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

<p>Counsel For The State Bar</p> <p>Maria J. Oropeza Office of the Chief Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538 -2569</p> <p>Bar # 182660</p>	<p>Case Number (s)</p> <p>05-O-03912 05-O-03914 06-O-10445 07-O-10836</p>	<p>(for Court's use)</p> <p align="center">PUBLIC MATTER</p> <p align="center">FILED <i>LD</i></p> <p align="center">MAY 04 2010</p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>David McMonigle Long and Levitt 465 California Street, Suite 500 San Francisco, CA 94104</p> <p>Bar # 258980</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><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Arlene Kock</p> <p>Bar # 80276</p> <p>A Member of the State Bar of California (Respondent)</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 23, 1978.
- (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 17 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.
- (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

- (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
- (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. Respondent spoke to several experts and relied on their assessment of her fee agreements, with respect to the characterization of a "true retainer."
- (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

Respondent has made restitution to all the clients

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of one year.

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 one year, 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 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

No MPRE recommended. Reason:

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- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 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 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:** This stipulation will not be considered a prior record of discipline with respect to any pending cases that occurred during the same time period as the cases set forth in this stipulation. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 – aggravating effect of prior discipline is diminished when misconduct in current case occurred during same period as misconduct which resulted in prior discipline – not “true prior” because it is not indicative of the respondent’s inability to conform to ethical norms.)

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Arlene Kock, Bar No. 80276

CASE NUMBER(S): ET AL. 05-O-03912; 05-O-03914; 06-O-10445; 07-O-10836

The parties waive any variance between the Notice of Disciplinary Charges filed on, December 13, 2006 and September 20, 2008 and the statement of facts and conclusions of law contained in this stipulation of facts. As set forth in the State Bar's Pre-trial statement filed on September 11, 2009, case no. 06-O-13209 is dismissed.

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.

Statement of Facts: Count One (Case Nos .05-O-03912; 05-O-03914; 06-O-10445; 07-O-10836)

1. Arlene Kock (respondent) was admitted to the practice of law in the State of California on June 23, 1978, was a member at all times pertinent to these charges and is currently a member of the State Bar of California.
2. Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2) by failing to refund promptly any part of a fee paid in advance that has not been earned as follows:
Khan Matter (Case No. 05-O-03912)
3. On December 5, 2003, respondent agreed to represent Salma Khan in her marital dissolution matter.
4. On December 5, 2003, respondent and Khan executed a fee agreement requiring a non-refundable/ true retainer payment of \$4,500.00 for the legal services associated with the dissolution.
5. The fee agreement contained the following statements: "I understand by signing this agreement that the retainer paid to the Offices of ADK is a non-refundable retainer that is earned upon receipt by the Law Offices of ADK. I understand that this retainer and any subsequent retainer, is considered a true retainer fee, which is paid solely for the purpose of insuring the availability of the Law Offices of ADK for my particular legal matter. I fully understand that the attorney earns this type of retainer when it is paid by the client, regardless of whether the attorney actually performs any services for the client." "Based upon paragraph A above, ADK will charge you \$240.00 per hour for her legal services on this matter." "Both ADK and the associates hourly charge will be applied against your non-refundable retainer." "When this initial non-refundable retainer is exhausted, you agree to pay an additional non-refundable retainer." "I agree upon receipt of the attorneys' billing, I shall carefully and thoroughly review it. If after discussing the matter with the attorney's offices, any item charge or amount still appears to be incorrect, doubtful or is otherwise not entirely satisfactory, I agree to notify the attorney in writing thirty (30) days of the receipt of the billing. I understand and agree that unless I notify attorney, the items, charges or amount will conclusively presumed to be correct. This means that if ever there is a dispute about the billing unless I have

written to the attorney within thirty (30) days of the date of the billing, any arbitrator pane, (sic), jury or court will be required to consider the billing correct.”

