

**State Bar Court of California
Hearing Department
Los Angeles**

<p>Counsel For The State Bar</p> <p>Patsy J. Cobb Deputy Chief Trial Counsel 1149 S. Hill Street, 10th Fl. Los Angeles, CA 90015-2299 Telephone: (213) 765 1469</p>	<p>Case Number (s) 05-O-01147</p>	<p>(for Court's use)</p> <p align="center">FILED</p> <p align="center">JAN 31 2007 <i>HOC</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Bar # 107793</p> <p>James R. DiFrank 12227 Philadelphia Street Whittier, CA 90601-3931 Telephone: (562) 789-7734</p>	<p align="center">PUBLIC MATTER</p>	
<p>Bar # 105591</p>		
<p>In the Matter Of: Thomas W. Gillen</p> <p>Bar # 152569</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p>[] PREVIOUS STIPULATION REJECTED</p>	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 6, 1991**.
- (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 **13** 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: 2008 & 2009 (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 **00-O-14155; 00-O-14472 (S120268)**
- (b) Date prior discipline effective **02/22/04**
- (c) Rules of Professional Conduct/ State Bar Act violations: **Rule 4-100 & 3-110**
- (d) Degree of prior discipline **one year stayed suspension; two years probation**
- (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.
- (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.

- OMJ
PCC
- (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.
 - (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: See Other Conditions Negotiated by the parties.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **two (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 **two (2) 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 **thirty (30) 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:
- | | |
|---|---|
| <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:

- (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:**
Respondent shall not permit Kenneth E. Hagen or any other non-attorney employee, agent or independent contractor to use the title "Legal Advisor." Respondent shall require Kenneth E. Hagen to use the title "Legal Assistant." Respondent shall require any other non-attorney employee, agent or independent contractor to use a title that clearly identifies the person as a non-attorney.

Respondent agrees that he will not permit his non-attorney employees, agents or independent contractors to engage in the following conduct proscribed by Rules of Professional Conduct, Rule 1-311:

- (1) Render legal consultation or advice to clients;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client's funds; or
- (6) Engage in activities which constitute the practice of law.

Respondent agrees that in each quarterly report he will certify that he has not permitted any non-attorney employee, agent or independent contractor to engage in the above-listed conduct proscribed by Rules of Professional Conduct, rule 1-311.

Respondent has implemented the following procedures: no correspondence shall be sent out without review and approval by Respondent. Any correspondence prepared by Kenneth E. Hagen or any other non-attorney employee, agent or independent contractor shall state that it written on behalf of Respondent or at Respondent's direction.

In the Matter of
Thomas W. Gillen

Case number(s):
05-O-01147

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

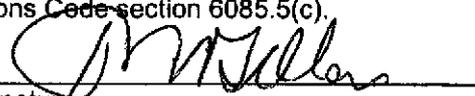
- (a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:
 - (5) a statement that Respondent either
 - (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules 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 acknowledgement 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

16 January 07

Signature



Print Name

Thomas W. Gillen

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: THOMAS W. GILLEN

CASE NUMBER(S): 05-O-01147

BACKGROUND FACTS

1. Respondent became an attorney in California at the age of 63, and is currently 77 years of age.
2. Kenneth E. Hagen ("Hagen"), was a member of the State Bar of California from June 19, 1956 until he tendered his resignation from the practice of law with disciplinary charges pending. The California Supreme Court accepted Hagen's resignation from the practice of law, effective June 23, 1994. Hagen has not sought readmission to the practice of law in California.
3. In or about September 2003, Hagen began to work for Respondent in his law office. At all time relevant, Hagen was not entitled to practice law. Respondent was at all times relevant aware of Hagen's resignation and consequent ineligibility to practice law.

The Gruenewald Matter

4. Nancy Gruenewald, John L. Osborne, Gary A. Osborne, and Frances Joyce Hartman are adult siblings. Their father, H.S. Osborne ("Osborne"), created a trust, the H.S. Osborne Trust ("Osborne Trust"), for the benefit of his four children.
5. In addition, Osborne was involved in several business ventures, including Osborne Tank & Supply, Inc. and Cardono Square Ltd.
6. In or about July 2000, Osborne passed away, leaving his four children as heirs. After Osborne's death, one of the siblings, Nancy Gruenewald, disagreed with the division of the assets and interest in the trust and businesses. As a result, a number of lawsuits were filed relating to the assets and trust of the deceased father.
7. In or about April 2004, Nancy Gruenewald ("Gruenewald") retained Respondent to represent her and her son, Layne Gruenewald, in the following matters, filed in the Superior Court, San Bernardino County: *Nancy Gruenewald v. H.S. Osborne Trust, et al.*, Case No. SCVSS 113278; *Nancy Gruenewald and Layne Gruenewald v. Melodie*

Scott, Trustee of the H.S. Osborne Trust, et al., Case No VCVVS 034073; and *In the Matter of H.S. Osborne Trust, et al.*, Case No. VPRVS 01510 (collectively referred to as "the Litigation").

