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<b>State Bar Court of California</b> <b>Hearing Department</b>		
Counsel For The State Bar  <b>LEE ANN KERN</b> Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 213-765-1272  Bar # 156623	Case Number (s) <b>04-O-11238</b>	(for Court's use)  <div style="text-align: center;"> <p><b>FILED</b></p> <p><b>JUL - 7 2008</b> <i>YKC</i></p> <p>STATE BAR COURT                          CLERK'S OFFICE                          LOS ANGELES</p> </div>
<b>DAVID C. CARR</b> 3333 CAMINO DEL RIO S. STE. 215 SAN DIEGO, CA 92108  Bar # 124510	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter Of: <b>KENNETH KLEINBERG</b>  Bar # 110732  A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</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 entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **20** 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."



- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
  - costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs entirely waived

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

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **Respondent's misconduct harmed his former employee, Sallie Matonis.**
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$      on      in restitution to      without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **2 years**.

- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

(b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of **5 years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **120 days**.
  - i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
  
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
  
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
  
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
  
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
  
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
  
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason: .
  
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
  
- (10)  The following conditions are attached hereto and incorporated:
  - Substance Abuse Conditions                       Law Office Management Conditions
  - Medical Conditions                                       Financial Conditions

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

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 954-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
  - No MPRE recommended. Reason: .
  
- (2)  **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
  
- (3)  **Conditional Rule 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
  
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .
  
- (5)  **Other Conditions:**

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

IN THE MATTER OF:       KENNETH KLEINBERG

CASE NUMBER(S):        04-O-11238

**FACTS AND CONCLUSIONS OF LAW.**

Respondent pleads nolo contendere to the following facts and violations. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified herein.

COUNT ONE:            Business and Professions Code, section 6068(a)  
                              [Failure to Support Laws - Failing to File Employee's W-2 Form with the Social Security Administration]

1. Respondent wilfully violated Business and Professions Code, section 6068(a), by failing to file his employee's W-2 Form with the Social Security Administration copy of Form in violation of 26 Code of Federal Regulations 31.6051-2, as follows:

2. From in or about May 1994 through on or about December 1, 2003, Respondent employed Sallie Matonis ("Matonis").

3. The W-2 form provided to Matonis by Respondent for the year 1994 stated that \$2,058 in Federal income tax, \$1,038.50 in Social Security tax, and \$440.72 in State income tax was withheld from Matonis's earnings of \$16,750 for 1994.

4. Matonis cannot locate her W-2 form for the year 1995.

5. The W-2 form provided to Matonis by Respondent for the year 1996 stated that \$3,891 in Federal income tax, \$1,757.70 in Social Security tax, and \$893.94 in State income tax was withheld from Matonis's earnings of \$28,350 for 1996.

6. The W-2 form provided to Matonis by Respondent for the year 1997 stated that \$4,500 in Federal income tax, \$1,937.50 in Social Security tax, and \$1,016.50 in State income tax was withheld from Matonis's earnings of \$31,250 for 1997.

7. The W-2 form provided to Matonis by Respondent for the year 1998 stated that \$3,979 in Federal income tax, \$1,853.80 in Social Security tax, and \$440.72 in State income tax was withheld from Matonis's earnings of \$29,900 for 1998.

8. The W-2 form provided to Matonis by Respondent for 1999 stated that \$3,979 in Federal income tax, \$1,853.80 in Social Security tax, and \$440.72 in State income tax was withheld from Matonis's earnings of \$29,900 for 1999.

9. The W-2 form provided to Matonis by Respondent for the year 2000 stated that \$3,979 in Federal income tax, \$1,853.80 in Social Security tax, and \$440.72 in State income tax was withheld from Matonis's earnings of \$29,900 for 2000.

10. The W-2 form provided to Matonis by Respondent for the year 2001 stated that \$3,979 in Federal income tax, \$1,853.80 in Social Security tax, and \$440.72 in State income tax was withheld from Matonis's earnings of \$29,900 for 2001.