6. On December 5, 2003, respondent requested and received a payment of \$4,500.00 from Khan.
7. On February 15, 2004 respondent sent a letter to Khan stating the following: “As you know, you have paid a first stage non-refundable retainer in the amount of \$4,500.00 to be applied towards your fees and costs.”
8. On February 5, 2004, respondent issued a billing statement to Khan billing against the \$4,500.00, and indicating a credit balance of \$2,181.75.
9. On March 10, 2004, respondent issued a billing statement to Khan billing against the \$4,500.00 and indicating a credit balance of \$486.45.
10. On March 11, 2004, respondent sent Khan a letter and requested an additional retainer in the sum of \$4,500.00.
11. On March 19, 2004, issued a billing statement to Khan billing against the \$4,500.00 and indicating a credit balance of \$174.45.
12. On March 19, 2004, respondent sent Khan a letter and requested that Khan pay half of the additional retainer requested in the March 11, 2004 letter.
13. On March 25, 2004, respondent sent a letter to Khan indicating that since the additional payment had not been received, that it appeared that Khan no longer desired respondent’s services and if that was the case to execute the substitution of attorney form. If Khan did desire respondent’s representation she needed to contact the billing administrator and make payment arrangements.
14. On April 1, 2004, the executed substitution of attorney was filed in the dissolution matter, substituting Khan as in pro-per.
15. Respondent did not provide Khan with a refund of \$174.45 after she was removed as Khan’s attorney, which was duly owed to Khan as the remainder of respondent’s advance fees, which had not been earned.
16. On May 15, 2005, respondent sent a letter to Khan, addressing the fee dispute between the two of them. Respondent specifically referred Khan to the portion of the fee agreement which stated the following: “I agree upon receipt of the attorneys’ billing, I shall carefully and thoroughly review it. If after discussing the matter with the attorney’s offices, any item charge or amount still appears to be incorrect, doubtful or is otherwise not entirely satisfactory, I agree to notify the attorney in writing thirty (30) days of the receipt of the billing. I understand and agree that unless I notify attorney, the items, charges or amount will conclusively presumed to be correct. This means that if ever there is a dispute about the billing unless I have written to the attorney within thirty (30) days of the date of the billing, any arbitrator pane, (sic), jury or court will be required to consider the billing correct.” Respondent also referred Khan to the section of the fee agreement that stated the following: “You acknowledge that ADK has made no guarantee about the total amount of the charges, not about the length of time to complete your matter, nor about the results.”
17. On March 7, 2006, respondent issued a billing statement to Khan, indicating a credit balance of \$114.95.
18. Respondent was required to refund to Khan the sum of \$174.45 as unearned fees. On January 21, 2010, respondent refunded the sum of \$147.00 to Ms. Khan.

Orosco Matter (Case No. 05-O-03914)

