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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL. WILLIAM F. STRALKA 1149 South Hill Street Los Angeles, CA 90015, 10th Fl. Telephone: (213) 765-1091 Bar # 56146	Case number(s) 04-0-14672 PUBLIC MATTER	(for Court's use) <div style="text-align: center;"> FILED JUN 22 2005 <i>Xac</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent John W. Nelson 12399 Lewis Street, #103 Garden Grove, CA 92840-4643 Bar # 73958	Submitted to <input type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of Kathleen M. Fitzgerald Bar # 145252 A Member of the State Bar of California (Respondent)		

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 13, 1989
(date)
- (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 and order consist of 11 pages.
- (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.

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- (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".

03-0-02533, June 9, 2004, Violation: 6068(i) Business and Professions Code
Public Repeal

- (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.
- (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.

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- (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:

(Do not write above this line.)

D. Discipline:

- (1) Private reproof (check applicable conditions, if any, below)
 - (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
 - (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of one year
- (2) During the condition period attached to the reproof, 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 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 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (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 conditions attached to the reprobation.
- (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 of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. 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 required to be filed with the Office of Probation.
- (10) 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 within one year of the effective date of the reprobation.
- In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.
- No MPRE ordered. Reason: violation was for failure to keep license current
- (11) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

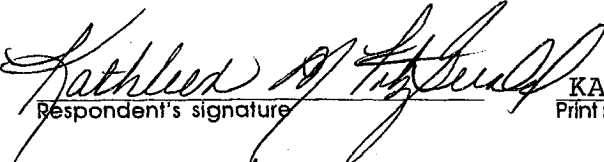
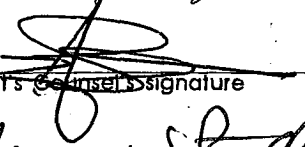
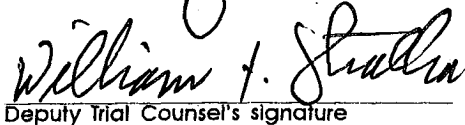
F. Other Conditions Negotiated by the Parties:

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In the Matter of KATHLEEN M. FITZGERALD	Case number(s): 04-0-14672
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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>06/07/05</u> Date	 Respondent's signature	<u>KATHLEEN M. FITZGERALD</u> Print name
<u>06/01/05</u> Date	 Respondent's counsel's signature	<u>JOHN W. NELSON</u> Print name
<u>06/14/05</u> Date	 Deputy Trial Counsel's signature	<u>WILLIAM F. STRALKA</u> Print name

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In the Matter of KATHLEEN M. FITZGERALD	Case number(s): 04-O-14672
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All Hearing dates are vacated.

Page 1, check box - settlement judge.

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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

06-22-05
Date


RICHARD A. PLATEL
Judge of the State Bar Court

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: KATHLEEN MARGARET FITZGERALD

CASE NUMBER: 04-O-14672

PENDING PROCEEDINGS:

The disclosure date referred to, on page one paragraph A.(7), was May 18, 2005.

PARTIES ARE BOUND BY THE STIPULATED FACTS:

The parties intend to be and are hereby bound by the stipulated facts contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law and/or stipulated disposition set forth herein are rejected or changed in any manner whatsoever by the California Supreme Court.

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW:

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct, or has otherwise committed acts of misconduct warranting discipline:

FACTS:

Case No.: 04-O-14672

1. On October 26, 2001, Respondent was appointed by the Orange County Superior Court to represent a minor in a family law matter entitled *Gary A. Gustafson vs. Kerstin L. Gustafson*, case no. 01D010200, (the "Gustafson matter").
2. Between October 30, 2003, and May 21, 2004, the State Bar's Office of Membership Billing Services ("membership billing") sent notices to Respondent advising that her membership fees were due.
3. On August 27, 2004, membership billing sent a notice to Respondent at her membership records address advising her that her name was included on a list submitted to the California Supreme Court regarding State Bar members delinquent in the payment of their membership fees. Said notice further advised Respondent that effective September 16, 2004, she would be suspended from the practice of law for nonpayment of State Bar membership fees, penalties, and/or costs.

4. On August 27, 2004, the California Supreme Court entered an order (S126962), effective on or about September 16, 2004, suspending Respondent from the practice of law as a result of failure to pay State Bar membership fees. Respondent paid the membership fees and was reinstated to the practice of law on or about September 30, 2004.
5. On September 16, 2004, Respondent was rendered *Not Entitled* to practice law for non-compliance with the State Bar's Mandatory Continuing Legal Education ("MCLE") requirements. Respondent complied and was removed from *Not Entitled* status effective on October 18, 2004.
6. On September 28, 2004, Respondent appeared in Court on behalf of the minor while suspended from the practice of law.
7. On September 29, 2004, the minor's mother, Kerstin Gustafson, 5121 East Marita Lane D, Anaheim Hills, CA 92807, (714) 970-6917, brought Respondent's suspension and not entitled status to the attention of the Judge presiding in the Gustafson matter.
8. On November 5, 2004, Respondent provided proof to the Court that she paid her Bar membership fees and was reinstated to practice law effective September 30, 2004, and that she had been removed from *Not Entitled* status effective October 18, 2004.
9. On November 5, 2004, during the Court proceeding, at the request of the minor's mother Kerstin Gustafson, the Judge relieved Respondent as the minor's attorney with no objections from Respondent.

CONCLUSIONS OF LAW:

By appearing in Court representing the minor, Respondent held herself out to the Court as entitled to practice law and actually practiced law while she was not an active member of the State Bar in wilful violation of Business and Professions Code, sections 6125 and 6126, and thereby failed to support the laws of the State of California, and wilfully violated Business and Professions Code, section 6068(a), by advertising or holding herself out as practicing or entitled to practice law or otherwise practicing law when she was not an active member of the State Bar.

SUPPORTING AUTHORITY:

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. In Hanson respondent had a prior private reproof. The review department weighed the misconduct and judged that it was not serious enough to justify suspension and issued a public reproof.

COSTS OF DISCIPLINARY PROCEEDINGS:

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of May 16, 2005 the estimated prosecution costs in this matter are approximately \$2,021.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment.

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.

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 June 22, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed June 22, 2005**

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

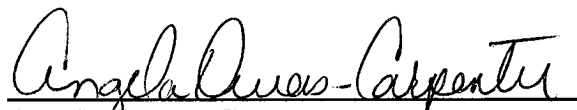
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOHN W NELSON ESQ
WEISENBERG & NELSON
12399 LEWIS STREET #103
GARDEN GROVE CA 92840-4643**

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

WILLIAM STRALKA ESQ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 22, 2005**.



Angela Owens-Carpenter
Case Administrator
State Bar Court