11. The W-2 form provided to Matonis by Respondent for the year 2002 stated that \$3,979 in Federal income tax, \$1,853.80 in Social Security tax, \$433.55 in Medicare tax, \$239.16 in State Disability/Unemployment Insurance, and \$440.72 in State income tax was withheld from Matonis's earnings of \$29,900 for 2002.

12. The W-2 form provided to Matonis by Respondent for the year 2003 stated that \$3,647.38 in Federal income tax, \$1,699.28 in Social Security tax, \$397.32 in Medicare tax, and \$972.18 in State income tax was withheld from Matonis's earnings of \$27,408.26 for 2003.

13. As an employer, Respondent was required to file a Wage and Tax Statement ("W-2 form") with the Social Security Administration ("SSA") each and every year for the purpose of reporting the wages he paid to each employee from whom he withheld income taxes, Social Security taxes, and/or Medicare taxes.

14. Respondent did not file a copy of Matonis's W-2 form with the SSA for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003.

15. Respondent knew or was grossly negligent in not knowing that he was required to, and responsible for, filing a copy of Matonis's W-2 forms with the SSA.

16. Respondent knew or was grossly negligent in not knowing that he had failed to file a copy of Matonis's W-2 form with the SSA for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003.

17. LEGAL CONCLUSION: By failing to file Matonis's W-2 form with the SSA for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003, Respondent violated 26 Code of Federal Regulations 31.6051-2, and thereby failed to support the laws of the United States.

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COUNT TWO: Business and Professions Code, section 6068(a)  
[Failure to Support Laws - Failing to Pay Federal Taxes, State Taxes, and Social Security Taxes Withheld from Employee's Salary]

18. Respondent wilfully violated Business and Professions Code, section 6068(a), by failing to pay federal taxes and Social Security taxes in violation of 26 USC 7202 and by failing to pay California state income tax and Unemployment Insurance/State Disability Insurance, in violation of California Revenue and Taxation Code section 19709 and Unemployment Insurance Code, section 976, respectively, as follows:

19. The allegations of paragraphs 2 through 16 are incorporated by reference.

20. As an employer, Respondent was required to, and responsible for, paying Federal income taxes, Social Security taxes, Medicare taxes, State Unemployment Insurance/State Disability Insurance, and State income tax withheld from his employee's salary.

21. Respondent did not pay Federal income taxes, Social Security taxes, Medicare taxes, State Unemployment Insurance/State Disability Insurance, and State income tax withheld from his employee's salary for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003.

22. Respondent knew or was grossly negligent in not knowing that he was required to, and responsible for, paying Federal income taxes, Social Security taxes, Medicare taxes, State Unemployment Insurance/State Disability Insurance, and State income tax withheld from his employee's salary.

23. Respondent knew or was grossly negligent in not knowing that he had failed to pay the Federal income taxes, State income taxes, and Social Security taxes that he had withheld from Matonis's salary for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003.

24. Respondent knew or was grossly negligent in not knowing that he had failed to pay the Medicare taxes that he had withheld from Mantonis's salary for the years 2002 and 2003.

25. Respondent knew or was grossly negligent in not knowing that he had failed to pay the State Unemployment Insurance/State Disability Insurance that he had withheld from Mantonis salary for the year 2002.

26. On or about November 22, 2002, Respondent paid the California Employment Development Department (EDD) a total of \$4,277.76 in back Unemployment Insurance/State Disability Insurance owed to EDD regarding Matonis.

27. LEGAL CONCLUSION: By not paying the Federal income taxes and Social Security taxes that he had been withheld from Matonis's salary for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003 and by not paying Medicare taxes that he had withheld from her salary for the years 2002 and 2003, Respondent violated 26 USC 7202, and thereby failed to support the laws of

the United States.

28. LEGAL CONCLUSION: By not paying State income tax that had been withheld from Matonis's salary for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003, and by not paying the Unemployment Insurance/State Disability Insurance that he had withheld from her salary for the year 2002, Respondent violated California Revenue and Taxation Code section 19709 and Unemployment Insurance Code, section 976, respectively, and thereby failed to support the laws of the State of California.