19. On December 21 2004, respondent agreed to represent Ruben Orosco in his marital dissolution matter.
20. On December 21, 2004, respondent and Orosco executed a fee agreement requiring a non-refundable/ true retainer payment of \$4,500.00 for the legal services associated with the dissolution.
21. The fee agreement contained the following statements: "I understand, by signing this agreement that the retainer paid to the Offices of ADK is non-refundable retainer that is earned upon receipt by the Law Offices of ADK." "I understand that this retainer and any subsequent retainer, is considered a true retainer fee, which is paid solely for the purpose of insuring the availability of the Law Offices of ADK for my particular legal matter. By entering into this Agreement ADK is assuring client that her offices shall set aside sufficient time to devote to this legal matter. Client fully understands that the attorney earns this type of retainer when it is paid by the client, regardless of whether the attorney actually performs any services for the client." "Client and Attorney understand that this non-refundable retainer will be applied towards the time period and services rendered that are required to represent client on this legal matter. Said earned retainer shall cover a period of time not to exceed the billing against and the exhaustion of the fees and costs tendered by Client to ADK. "Based upon paragraph A above, ADK will charge you \$240.00 per hour for her legal services on this matter." "Both ADK and the associates hourly charge will be applied against your non-refundable retainer." "When this initial non-refundable retainer is exhausted, you agree to pay an additional non-refundable retainer." "I agree upon receipt of the attorneys' billing, I shall carefully and thoroughly review it. If after discussing the matter with the attorney's offices, any item charge or amount still appears to be incorrect, doubtful or is otherwise not entirely satisfactory, I agree to notify the attorney in writing thirty (30) days of the receipt of the billing. I understand and agree that unless I notify attorney, the items, charges or amount will conclusively presumed to be correct. This means that if ever there is a dispute about the billing unless I have written to the attorney within thirty (30) days of the date of the billing, any arbitrator panel, jury or court will be required to consider the billing correct."
22. On December 21, 2004, respondent requested and received a payment of \$4,500.00 from Orosco.
23. On February 5, 2005 respondent sent a letter to Orosco stating the following: "As you know, you have paid a non-refundable retainer in the amount of \$4,500.00 to be applied towards your fees and costs."
24. On February 17, 2005, respondent received from Orosco's wife the finalized marital settlement agreement fully executed and ready to be filed with the court.
25. In March 2005, Orosco placed a call to respondent's office and requested a refund of the unearned fees. Respondent's paralegal informed Orosco that he would have to take the matter up with respondent.
26. On March 29, 2005, Orosco sent a letter to respondent requesting a refund of the unearned fees in his matter. Respondent received the letter and did not respond to the request of unearned fees
27. On June 13, 2005, respondent issued a billing statement to Orosco billing against the \$4,500.00, and indicating a credit balance of \$3,070.70.
28. As of June 13, 2005, respondent was required to refund to Orosco the sum of \$3,070.70 as unearned fees.
29. On July 5, 2005, respondent filed a notice of withdrawal of attorney of record in Orosco's matter.

30. On September 14, 2005, Orosco sent respondent a letter terminating her as his attorney and requested the unearned fees. He gave respondent 10 days to comply with his request. Respondent received Orosco's letter but did not respond to the request for the unearned fees.

31. On September 26, 2005, Orosco sent respondent a letter and once again requested the refund of the unearned fees. He gave respondent 10 days to comply with his request. Respondent received Orosco's letter but did not respond to the request for the unearned fees.

32. On March 7, 2006 respondent issued a billing statement to Orosco billing against the \$4,500.00, and indicating a credit balance of \$2,734.70.

33. On June 22, 2006, after attending a fee arbitration, respondent refunded to Orosco the sum of \$2,200.00 in unearned fees.

Rourke Matter (Case No. 06-O-10445)

34. On August 19, 2005, respondent agreed to represent Darlene Rourke in her marital dissolution matter.

35. On August 19, 2005, respondent and Rourke executed a fee agreement requiring a non-refundable/ true retainer payment of \$5,000.00 for the legal services associated with the dissolution.

36. The fee agreement contained the following statements: "I understand, by signing this agreement that the retainer paid to Offices of ADK is a non-refundable retainer that is earned upon receipt by the Law Offices of ADK." "I understand that this retainer and any subsequent retainer, is considered a true retainer fee, which is paid solely for the purpose of insuring the availability of the Law Offices of ADK for my particular legal matter. By entering into this Agreement ADK is assuring client that her offices shall set aside sufficient time to devote to this legal matter. Client fully understands that the attorney earns this type of retainer when it is paid by the client, regardless of whether the attorney actually performs any services for the client." "Client and Attorney understand that this non-refundable retainer will be applied towards the time period and services rendered that are required to represent client on this legal matter. Said earned retainer shall cover a period of time not to exceed the billing against and the exhaustion of the fees and costs tendered by Client to ADK. "Based upon paragraph A above, ADK will charge you \$240.00 per hour for her legal services on this matter." "Both ADK and the associates hourly charge will be applied against your non-refundable retainer." "When this initial non-refundable retainer is exhausted, you agree to pay an additional non-refundable retainer." "I agree upon receipt of the attorneys' billing, I shall carefully and thoroughly review it. If after discussing the matter with the attorney's offices, any item charge or amount still appears to be incorrect, doubtful or is otherwise not entirely satisfactory, I agree to notify the attorney in writing thirty (30) days of the receipt of the billing. I understand and agree that unless I notify attorney, the items, charges or amount will conclusively presumed to be correct. This means that if ever there is a dispute about the billing unless I have written to the attorney within thirty (30) days of the date of the billing, any arbitrator panel, jury or court will be required to consider the billing correct."

