board pursuant to Penal Code § 1202.4(f).

6. The court denied probation and denied respondent's request for bail pending appeal.

7. On March 8, 2005, respondent was placed on interim suspension by the Review Department of the State Bar Court ("Review Department"). He has remained on interim suspension ever since.

8. On April 3, 2005, the Review Department found respondent's conviction for a violation of Penal Code § 129 is an offense involving moral turpitude, and that respondent's conviction for a violation of Revenue and Taxation Code § 19706 is an offense for which there is probable cause to believe that it involves moral turpitude, additional grounds for the interim suspension imposed by the Review Department's order filed March 8, 2005

9. On June 8, 2005, respondent appealed his conviction. On March 15, 2010, the Court of Appeal affirmed respondent's conviction in its entirety. (See *People v. Tiano* (2010) 2010 WL 918070.)

10. On March 26, 2010, respondent filed a petition for rehearing. On April 8, 2010, respondent's petition for a rehearing was denied by the Court of Appeal.

11. On April 23, 2010, respondent petitioned the Supreme Court of the State of California to review his conviction. On July 14, 2010, the Supreme Court of the State of California denied respondent's petition for review.

12. On July 19, 2010, the Court of Appeal issued its remittitur.

13. On October 18, 2010, respondent filed a petition for a writ of certiorari in the United States Supreme Court. On December 6, 2010, the United States Supreme Court denied respondent's petition for a writ of certiorari. Respondent's conviction is now final.

14. On September 12, 2011 the Review Department issued an Order to Show Cause stating respondent's record of conviction established a conviction for Penal Code §129, a felony inherently involving moral turpitude and Revenue and Taxation Code § 19706 a felony for which there is probable cause to believe that it involves moral turpitude.

15. On October 6, 2011, this matter was referred by the Review Department to the hearing department for a hearing and decision recommending the discipline to be imposed. It also ordered that respondent remain on interim suspension pending final disposition of this proceeding.

## **FACTS:**

### **A. Historical Background:**

1. Respondent George Kellner is the son of parents who owned the George Matthews Great London Circus. Raised in a close knit family environment, George traveled with, managed, and promoted the circus as a young boy into early adulthood. The circus was named for the owners two sons, George and Matthew Kellner. Purchased by their parents in 1959 for \$50.00 the circus grew through the family's hard work, thrift and industry to become one of the top three tented circus traveling in the United States and Canada. With a big top and seating for over 3,000 the circus was in fact a traveling self-contained city on wheels, thrilling and entertaining fans across the country. George Kellner and his brother Matthew worked in all aspects of the business, from show production, management, planning, contracting, pulling canvas, erecting tents, setting up seats, advance ticket sales, and even occasionally handling lions, elephants and horses. Circus tickets were sold in advance of each performance by telephone subscription benefitting local community sponsors (such as Police Associations and Firefighter Unions) and both George and Matthew Kellner learned that portion of the business from their father and his employees. By 1974 George Matthews Great London Circus was one of the few American circus still traveling under a big top. It employed hundreds of people. The George Matthews Great London Circus was not a carnival and was without rides or games of chance. The Circus provided wholesome family entertainment over its lifetime to millions.



2. Respondent's parents entered a bitter divorce and consequently by the late 1970's the circus folded. Respondent transitioned skills he had learned in show business, including telemarketing, into his own company promoting shows of his own, usually with law enforcement or union sponsors. When assets of the circus were sold, respondent's brother Matthew came to work for respondent and together they formed Stuart Bradley Productions, Inc., formally incorporated in 1979.
3. Stuart Bradley Productions, Inc. developed into a substantial business eventually contracting with about one hundred law enforcement and firefighter sponsors in the United States and Canada. For fundraisers it published millions of crime prevention manuals, journals and newspapers and/or produced live music events starring contemporary artists, variety shows, crime prevention manuals, comedy basketball games, outdoor events, publications, journals and newspapers. Respondent was politically active on behalf of Stuart Bradley's law enforcement and labor sponsors, campaigning for political candidates and ballot initiatives which favored collective bargaining rights or law enforcement candidates and issues.
4. During the early 1990's, the United States economy retracted while Stuart Bradley attempted to expand, expensive technology purchased for political campaigning and fundraising efforts failed and Stuart Bradley was unable to manage within that economic environment. Respondent poured his money into Stuart Bradley Productions, Inc, which failed none the less. During that recessionary period real properties were foreclosed followed by respondent's personal bankruptcies.
5. A new group of companies were formed with family, friends and former employees with the intention of getting a fresh start in late 1992. Still in a recessed economy it was very difficult. The brothers became bitter towards each other. Respondent began practicing law. Respondent and his brother, for the most part, although not completely, severed their ties.