8. On April 12, 2004, Hagen wrote to Louis Stearns, the attorney representing John L. Osborne, Joyce Hartman and Osborne Tank & Supply, Inc. to notify him of the representation of the Gruenewalds. The letter was written on Respondent's law office letterhead, and was signed by Hagen. The letter did not identify Hagen as a non-attorney or give any indication of Hagen's position in Respondent's office or Hagen's role in the Litigation. In the letter, Hagen used "we" in reference to the law office.
9. Thereafter, Hagen wrote letters to Stearns and other counsel in the Litigation. All of the letters were written on Respondent's law office letterhead, and were signed by Hagen. None of the letters written by Hagen identified Hagen as a non-attorney or identified Hagen's position in Respondent's office or Hagen's role in the Litigation.
10. From the context of the letters written by Hagen, it appeared that Hagen is an attorney and in charge of the Litigation. The subject letters included legal analysis and opinions and were replete with decisions about the Litigation.
11. For example, on May 21, 2004, Hagen wrote a letter to Stearns in response to Stearns' request for an extension of time to file an answer in the *Gruenewald v. H.S. Osborne Trust* matter. Hagen advised Stearns that pursuant to section 415.20 of the Code of Civil Procedure and section 68616(b) of the Government Code, the time to file a response could be extended to July 7, 2004.
12. On June 14, 2004, Hagen wrote a letter to Stearns regarding the scheduled depositions of the Gruenewalds. In the letter, Hagen used "we" in reference to the law office, and referred to the Gruenewalds as "our clients." Hagen noted an objection to the depositions of the Gruenewalds until all parties had appeared in the Litigation.
13. On August 26, 2004, Hagen wrote a letter to Angelo Cardono, requesting an accounting of disbursements made by Cardono Square to the Osborne Trust after July 1, 2000. Hagen indicated in the letter that he was attaching a copy of the caption page of the complaint as evidence of "... our role as attorneys for Nancy Gruenewald."
14. On November 2, 2004, in the *Gruenewald v. Scott, et al* action, Hagen wrote a letter to Stearns, which he sent by facsimile, indicating, among other things, that Stearns had acted without the authority of Osborne Tank & Supply, Inc. in filing an answer to an amended complaint and a cross-complaint, and in serving discovery on the Gruenewalds. Hagen

- directed Stearns to advise the court that Stearns did not oppose the motion to strike the subject pleadings and to issue a letter withdrawing the discovery he served on the Gruenewalds.
15. There was no indication in any of the above-described letters written by Hagen that the legal analysis and opinions and decisions about the Litigation came from Respondent.
 16. David Horspool represented the successor trustee of the Osborne Trust, Melodie Z. Scott, in the *Gruenewald v. Scott, et.al* action.
 17. On or about August 23, 2004, Hagen appeared with Gruenewald at Horspool's office to meet with Horspool's client, Melodie Scott, regarding an objection filed by Gruenewald to the financial accounting of Scott. Hagen and Gruenewald were accompanied by a person who purported to be a forensic accountant, but who was not an attorney. Respondent did not attend the meeting.
 18. At the time of the subject meeting, and subsequent thereto, Horspool was under the impression that Hagen was an attorney for the Gruenewalds.
 19. Natalia Greene, the attorney representing Suzanne Graham, CPA, and Swanson, Graham, Russo & Thomas Accountants, Inc. in the *Gruenewald v. Scott, et.al* action, was also under the impression that Hagen was an attorney representing the Gruenewalds.
 20. On May 27, 2005, Greene sent a fax to Respondent and Hagen, wherein she addressed both Respondent and Hagen as counsel.
 21. In response to the fax, on May 27, 2005, Respondent wrote a letter to Greene and stated, "[H]agen is a retired attorney working as a consultant to me, and performing briefing and discovery tasks. His comments to you represented my preliminary views." Respondent's representation to Greene that Hagen is a retired attorney was false and Respondent knew it was false when he made it.

CONCLUSIONS OF LAW

Pursuant to the Nolo Plea entered herein, Respondent acknowledges that he wilfully committed the following violations:

1. Section 6133 of the Business and Professions Code requires any attorney or law firm employing an attorney who has resigned, or who has been suspended or disbarred, to not permit the resigned or disciplined attorney to practice law or to advertise or hold himself or herself out as practicing law, and to supervise the resigned or disciplined

attorney in any assigned duties.

By failing to prevent Hagen, a resigned attorney, from signing letters that did not clearly indicate Hagen was other than an attorney eligible to practice law, and failing to supervise Hagen's work on behalf of the Gruenewalds, including the writing of letters to opposing counsel, Respondent wilfully violated section 6133.

2. By advising attorney Natalia Greene that Hagen is a retired attorney, when Hagen, in fact, resigned from the State Bar and, therefore, is not entitled to practice law, Respondent misrepresented Hagen's status, in wilful violation of Business and Professions Code section 6106.
3. By not being present at the meeting held at Horspool's office regarding the accounting filed by the trustee, and permitting Hagen to represent Gruenewald at that meeting, Respondent wilfully permitted Hagen to perform acts prohibited by disbarred, suspended and resigned attorneys, in wilful violation of the Rules of Professional Conduct, rule 1-311(B)(4).