37. On August 22, 2005, respondent requested and received a payment of \$5,000.00 from Rourke.

38. On November 8, 2005, respondent issued a billing statement to Rourke billing against the \$5,000.00, and indicating a credit balance of \$3,161.90.

39. On November 18, 2005, Rourke sent respondent's bookkeeper/staff a letter questioning the sum billed for services rendered, given that most of the time she spoke with the paralegal and not with respondent.

40. On December 10, 2005, Rourke terminated respondent as her attorney by fax and requested the refund of the retainer. Rourke delineated the issues she had with respondent's office and the staff and stated that she wanted a full accounting of any charges charged against the retainer. Respondent received the fax from Rourke and did not respond the request for a refund.

41. As of December 10, 2005, Rourke had a credit balance of \$2,825.90.

42. As of December 10, 2005, respondent was required to refund to Rourke the sum of \$2,825.90 as unearned fees.

43. Thereafter respondent continued to bill Rourke for fees after having been terminated on December 10, 2005. Respondent billed Rourke for services she performed from December 29, 2005 through January 5, 2006.

44. On June 22, 2006, respondent issued a billing statement to Rourke, billing against the \$5,000.00, indicating that Rourke had a credit balance of \$1,740.40.

45. On September 22, 2006, respondent issued a billing statement to Rourke, billing against the \$5,000.00 and indicating that Rourke had a credit balance of \$1,740.40.

46. Between December 10, 2005 and August 2007, respondent did not contact Rourke to discuss the refund of the unearned fees.

47. In August 2007, Rourke sent respondent a letter requesting a refund of her unearned fees. Respondent received the letter.

48. In August 2007, respondent refunded to Rourke the sum of \$1,740.40.

Luis Matter (Case No. 07-O-10836)

49. On April 26, 2005, respondent agreed to represent Stacy Luis in her marital dissolution matter.

50. On April 26, 2005, respondent and Luis executed a fee agreement requiring a non-refundable/true retainer payment of \$5,000.00 for the legal services associated with the dissolution.

51. The fee agreement contained the following statements: "I understand, by signing this agreement that the retainer paid to Offices of ADK is a non-refundable retainer that is earned upon receipt by the Law Offices of ADK." "I understand that this retainer and any subsequent retainer, is considered a true retainer fee, which is paid solely for the purpose of insuring the availability of the Law Offices of ADK for my particular legal matter. By entering into this Agreement ADK is assuring client that her offices shall set aside sufficient time to devote to this legal matter. Client fully understands that the attorney earns this type of retainer when it is paid by the client, regardless of whether the attorney actually performs any services for the client." "Client and Attorney understand that this non-refundable retainer will be applied towards the time period and services rendered that are required to represent client on this legal matter. Said earned retainer shall cover a period of time not to exceed the billing against and the exhaustion of the fees and costs tendered by Client to ADK. "Based upon paragraph A above, ADK will charge you \$240.00 per hour for her legal services on this matter." "Both ADK and the associates hourly charge will be applied against your non-refundable retainer." "When this initial non-refundable retainer is exhausted, you agree to pay an additional non-refundable retainer." "I agree upon receipt of the attorneys' billing, I shall carefully and thoroughly review it. If after discussing the matter with the attorney's offices, any item charge or amount still appears to be incorrect, doubtful or is otherwise not entirely satisfactory, I agree to notify the attorney in writing thirty (30) days of the receipt of the billing. I understand and agree that unless I notify attorney, the items, charges or amount will conclusively presumed to be correct. This means that if ever there is a dispute about the billing unless I have written to the attorney within

thirty (30) days of the date of the billing, any arbitrator panel, jury or court will be required to consider the billing correct.”