**B. Factual Background**

6. In 1979, respondent and his brother, Matthew B. Kellner, incorporated Stuart Bradley Productions ("SBP") and engaged in commercial fund raising and publishing, primarily for law enforcement organizations and labor unions. Respondent served as the Chairman of the Board and Secretary for SBP. SBP produced fundraisers for law enforcement unions and respondent and his brother often made presentations at law enforcement organization meetings and activities. SBP did telemarketing for law enforcement agencies.
7. On December 12, 1983, respondent, now 29 years of age, was admitted to the practice of law in California.
8. At its peak, SBP grew to 35 offices in several states and British Columbia, contracting with over one hundred law enforcement unions.

9. "Commercial Fundraisers" are individuals and companies who solicit on behalf of charities, non-profit organizations, police, or firefighter unions. Commercial Fundraisers charge fees for their services, often conducting solicitations by telephone and often producing publications or events. During the relevant time periods, they were required by law to register in California with the Attorney General and file an annual registration known as a CF-1. During the 1980's and afterwards, there were disclosure requirements for the solicitations. (See e.g. Business and Professions Code §§ 17510.3, 17510.4, 17510.5; 79 T 19557-19559).
10. During the relevant time periods, commercial fundraisers were required to file an annual report, known as a CF-2, pertaining to the operation of commercial fundraisers with the Attorney General for each fundraising event. The commercial fundraisers were also required to maintain financial records on the basis of generally accepted accounting principles, as defined by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board. (See Bus. & Prof. Code § 17510.5.)
11. Sometime in the 1980's, SBP opened an office in Walnut Creek, California, and contracted with the Santa Clara County Deputy Sheriff's Association ("DSA"). Respondent was one of the signatories to that contract. SBP also contracted with DSA to produce and pay all the costs of the DSA's newsletter the "Bullet."
12. The DSA is a union that represents employees of the Santa Clara County's Sheriff's Department regarding wages, hours, working conditions, and other union issues. Armand Tiano was president of the DSA on and off from the late 1980's until his retirement in 1996 and a member of the board at all times until his retirement.
13. Under the terms of SBP's contract with DSA, SBP raised money for DSA by soliciting the general public via telemarketing charitable donations, producing crime prevention related publications for DSA, selling advertising and listings therein, with 15% of the gross revenue to DSA often accompanied by published and distributed crime prevention manuals. SBP also assumed all of the publishing, mailing and editing costs of the Bullet newspaper, in exchange for advertising rights therein. DSA's goal was to fund officer benevolence, local youth programs, and other related activities. The contract with DSA provided that SBP would retain 85 percent of the funds raised and DSA would receive the remaining 15 percent. DSA used its share of the funds raised for officer benevolence, local youth sports, and the like.
14. During the 1980's, SBP experienced rapid growth. Its agreements with DSA ran smoothly for many years. SBP grew offices principally in California and secondarily expanded into Texas, Louisiana, New York, Minnesota, Washington and British Columbia. Relations between SBP and DSA went smoothly at first. At some point, the Kellners began diverting DSA's share of the raised charitable funds for their own use and paying money secretly to Tiano. Tiano, in turn used his position to promote SBP to DSA and other law enforcement organizations. In

1989, Tiano admitted to DSA's board that he was being paid by SBP and recused himself from voting on SBP's contracts. Near this time, SBP's accounting to DSA became unreliable and SBP bounced checks to DSA. SBP ultimately amassed a debt to DSA of over \$100,000. DSA then asserted monetary control by opening its own bank account for the raised funds, directed SBP to deposit the funds in that account, and agreed to pay SBP from that account.