PENDING PROCEEDINGS

The disclosure date referred to on page 1 paragraph 7 was January 9, 2007.

SUPPORTING AUTHORITY

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct, the primary purposes of disciplinary proceedings and imposing sanctions for professional misconduct are "the protection of the public, the courts and legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." The discipline recommendation herein complies with the purposes set forth in Standard 1.3.

Standard 1.6 (a) provides that the appropriate sanction for an act of professional misconduct shall be the sanction set forth in the standards for the particular misconduct found. In addition, if two or more acts of misconduct are found, and different sanctions are prescribed by the standards, the sanction imposed shall be the most severe of the subject sanctions.

Pursuant to Standard 1.7, the attorney should receive greater discipline than that imposed in his prior proceeding, unless the prior is remote in time and the offense was so minimal in severity that imposing greater discipline would be manifestly unjust.

Pursuant to Standard 2.3, culpability of a member of an act of moral turpitude, fraud or intentional dishonesty shall result in actual suspension or disbarment depending upon the harm, the magnitude of the act, and the degree to which it relates to the attorney's practice of law. In this instance, Respondent committed an act of moral turpitude, in violation of section 6106.

Pursuant to Standard 2.10, culpability of a member of violation of sections or rules not specified in the standards, shall result in reproof or suspension, depending on the gravity of the offense or the harm, if any, to the victim. In this instance, Respondent violated rule 1-311 and section 6133.

Accordingly, the governing standard is standard 2.3.

The Supreme Court gives the Standards "great weight" and will reject a recommendation consistent with the Standards only where the Court entertains "grave doubts" as to its propriety. (*In re Naney* (1990) 51 Cal. 3d 186, 190; see also *In re Silverton* (2005) 36 Cal. 4th 81, 91-92.) Further, although the Standards are not mandatory, it is well established that the Standards will be deviated from only when there is compelling, well-defined reason to do so. (See *Aronin v. State Bar* (1990) 52 Cal.3d 276 291; see also *Bates v. State Bar* (1990) 52 Cal.3d. 1056, 1060, fn. 2.)

There is no compelling reason to deviate from the standards. Pursuant to standard 1.6, the sanction here should be greater than the sanction in Respondent's prior, which was a stayed suspension and probation. Standard 2.3 prescribes the most severe sanction, which is actual suspension or disbarment as a result of the misrepresentation.

Considering the totality of the misconduct herein, the mitigating and aggravating factors, including Respondent's prior record of discipline, coupled with the fact that the misconduct in his prior also involved a failure to supervise his staff, thirty days actual suspension is appropriate in this instance.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of January 9, 2007, the estimated prosecution costs in this matter are approximately \$2,003.55. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from this stipulation be granted, the costs in this matter may increase due to the costs of further proceedings.

12

Page #

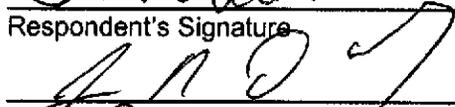
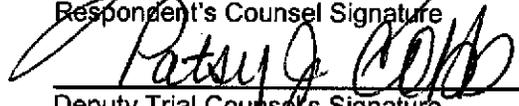
Attachment Page 5

(Do not write above this line.)

In the Matter of Thomas W. Gillen	Case number(s): 05-O-01147
--------------------------------------	-------------------------------

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.

<u>16 Jan 2007</u> Date	 Respondent's Signature	Thomas W. Gillen Print Name
<u>1/16/2007</u> Date	 Respondent's Counsel Signature	James R. DiFrank Print Name
<u>1/23/2007</u> Date	 Deputy Trial Counsel's Signature	Patsy J. Cobb Print Name

(Do not write above this line.)

In the Matter Of THOMAS W. GILLEN	Case Number(s): 05-O-01147
---	--------------------------------------

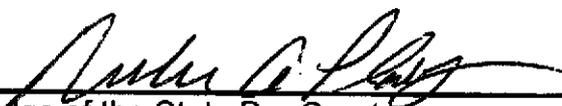
ORDER

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See 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.)**

01-31-07
Date


Judge of the State Bar Court

RICHARD A. PLATEL

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

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 January 31, 2007, I deposited a true copy of the following document(s):

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

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

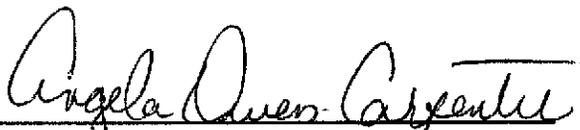
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JAMES R DIFRANK
12227 PHILADELPHIA STREET
WHITTIER CA 90601 3931**

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

PATSY COBB, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 31, 2007**.


Angela Owens-Carpenter
Case Administrator
State Bar Court