52. On April 26, 2005, respondent requested and received a payment of \$5,000.00 from Luis.

53. On May 5, 2005, respondent sent a letter to Luis stating the following: “As you know, you have paid a non-refundable retainer in the amount of \$5,000.00 to be applied towards your fees and costs.”

54. In May 2006, Luis contacted respondent’s office by phone and advised that she and her husband had reconciled and that she no longer needed respondent’s services.

55. As of May 2006, Luis had a credit balance of \$4,283.00.00

56. As of May 2006, respondent was required to refund to Luis the sum of \$4,283.00 as unearned fees.

57. Thereafter respondent continued to bill Luis for fees after having been terminated in May 2006. Respondent billed Luis for services she performed from October 2006 through December 2006.

58. On June 6, 2006, respondent issued a billing statement to Luis billing against the \$5,000.00, and indicating a credit balance of \$4,283.00.

59. On September 22, 2006, respondent issued a billing statement to Luis, billing against the \$5,000.00 and indicating a credit balance of \$4,283.00.

60. On October 26, 2006, respondent issued a billing statement to Luis, billing against the \$5,000.00 and indicating a credit balance of \$4,116.50.

61. On December 29, 2006, respondent issued a billing statement to Luis, billing against the \$5,000.00 and indicating a credit balance of \$3,278.50.

62. Between May 2006 and January 2007, respondent did not contact Luis to discuss the refund of the unearned fees.

63. On January 10, 2007, Luis sent respondent a letter requesting the refund of the retainer’s fee paid in April 2005. She gave respondent until January 30, 2007 to respond to the request for the client file and refund of fees paid.

64. On January 24, 2007, respondent issued a billing statement to Luis, billing against the \$5,000.00 and indicating a credit balance of \$2,888.50.

65. On January 29, 2007, respondent responded to Luis’ January 10th letter requesting a refund and informed her that she would refund a portion of the fees paid.

66. On January 29, 2007, respondent issued a billing statement to Luis, billing against the \$5,000.00 and indicating a credit balance of \$3,278.50.

67. On February 26, 2007 Luis sent a fax to respondent’s office staff person Michelle, indicating that there were some charges that were duplicates on the bill issued on January 29, 2007.

68. On February 27, 2007, respondent issued a billing statement to Luis, billing against the \$5,000.00 and indicating a credit balance of \$2,399.00.

69. On February 28, 2007, respondent sent Luis a letter outlining the terms and conditions of the negotiated refund in the sum of \$2,578.00. Respondent indicated that she was waiving charges on the account for any work performed after January 18, 2007, and had provided a credit to the account due to changes regarding the hourly rates.

70. On February 28, 2007, respondent issued a billing statement to Luis, billing against the \$5,000.00 and indicating a credit balance of \$2,578.00.

71. On February 28, 2007, after negotiating the refund amount of \$3,278.50, Luis executed the refund agreement and subsequently received a check for the sum of \$3,278.50.

72. On May 29, 2007, respondent issued a billing statement to Luis, billing against the \$5,000.00 and indicating a credit balance of \$2,578.00.

Conclusions of Law: Count One (Case Nos .05-O-03912; 05-O-03914; 06-O-10445; 07-O-10836)

73. By failing to promptly refund to Khan the sum of \$174.45, respondent failed to promptly refund fees paid in advance that she had not earned, a wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

74. By failing to promptly refund to Orosco the sum of \$3,070.70 in June 2005, and waiting until June 2006 to refund the sum of \$2,200.00 respondent failed to promptly refund fees paid in advance that she had not earned, a wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

75. By failing to refund to Rourke the sum of \$2,825.40 in December 2005, and waiting until August 2007 to refund the sum of \$1,740.40 to Rourke, respondent failed to promptly refund fees paid in advance that she had not earned a wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