15. During the period entering 1989 the economy was in a boom and charitable giving was at its peak. In mid-1990 the economy was weakening with a recession which began at the time of the Iraq invasion of Kuwait. The recession continued through 1991 followed by a very weak recovery. During the second half of 1990 in the states in which SBP operated (principally California with secondary operations in Texas, Louisiana, New York, Minnesota and Washington) people began losing jobs. By the first half of 1991 job loss was dramatic, which continued through early 1992. The national economy started recovering but the states in which SBP was exposed were not. Charitable contributions follow the economy and giving collapsed in 1990, 1991 and stayed low in 1992, 1993. The California economy really didn't start recovering until well into 1994. It was also very difficult economically in the state of New York, Texas and Louisiana. Bankruptcy filings jumped in 1990, got much worse in 1991, and they continued to grow through 1992. Companies such as SBP, which are in trouble, need a really strong recovery. And if they cannot hang on long enough, they are gone.
16. Beginning in the late 1980's, SBP was experiencing financial problems directly related to the economics of those times and failed in 1992. At this time, SBP was also bouncing checks on numerous other individuals and organizations.
17. In or about October and November 1992, a Bay Area television news program aired several stories critical of the Kellners and SBP's fundraising practices.
18. Two days after the news program aired in October 1992, the Kellners formed a Nevada corporation called Family Entertainment Group of California, Inc. ("FEG"), to continue their fundraising business. The Kellners also formed other corporations to do fundraising, including Family Entertainment Group. FEG assumed the \$100,000 debt SBP still owed DSA and paid DSA \$25,000 against the \$100,000 debt in exchange for a new fundraising contract, which terminated in 1995 with \$67,000 still owing by FEG to DSA.
19. Following the failure of SBP, respondent and his brother met with corporate attorney Andras Babero in Las Vegas, NV, to make an effort with friends, former employees and family to start a new group of companies which would engage in family oriented entertainment and publishing as a means of commercial fundraising. In October of 1992 they formed Family Entertainment Group of California, Inc., Family Entertainment Group, Inc., and other corporations.
20. SBP and Family Entertainment Group of California (FEG) were registered as commercial fundraisers but Family Entertainment Group and Deputy Sheriffs

Athletic League and Police and Sheriffs Athletic league were not. FEG was registered during the period of 1992 through 2000.