COUNT THREE: Business and Professions Code, section 6068(a)  
[Failure to Support Laws - Failing to Withhold Medicare Taxes from Employee's Wages]

29. Respondent wilfully violated Business and Professions Code, section 6068(a), by failing to withhold Medicare tax from his employee's salary, in violation of 26 USC 3102, as follows:

30. The allegations of paragraphs 2 through 16 and 20 through 26 are incorporated by reference.

31. As Matonis's employer, Respondent was required to, and responsible for, withholding Medicare taxes from Mantonis's salary.

32. Respondent did not withhold Medicare taxes from Mantonis's salary for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2001.

33. Respondent knew or was grossly negligent in not knowing that he was required to, and responsible for, withholding and paying Medicare tax from his employee's salary.

34. Respondent knew or was grossly negligent in not knowing that he had failed to withhold and pay Medicare tax from Matonis's salary for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2001.

35. LEGAL CONCLUSION: By failing to withhold and pay from Matonis's salary Medicare tax for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2001 Respondent violated 26 USC 3102, and thereby failed to support the laws of the United States.

COUNT FOUR: Business and Professions Code, section 6068(a)  
[Failure to Support Laws - Failing to Withhold State Unemployment Insurance/State Disability Insurance from Employee's Salary]

36. Respondent wilfully violated Business and Professions Code, section 6068(a), by failing to withhold State Unemployment Insurance/State Disability Insurance from his employee's salary in violation of California Unemployment Insurance Code §13020, as follows:

37. The allegations of paragraphs 2 through 16, 20 through 26, and 31 through 34 are

incorporated by reference.

38. As Matonis's employer, Respondent was required to, and responsible for, withholding State Unemployment Insurance/State Disability Insurance from his employee's salary.

39. Respondent did not withhold State Unemployment Insurance and State Disability Insurance from Matonis's salary for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2003.

40. Respondent knew or was grossly negligent in not knowing that he was required to, and responsible for, withholding State Unemployment Insurance/State Disability Insurance from his employee's salary.

41. Respondent knew or was grossly negligent in not knowing that he had failed to withhold State Unemployment Insurance and State Disability Insurance from Matonis's salary for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2003.

42. LEGAL CONCLUSION: By failing to withhold State Unemployment Insurance/State Disability Insurance for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2003, Respondent violated California Unemployment Insurance Code §13020, and thereby failed to support the laws of the State of California.

COUNT FIVE: Business and Professions Code, section 6106  
[Moral Turpitude - Misrepresentation - Providing False W-2 Form to Employee]

43. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

44. The allegations of paragraphs 2 through 16, 20 through 25, 30 through 33, and 37 through 40 are incorporated by reference.

44. At the time Respondent provided Matonis with her W-2 Forms for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003, Respondent was grossly negligent in not knowing that the W-2 forms were false.

45. By providing Matonis with false W-2 Forms for the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003, Respondent acted with gross negligence, in wilful violation of Business and Professions Code section 6106.

**PENDING PROCEEDINGS.**

The disclosure date referred to on page one, paragraph A.(7), was May 29, 2008.

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**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 20, 2008, the costs in this matter are \$1,983.00. 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.

**AUTHORITIES SUPPORTING DISCIPLINE.**

In *In re Brown* (1995) 12 Cal.4th 205, the attorney was convicted of three counts of failing to remit funds to the state that he had withheld from his employees. Brown had misappropriated approximately \$36,000 in employee funds that should have been paid to the state and his misconduct spanned over two years. Brown received 60-days actual suspension.

In *In re Rohan* (1978) 21 Cal. 3d 195, the Supreme Court concluded that an attorney's failure to file timely federal income tax returns for six years was not accompanied by acts of deception, nor did the attorney intend to permanently avoid payment of taxes. The court imposed a two-year suspension, stayed, and a two-year probation on conditions that included a 60-day actual suspension.