76. By failing to promptly refund the sum of \$4,283.00 in May 2006 to Luis and waiting until February 2007 to refund the sum of \$3,278.50 to Luis respondent failed to promptly refund fees paid in advance that she had not earned, a wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Statement of Facts: Count Two (Case No. 05-O-03914)

77. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3) by failing to render appropriate accounts to a client regarding all funds and other properties of the client coming into respondent's possession as follows:

78. On December 21, 2004, respondent received the sum of \$4,500.00 from Orosco in advance fees.

79. On February 17, 2005, Orosco requested that respondent provide him with a final accounting. Orosco made the request to respondent's office staff.

80. In April 2005, Orosco requested that respondent provide him with a final accounting. Orosco was told that the final accounting had been mailed to him. Orosco did not receive an accounting in April 2005.

81. On May 17, 2005, Orosco requested that respondent provide him with a final accounting. Orosco was told that the final accounting had been mailed to him. Orosco did not receive an accounting in May 2005.

82. On June 9, 2005, Orosco requested that respondent provide him with a final accounting. Orosco was told that the final accounting had been mailed. Orosco requested that the accounting be faxed to him.

83. On June 13, 2005, respondent issued a billing statement to Orosco billing against the \$4,500.00, and indicating a credit balance of \$3,070.70.

Conclusions of Law: Count Two (Case No. 05-O-03914)

84. By waiting until June 13, 2005 to provide Orosco with an accounting, respondent failed to render appropriate accounts to a client regarding all funds and other properties of the client coming into respondent's possession, a wilful violation of rule 4-100(B)(3).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was January 7, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 7, 2010, the prosecution costs in this matter are \$8,881.75. 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.

Standard 2.2(b) states "culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, none of which result in a wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances."

Standard 2.10 states in pertinent part "Culpability of a member of a violation of any provision of the Business & Professions Code not specified in these standards or a of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim with due regard to the purposes of imposing discipline set forth in standard 1.3."

Standard 1.6(a) states in pertinent part "the appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged in a single disciplinary proceeding and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

In Re Ronald Robert Silvertan (2005) Supreme Court Order S123042, the Supreme Court stated that the standards are entitled to great weight and that the State Bar Court should follow the guidance of the Standards for Attorney Sanctions whenever possible (*Supra.* Slip opinion pg. 14).

Case Law on violations of Rule 3-700(D)(2)

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, the Review Department stated that a retainer agreement's characterization of a fee as a "non-refundable retaining fee" is not determinative in ascertaining whether the fee was a true retainer and whether respondent's failure to refund it promptly upon the termination of employment violated rule 3-700(D)(2). A true retainer is paid to secure the availability of an attorney over a given period of time and is earned when paid regardless of whether the attorney actually performs services for the clients. Where the fee was intended to cover the initial ten hours for respondent's work, the clients understood the fee to be an advanced payment for services, the bills sent to the client showed the fee as a credit for services to be rendered, the retainer agreement did not specify a period of time for which the respondent was to be available to the client and the record did not show that respondent set aside a particular period of time to devote to the client's matter, the fee was not a true retainer and respondent had to comply with the requirement of rule

3-700(D)(2) to refund any unearned part of an advanced fee promptly upon termination. The Review Department imposed a 90 day-actual suspension.

In the Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752 the Review Department defined a true retainer as a fee which is paid solely to ensure the attorney's availability over a given period of time, and is earned when paid since the attorney is entitled to it regardless of whether any actual services are performed. Where respondent did not devote certain blocks of time to certain clients' claims or turn away other business to proceed with their matters and it was evident that clients were paying for more than the respondent's availability, respondent was not excused from accounting for an advanced fee on the ground that it was a retainer earned on receipt. The Review Department imposed a 60 day actual suspension.

