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State Bar Court of California Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar Cydney Batchelor Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204 Bar # 114637	Case Number(s) PUBLIC MATTER 04-0-10821-PEM	(for Court use) CONFIDENTIAL LODGED JAN 16 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO FILED APR 27 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per Jonathan I. Arons, Esq. 101 Howard St., #310 San Francisco, CA 94105 Tele: 415/957-1818 Bar # 111257		
In the Matter of KELLEY KS RASMUSSEN MARTINEZ Bar # 161409 A Member of the State Bar of California (Respondent)	Submitted to Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <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 14, 1992 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of 8 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." **See attached**
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law." **See attached**

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- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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

- (1) **Prior Record of Discipline [see standard 1.2(f)]**
- (a) State Bar Court Case # of prior case _____
- (b) Date prior discipline effective _____
- (c) Rules of Professional Conduct/State Bar Action violations _____
- (d) Degree of prior discipline _____
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ~~xxx~~ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See attached**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) ~~xx~~ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct. **See attached**
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

None

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C. Mitigating Circumstances [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) ~~xxx~~ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to the ~~victim of his/her misconduct~~ **State Bar** during disciplinary investigation and proceedings.
- See attached**
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances:

See attached

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **KELLEY K.S. RASMUSSEN MARTINEZ**

CASE NUMBERS: **04-O-10821**

FACTS AND CONCLUSIONS OF LAW.

Facts: In August 1995, Donna Sutherland employed respondent to represent her in an employment matter. Respondent filed several claims on Ms. Sutherland's behalf, and all three claims were resolved by settlement in August 1998. During the course of the litigation, Ms. Sutherland paid respondent \$25,500.00 as litigation costs. Throughout her representation, respondent provided Ms. Sutherland with billing statements which showed that the litigation costs were \$16,541.01. However, respondent has only been able to demonstrate that she expended \$13,836.60 in costs on Ms. Sutherland's behalf. Therefore, respondent should have maintained \$11,663.40 in her client trust account on Ms. Sutherland's behalf.

At the time of the settlement, Ms. Sutherland did not request that respondent disburse the balance of the costs because she wanted respondent to be available to represent her in the event she was called to testify in a separate but related claim filed by a co-worker. In July 2002, however, Ms. Sutherland sent respondent a letter which indicated that she was no longer concerned about testifying, and which requested a copy of the signed settlement agreement, an accounting of the funds she had on deposit for the litigation costs, and a refund of the unused costs. Ms. Sutherland sent similar letters to respondent in November 2002, and February and June 2003. Respondent failed to respond, until after the intervention of the State Bar in March 2004.

By the time Ms. Sutherland requested a refund, however, respondent's client trust account balance was \$494.95; the balance remained at that level until April 2004. Respondent did not pay any funds to Ms. Sutherland, but misappropriated them by gross negligence to her own use and benefit, until after the State Bar intervened in March 2004. In April 2004, respondent issued a check to Ms. Sutherland in the amount of \$5107.35 from her a general business account. In June 2004, respondent issued another check to Ms. Sutherland in the amount of \$3851.64 from a general business account. The total of these two payments was \$8958.99; however respondent still owes Ms. Sutherland \$2704.41 from the settlement because she has not been able to document this deduction from the settlement.

Conclusions of Law: By willfully not maintaining \$11,663.40 in her client trust account on Ms. Sutherland's behalf, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a client trust account, in violation of Rule of Professional Conduct 4-100(A). By willfully not providing an accounting to Ms. Sutherland upon her repeated request, respondent failed to render appropriate accounts to a client regarding all funds, in violation of Rule of Professional Conduct 4-100(B)(3). By misappropriating by gross negligence Ms. Sutherland's funds for her own use and benefit, respondent committed an act involving moral turpitude and dishonesty, in violation of Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was November 8, 2006.

AGGRAVATING CIRCUMSTANCES.

Facts Supporting Aggravating Circumstances:

Multiple acts of misconduct: The misconduct stipulated to herein involved multiple acts of misconduct.

Significant harm: Ms. Sutherland was deprived of the use of most of her settlement funds for 21 months, and is still owed money from that settlement four years later.

MITIGATING CIRCUMSTANCES.

Facts Supporting Mitigating Circumstances.

Candor and cooperation. Respondent has been completely candid and cooperative with the State Bar during its investigation and resolution of these cases.

Additional Mitigating Circumstances.

No prior discipline: Although the stipulated misconduct is serious, it is worth noting that Respondent has had no prior record of discipline since being admitted in 1992.

Restitution: Although she did not do so until after the intervention of the State Bar, and she did so out of a general business account and not her trust account, respondent did pay restitution to Ms. Sutherland in the amount of \$8958.99.

Participation in Lawyer's Assistance Program. On September 20, 2005, respondent contacted the State Bar Lawyer Assistance Program ("LAP") and completed the intake process. On September 21, 2005, respondent signed a pre-enrollment assessment agreement with LAP. Respondent signed a long-term participation plan with LAP on January 5, 2006.

RESTITUTION.

In accordance with the timetable set forth in the State Bar Court alternative discipline program contract to be executed between the State Bar Court and Respondent on the captioned case, Respondent must make restitution as follows:

Donna Sutherland, or the Client Security Fund if it has paid on her behalf, in the principal amount of \$2704.41, plus interest at the rate of 10% per annum from August 1, 2002, until paid in full and furnish satisfactory evidence of restitution to the State Bar Office of Probation.

Donna Sutherland, interest on \$8958.99, at the rate of 10% per annum, from August 1, 2002 until April 1, 2004, until paid in full and furnish satisfactory evidence of restitution to the State Bar Office of Probation.

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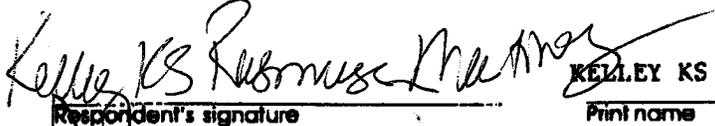
SIGNATURE OF THE PARTIES

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

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

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

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

11-20-06 Date	 Respondent's signature	KELLEY KS RASMUSSEN MARTINEZ Print name
November 20, 2006 Date	 Respondent's Counsel's signature	JONATHAN I. ARONS Print name
11/20/06 Date	 Deputy Trial Counsel's signature	CYDNEY BATCHELOR Print name

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ORDER

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

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

Jan 16, 2007
Date

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on, June 18, 2010, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

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

**JONATHAN IRWIN ARONS
LAW OFC JONATHAN I ARONS
221 MAIN ST STE 740
SAN FRANCISCO, CA 94105**

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

ERICA DENNINGS , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 18, 2010.


Laurretta Cramer
Case Administrator
State Bar Court