The prolonged nature of Respondent's misconduct, the fact that Respondent's misconduct involved deception, and the factors in aggravation, including the harm caused to his former employee, distinguishes the instant matter from those cases in which 60-days actual suspension was imposed for those who failed to pay taxes. As such, the recommended 120-days actual suspension, two years stayed suspension, and three years probation with conditions is just and reasonable.

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In the Matter of  
**KENNETH KLEINBERG**

Case number(s):  
**04-O-11238**

A Member of the State Bar

## **NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

Bus. & Prof. Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a Notice of Disciplinary Charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) **Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admission required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)**

Rule 133, Rules of Procedure of the State Bar of California **STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

(a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:

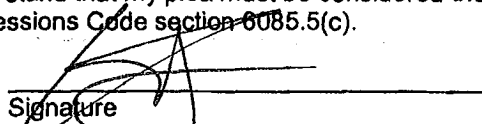
- (5) a statement that Respondent either
  - (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
  - (ii) **pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:**
    - (a) **an acknowledgment that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and**
    - (b) **If requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter (emphasis supplied)**

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as state in Business and Professions Code section 6085.5(c).

Date

6-1-08

Signature



**Kenneth Kleinberg**  
Print Name

(Nolo Contendere Plea form approved by SBC Executive Committee 10/22/1997. Revised 12/16/2004; 12/13/2006.)

In the Matter of  
**Kenneth Kleinberg**

Case number(s):  
**04-O-11238**

A Member of the State Bar

## Financial Conditions

### a. Restitution

- Respondent must pay restitution (including the principal amount, plus penalties, interest, etc. to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid.

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<b>PAYEE</b>	<b>ESTIMATED PRINCIPAL AMOUNTS</b>
United States Dept. Of Treasury (on behalf of Sallie Matonis)	Federal Income Tax - <b><u>\$36,470.38</u></b>
California Franchise Tax Board (on behalf of Sallie Matonis)	State Income Tax - <b><u>\$9,173.99</u></b>
California Employment Development Department (on behalf of Sallie Matonis)	SDI - <b><u>\$865.00</u></b>
Social Security Administration (on behalf of Sallie Matonis)	FICA - <b><u>\$16,935.78</u></b>
Social Security Administration (employer contribution on behalf of Sallie Matonis)	FICA - <b><u>\$16,935.78</u></b>
<b><u>Restitution Owed:</u></b>	<b><u>\$80,380.95</u></b> (Respondent acknowledges that this amount is a good faith estimate of the principal and does not include any interest, penalties, etc. that may be assessed by the payees.)

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than .

**b. Installment Restitution Payments**

- Respondent must pay the above-referenced restitution on the payment schedule set forth below beginning 150 days after the effective date of his discipline (i.e., 30 days after the end of his 120 day actual suspension). Respondent must provide satisfactory proof of payment to the Office of Probation within 30 days of each payment, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation, Respondent must make any necessary final

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

payment(s) in order to complete the payment of restitution, including principal, interest, penalties, etc. in full.

<b>PAYEE/CSF (AS APPLICABLE)</b>	<b>MINIMUM MONTHLY PAYMENT AMOUNT DUE BY THE FIRST OF EACH MONTH</b>
United States Dept. Of Treasury (on behalf of Sallie Matonis)	Minimum monthly payment to United States Dept. Of Treasury over 54 months of probation: <b><u>\$675.38</u></b>
California Franchise Tax Board (on behalf of Sallie Matonis)	Minimum monthly payment to California Franchise Tax Board over 54 months of probation: <b><u>\$169.89</u></b>
California Employment Development Dept. (on behalf of Sallie Matonis)	Minimum monthly payment to California Franchise Tax Board over 54 months of probation: <b><u>\$16.02</u></b>
Social Security Administration (on behalf of Sallie Matonis)	Minimum monthly payment to the Social Security Administration (on behalf of Sallie Matonis) over 54 months of probation: <b><u>\$313.63</u></b>
Social Security Administration (Employer Contribution on behalf of Sallie Matonis)	Minimum monthly payment to the Social Security Administration over 54 months of probation: <b><u>\$313.63</u></b>
<b><u>Total Monthly Payment:</u></b>	<b><u>\$1,488.55</u></b> (Respondent acknowledges that this amount is a good faith estimate of the principal and does not include any interest, penalties, etc. that may be assessed by the payees.)