Case Law on violations of Rule 4-100(b)(3)

Rule 4-100(B)(3) does not require a request from a client, the accounting is due at any time that the attorney receives funds for the benefit of the client. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, at 952, the Review Department stated: "[T]he obligation to 'render appropriate accounts to the client' found in rule 4-100(B)(3) does not require as a predicate that the client demand such an accounting. We therefore find respondent wilfully violated rule 4-100(B)(3) because he failed to render an accounting to Le or Ly."

Rule 4-100 contains no client request prerequisite for the duty to render appropriate accounts to a client. Nor did former rule 8-101(B)(3), rule 4-100(B)(3)'s predecessor rule. Nor has any published case which has discussed the duty set forth such a requirement. (See *McCray v. State Bar* (1985) 38 Cal.3d 257; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179; *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9; *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838; *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788; *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468; *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387; *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301; and *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59, 68 [no accounting; client asked for refund of unearned advanced fees].

Nor have published cases finding a violation of the duty which mention a request for an accounting stated that such a request was a requirement for finding such a violation. (See *Brody v. State Bar* (1974) 11 Cal.3d 347, 350; *Monroe v. State Bar* (1961) 55 Cal.2d 145, 150; *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547; 560; *In the Matter of Brimberry, supra*, 402 [delay of six months in providing an accounting]; *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758 [delay of at least six months and perhaps longer in providing an accounting]; *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 598 [no accounting]; *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 493 [no accounting]; *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96, 104 [delay of three years in providing an accounting]; *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 8 [no accounting]; and *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 659-660, 662 [no accounting]; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576; *In the Matter of Johnson* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 179 [no accounting].

AGGRAVATING CIRCUMSTANCES.

1. Respondent's misconduct evidences multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES.

1. Respondent has no prior record of discipline and was admitted into practice in 1978.
2. Respondent has made restitution to all of the clients, either through fee arbitration or by negotiation between the former client and respondent.
3. Respondent acted in good faith. Respondent spoke to several experts and relied on their assessment of her fee agreements, with respect to the characterization of a "true retainer."

STATE BAR ETHICS SCHOOL.

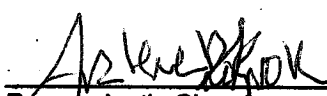

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

(Do not write above this line.)

In the Matter of Arlene Kock, Bar No. 80276	Case number(s): 05-O-03912 05-O-03914 06-O-10445 07-O-10836
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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.

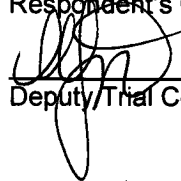
<u>4/12/10</u> Date	 Respondent's Signature	<u>Arlene Kock</u> Print Name
<u>4/21/10</u> Date	 Respondent's Counsel Signature	<u>David McMonigle</u> Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	<u>Maria J. Oropeza</u> Print Name

(Do not write above this line.)

In the Matter of Arlene Kock, Bar No. 80276	Case number(s): 05-O-03912 05-O-03914 06-O-10445 07-O-10836
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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.

Date	Respondent's Signature	Arlene Kock Print Name
Date	Respondent's Counsel Signature	David McMonigle Print Name
Date 4/22/10	 Deputy/Trial Counsel's Signature	Maria J. Oropeza Print Name

(Do not write above this line.)

In the Matter Of
Arlene Kock, Bar No. 80276

Case Number(s):
05-O-03912
05-O-03914
06-O-10445
07-O-10836

ORDER

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

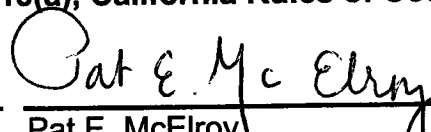
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 1, under Actual Suspension an "X" must be inserted in the box-- previous stipulation rejected.

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.)**

May 3, 2010

Date


Pat E. McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on May 4, 2010, 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:

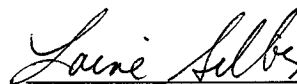
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JOSEPH PATRICK MCMONIGLE
LONG & LEVIT LLP
465 CALIFORNIA ST 5FL
SAN FRANCISCO, CA 94104

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

MARIA OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 4, 2010.



Laine Silber
Case Administrator
State Bar Court