21. In or about 1993, respondent and his brother had a falling out and respondent left the San Jose office of FEG and moved to San Joaquin County. Respondent managed FEG's office in San Joaquin County and continued to do fund raising and other duties for FEG. Although respondent and his brother were still operating under and for FEG and its bond for commercial fundraisers, they were in effect operating separately. Respondent conducted fundraising campaigns generally in the San Joaquin Valley and Matthew conducted fundraising campaigns generally in Santa Clara County. Respondent's office had distinct bank accounts with respondent's own employees or agents and their respective law enforcement or firefighter clients. Respondent did not profit from, direct or control the fundraising campaigns in Santa Clara County after 1993.
22. In 1993, Tiano incorporated several business entities using names that evoked an association with law enforcement organizations and signed contracts with FEG to raise funds on behalf of the entities. Tiano recruited deputy sheriffs to serve on the boards of his entities but there were no meetings or members of the entities. One entity, the Deputy Sheriff's Athletic League ("DSAL"), led to a dispute between Tiano and DSA regarding the similarity of DSAL's name to DSA's name. At some point, DSA paid Mr. Tiano \$7,500 and Tiano changed DSAL's name to the Police and Sherrifs' Athletic League. ("PSAL").
23. After separating from his brother and Tiano in 1993 and moving his business to Stockton, California, respondent transitioned into the practice of law. From 1993 through 1997 respondent conducted some fundraising activities for law enforcement unions, benevolent associations, athletic leagues and firefighter unions domiciled in the San Joaquin valley. Rather than start a totally separate and new company respondent contracted with his fundraising clients in the name of FEG. Respondent maintained an FEG bank account kept separate and distinct from any of the activities of his brother or his brother's fundraising clients and his brother did likewise. None of the proceeds, income, costs or expenses of respondent's fundraising efforts commingled with those of his brother except that each year when a premium was due for the fundraising bond respondent paid half. Respondent claims that he did not have access to or control over his brothers FEG bank accounts, operating accounts, employee's, sponsor's, clients, expenses, office(s), income, books or records or business affairs. Respondent was hired to represent DSAL as an attorney in a few matters, but was not their general counsel. Respondent remained involved in FEG's fundraising until at least August 1997. He also remained involved and associated with FEG after that date, including involved in the preparation and signing of CF-2 forms for FEG.
24. The telemarketers, employees of FEG, DSAL, and PSAL who were paid in cash in Santa Clara County used the names of Tiano's entities to solicit donations from the public. In doing so, the telemarketers misrepresented the entities as legitimate law enforcement organizations and themselves as volunteers for the organizations rather than paid the marketers. They also misrepresented themselves as authorized, for example under DSAL or PSAL name to raise funds

25. for legitimate organizations, such as Ronald McDonald House and Lucile Salter Packard Children's Hospital. The scheme operated from 1994 until 1999 and raised over \$3 million dollars. Only \$50,000 found its way toward charitable purposes. This scheme is the basis of the conspiracy, grand theft, and embezzlement convictions of respondent's brother, Matthew, Tiano, and others. Respondent was not convicted of those crimes and claims that he was not aware of them. Respondent's perjury conviction stems from false statutory filings signed under penalty of perjury and his convictions for tax evasion related to the failure to file tax returns for FEG and the failure to report FEG's income.
26. FEG filed CF-2's from 1992 -2000 with Lovie Nicoletti and Jerome Hall as the responsible persons. Respondent, his brother, Matthew, and his mother, Lovie signed CF-2 forms for FEG for fundraising events from 1992 through 2000.
27. The CF-2 form is a annual report pertaining to the operation of commercial fundraisers that must be filed with the California Attorney General for each fundraising event, must be signed under penalty of perjury by the commercial fundraiser and two representatives of the applicable charity, and must state how much money was raised, how much money was used for expenses and for what, and how much money was distributed to the charity from the event. (See Gov't. Code §12599 (c) and (d).)
28. Respondent's (and Matthew's and Tiano's) convictions under Penal Code §129 in Count 9 of the indictment arise from the signing of one or more of the CF-2 forms. FEG filed CF-2 forms from 1992 through 2000 for fundraising events on behalf of DSAL and PSAL. Respondent and Matthew signed the forms on behalf of FEG; Tiano signed the forms on behalf of DSAL and PSAL. Many of the CF-2 forms answered "no" to a question asking whether any officer, director, partner, or owner of the fundraiser was in any way affiliated with or controlled directly or indirectly by the charitable organization for which the fundraiser had contracted to solicit. A "yes" answer would trigger an Attorney General's investigation to determine whether the relationship was appropriate.
29. Respondent and Matthew signed the CF-2 forms on behalf of FEG. Some of the CF-2 forms were filled in by respondent, but signed by respondent's mother, Lovie M. Nicolette or L.M. Nicolette. Respondent also wrote the hand printing and/or numerals on several attachments to CF-2 Forms signed under penalty of perjury. On at least one CF-2 form, respondent signed his own name to the CF-2 and in others he signed his mother's name (Lovie M. Nicolette or L.M. Nicolette), the date and/or handwrote information on the form. Each CF-2 form signed by respondent (and Matthew) falsely answered "no" to the question asking whether any officer, director, partner, or owner of the fundraiser was in any way affiliated with or controlled directly or indirectly by the charitable organization for which the fundraiser had contracted to solicit. A "yes" answer would trigger an Attorney General's investigation to determine whether the relationship was appropriate. The CF-2 forms also showed that the ratio of expenses to revenues for the charities was often 85 percent.