**1. Additional Terms of Restitution**

i. Within 30 days of the effective date of discipline, Respondent agrees to provide the Office of Probation with written confirmation, as provided to Respondent or his counsel by the payees, of the precise amount of principal owed to each payee regarding Sallie Matonis.

ii. Within 30 days of the effective date of discipline, Respondent agrees to provide the Office of Probation with written confirmation, as provided to Respondent or his counsel by the payees, of the precise amount of interest, penalties, etc., if any, owed to each payee regarding Sallie Matonis.

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)



iii. As a condition of this stipulation, Respondent agrees to pay all principal, interest, penalties, etc. assessed by each payee regarding Sallie Matonis.

iv. If, after contacting each payee, Respondent learns that the total amount of principal, interest, penalties, etc. owed to the payees is greater than **\$80,380.95**, Respondent agrees to promptly file a motion to modify the terms of his probation, pursuant to rule 550 et seq. of the Rules of Procedure of the State Bar of California, to include the actual amount owed to each payee(s) regarding Sallie Matonis.

v. Respondent must provide to the Office of Probation proof from each payee that he has successfully completed payment of principal, interest, penalties, etc. regarding Sallie Matonis by the end of his probation period.

vi. If the Respondent completes payment of principal, interest, penalties, etc. early, has been on probation for at least two years, and has satisfied all other conditions of his probation, the Office of the Chief Trial Counsel will stipulate that the purposes of probation have been satisfied and that Respondent should be permitted to end his probation early.

**c. Client Funds Certificate**

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";
  - b. Respondent has kept and maintained the following:
    - i. A written ledger for each client on whose behalf funds are held that sets forth:
      - 1. the name of such client;
      - 2. the date, amount and source of all funds received on behalf of such client;
      - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
      - 4. the current balance for such client.

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

- ii. a written journal for each client trust fund account that sets forth:
    1. the name of such account;
    2. the date, amount and client affected by each debit and credit; and,
    3. the current balance in such account.
  - iii. all bank statements and cancelled checks for each client trust account; and,
  - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
  - ii. the person on whose behalf the security or property is held;
  - iii. the date of receipt of the security or property;
  - iv. the date of distribution of the security or property; and,
  - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.


(Do not write above this line.)

In the Matter of <b>KENNETH KLEINBERG</b>	Case number(s): <b>04-O-11238</b>
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**SIGNATURE OF THE PARTIES**

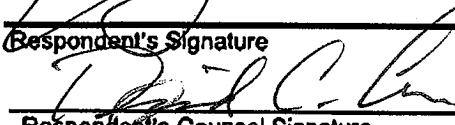
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

6-1-08  
Date

  
\_\_\_\_\_  
Respondent's Signature

KENNETH KLEINBERG  
Print Name

6/7/08  
Date

  
\_\_\_\_\_  
Respondent's Counsel Signature

DAVID C. CARR  
Print Name

6/10/08  
Date

  
\_\_\_\_\_  
Deputy Trial Counsel's Signature

LEE ANN KERN  
Print Name

(Do not write above this line.)

In the Matter Of <b>KENNETH KLEINBERG</b>	Case Number(s): <b>04-O-11238</b>
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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 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.

Page 1 Part A(3) – The stipulation consists of 19 pages, not including the order.

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 135(b), 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.)**

July 1, 2008  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court

**DONALD F. MILES**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 7, 2008, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING ACTUAL SUSPENSION**

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

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID C. CARR  
LAW OFFICE OF DAVID CAMERON CARR  
3333 CAMINO DEL RIO S STE 215  
SAN DIEGO, CA 92108**

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

**LEE ANN KERN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **July 7, 2008**.



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**Tammy R. Cleaver**  
Case Administrator  
State Bar Court