30. CF-2 forms have a box in which to check "yes" or "no" to the question: "Is any officer, director, partner or owner of the Commercial Fundraiser in any way affiliated with or control, directly or indirectly, the charitable organization for which Commercial Fundraiser has contracted to solicit?" Of the 46 CF-2 forms filed by FEG from 1993-2000 at least 14 have neither a "yes" or "no" checked relating to the question. 32 CF-2 forms have the box checked "No." The CF-2 form also requires that "If 'yes', is checked there must be 1) a list of the name of officer, director, partner, or owner of the Commercial Fundraiser; 2) the name and address of the Charitable organization; and 3) the relationship of the officer, etc to the Charitable." The 14 CF-2 forms that neither checked "yes" or "no" did not provide this list and information.
31. The CF-2 forms also showed that in most cases FEG retained 85% of the proceeds of most of its campaigns distributing 15% to its client-sponsor. Respondent would testify that FEG's retention of 85% of the gross proceeds was customary and usual in that industry at the relevant time periods.
32. No income tax returns for FEG were filed with the IRS or the FTB by FEG for the years 1993 -2000. Any officer, director, or employee of the corporation with the authority over its financial affairs was responsible for filing its income tax returns. A corporation doing business in California must pay a minimum of \$800 even if it has no income, and if it generates income it must pay tax on that income.
33. Subsequent to 1996, respondent remained an officer, director, or employee of FEG with the authority over its financial affairs and failed to file the corporate tax returns for FEG with the intent to evade taxes for the following years:
  - a. April 1997 for the tax year 1996;
  - b. April 1998 for the tax year 1997;
  - c. April 1999 for the tax year 1998;
  - d. April 2000 for the tax year 1999
  - e. April 2001 for the tax year 2000.
34. FEG owed income taxes of \$40,000 for the years 1993 through 2000 on unreported income of \$432,000. Some of these years, FEG owed only the minimal amount of taxes (\$800).

## CONCLUSIONS OF LAW:

Respondent's convictions involve moral turpitude. Respondent was convicted of Penal Code § 129 (perjury - - false return required under oath), and five (5) felony counts of violating Revenue and Taxation Code § 19706 (Unfiled/False/Fraudulent Tax return with intent to evade Tax). Penal Code § 129 is a crime involving moral turpitude per se.<sup>1</sup> Crimes of intentional deceit have long been held to constitute moral turpitude per.<sup>2</sup> Further, respondent signed Ms. Lovie Nicoletti's name to the CF-2 forms, even though the CF-2 forms were under penalty of perjury. It is long held that an attorney'

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<sup>1</sup> *In re Kristovich* (1976) 18 Cal.3d 468, 472; see also *In re Effenbeck* (1988) 44 Cal.3d 306; *In re Johnson* (1992) 1 Cal.4<sup>th</sup> 689, 700 fn.6.

<sup>2</sup> See e.g. *In re Rivas* (1989) 49 Cal.3d 794, 800; *In re Bloom* (1987) 44 Cal.3d 128, 134.

signing of another person's name to a document under penalty of perjury is moral turpitude, even if that other person gave the attorney authorization to do so.<sup>3</sup> Respondent's conviction of five felonies for violating Revenue and Taxation Code § 19706 also involves moral turpitude under the facts and circumstances surrounding the convictions.

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was February 1, 2012.

### **AUTHORITIES SUPPORTING DISCIPLINE.**

#### **APPLICABLE STANDARDS:**

Standard 3.2 of the Standards for Attorney Sanctions for Professional Misconduct (hereinafter "Standards") provides for disbarment when a member is convicted of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission.

The Supreme Court has held that great weight is to be given the Standards and that they should be followed *whenever possible*.<sup>4</sup> While the Standards are not mandatory, the Supreme Court has held that they should be followed unless the charged attorney can demonstrate the existence of extraordinary circumstances justifying a lesser sanction.<sup>5</sup> It is respondent's burden to demonstrate that a lesser sanction is warranted than that recommended by the Standards.<sup>6</sup> An attorney does not get the benefit of the doubt on the issue of appropriate discipline.<sup>7</sup>

#### **CASE LAW:**

Case law also supports disbarment. Although there are pre-Standard cases where a conviction for perjury has not resulted in disbarment,<sup>8</sup> the cases often result in disbarment.<sup>9</sup> In addition, respondent was convicted of five felonies for tax evasion.

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<sup>3</sup> See *Aronin v. State Bar* (1990) 52 Cal.3d 276, 286-287.

<sup>4</sup> *In re Silverton* (2005) 36 Cal.4th 81, 92 [emphasis added].

<sup>5</sup> *In re Silverton, supra*, 36 Cal.4th at 92.

<sup>6</sup> *In re Silverton, supra*, 36 Cal.4th at 92; *In re Rivas* (1989) 49 Cal.3d 794, 800.

<sup>7</sup> *Grim v. State Bar* (1991) 53 Cal.3d 21, 30 fn. 2.

<sup>8</sup> See *In re Kristovich*, (1976) 18 Cal.3d, 468.

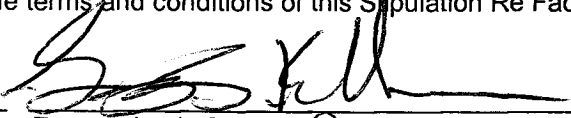

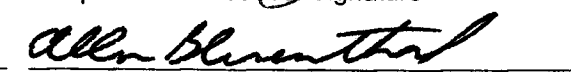
<sup>9</sup> See *In re Rivas* (1989) 49 Cal.3d 794 [disbarment]; *In re Paguirigan* (2001) 25 Cal.4th 1 [summary disbarment for filing forged summary judgment affidavits]. See also *In re Joseph* (1989) 49 Cal.3d 430 [disbarment for no lo to felonies of falsifying government documents]; *In re Bloom* (1987) 44 Cal.3d 128 [conspiracy to commit offense of presenting false writing to government agency despite 55 years with no priors]; *In re Schwartz* (1982) 31 Cal.3d 395 [disbarment for plea of guilty to using a fictitious name for the purpose of a scheme to defraud and obtain property by false pretenses]; *In re Lamb* (1989) 49 Cal.3d 239 [disbarment for impersonating husband in taking bar exam].

(Do not write above this line.)

In the Matter of: George S Kellner	Case number(s): 02-C-13863
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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.

<u>2/8/2012</u> Date	 Respondent's Signature	<u>George S. Kellner</u> Print Name
<u>2/8/12</u> Date	 Respondent's Counsel Signature	<u>Horace Siino</u> Print Name
<u>February 9, 2012</u> Date	 Deputy Trial Counsel's Signature	<u>Allen Blumenthal</u> Print Name



(Do not write above this line.)

In the Matter of: GEORGE S. KELLNER Member No. 111670	Case Number(s): 02-C-13863
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### DISBARMENT 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 2, (8), Payment of Disciplinary Costs, add "See p. 5 re installment payment of costs as additional requirements."

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.)**

Respondent George S. Kellner is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

February 23, 2012  
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 February 24, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

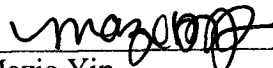
GEORGE STUART KELLNER  
C/O LOVIE M NICOLETTI  
171 DOUGLAS RD  
OAKLEY, CA 94561

HORACE JOSEPH SIINO  
7960 BRENTWOOD BLVD #A  
BRENTWOOD, CA 94513

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

ALLEN BLUMENTHAL, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 24, 2012.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court