ORIGINAL

(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar	Case Number (s)	(for Court's use)
Paul T. O'Brien **Supervising Trial Counsel** **The State Bar of California** **1149 South Hill Street** **Los Angeles, CA 90011** Bar # **171252**	**06-O-10709** PUBLIC MATTER	FILED OCT 24 2006 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent **Susan L. Margolis** **Margolis & Margolis, LLP** **2000 Riverside Dr** **Los Angeles, CA 90039** Bar # **104629**		
In the Matter Of: **William L. McKinney** Bar # **66803** A Member of the State Bar of California (Respondent)	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ***PUBLIC REPROVAL*** ☐ PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **December 18, 1975**.

(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 **12** 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):

- ☒ costs added to membership fee for calendar year following effective date of discipline (public reproval)
- ☐ case ineligible for costs (private reproval)
- ☐ costs to be paid in equal amounts 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

(9) The parties understand that:

(a) ☐ A private reproval imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's officials State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidents of a prior record of discipline under the Rules of Procedure of the State Bar.

(b) ☐ A private reproval imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

(c) ☒ A public reproval imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 **01-O-03615**

(b) ☒ Date prior discipline effective **January 9, 2003**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **6068(i)**

(d) ☒ Degree of prior discipline **Private Reproval**

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

(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.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted in good faith.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☒ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

(1) ☐ **Private reproval (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 reproval (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

(1) ☒ Respondent must comply with the conditions attached to the reproval for a period of **two (2) years.**

(2) ☒ During the condition period attached to the reproval, 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 condition period attached to the reproval. 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 reproval 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 30 (thirty) 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 the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the 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 conditions attached to the reproval.

(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) ☒ 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 reproval.

☐ No MPRE recommended. Reason: .

(11) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: WILLIAM LAWRENCE MC KINNEY

CASE NUMBER: 06-O-10709

FACTS AND CONCLUSIONS OF LAW.

1. In or about March 2003, Kellye Brothers ("Brothers") was convicted in a criminal case, *People v. Brothers,* LASC Case No. NA055708, ("the Brothers matter.") Respondent had represented Brothers through the preliminary hearing in the *Brothers* matter, but Brothers had decided she could not afford Respondent's services thereafter.

2. In or about late December 2003, while Brothers was in custody, Respondent met with her while visiting another of his clients. Brothers asked him to investigate the possibility of prevailing in an appeal of her conviction. During the conversation, Respondent told Brothers he would review the record and look into whether there were grounds for an appeal

3. On or about January 10, 2004, Ercell Bowens, Brothers' grandmother ("Ercell"), wired $800 to Respondent by Western Union money wire transfer.

4. On or about February 1, 2004, at Brothers' request and with Respondent's direction, Brothers' aunt, Herlinda E. Bowens, deposited a $700 check made payable to Respondent into Respondent's client trust account.

5. Thereafter, Respondent went to the Long Beach courthouse and reviewed the court file. Initially, Brothers entered into a conditional sentencing agreement. Respondent found that Brothers had not met the conditions stated in the agreement, and

that other information that Brothers and her family members had provided him was inaccurate.

6. After his review of the record, Respondent did not identify any issues that he believed would provide adequate grounds for an appeal of her conviction.

7. Respondent conveyed that opinion to Ercell Bowens, Brothers' grandmother, but he did not communicate directly with Brothers regarding his conclusion that there were no appealable issues, or that he had made a decision not to proceed with an appeal of her conviction.

8. In early 2004, as soon as she was released from prison, Brothers contacted Respondent by telephone, and asked him for a full refund of the money paid to him. Respondent explained to her that he had fully earned the money and that she was not owed any refund. He did not send her a letter confirming their conversation.

9. Approximately six months later, or on or about July 7, 2004, the State Bar opened an investigation, case no. 06-0-10709, pursuant to a complaint against Respondent filed by Brothers.

10. On or about October 14, 2005, a State Bar investigator (the "Investigator") wrote to Respondent regarding the Brothers matter. On or about October 27, 2005, the Investigator again wrote to Respondent regarding the Brothers matter. Thereafter, on November 15, 2005, February 25, 2006, and March 16, 2006, the Investigator sent additional letters to Respondent regarding the Brothers matter. The Investigator's letters requested a detailed response from Respondent to Brothers' complaint. Respondent received the letters but did not respond in writing to any of them.

11. By not clarifying the intended scope of his employment to his client, or ensuring that she was informed of his decision not to pursue an appeal on her behalf, Respondent violated Rule 3-500, Rules of Professional Conduct.

12. By failing to provide a written response to the State Bar Investigator's letters, Respondent violated Business & Professions Code section 6068(i).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 28, 2006.

AUTHORITIES SUPPORTING DISCIPLINE.

STANDARDS FOR ATTORNEY SANCTIONS

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Also, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

> The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the protection of public confidence in the legal profession.

Standard 1.7(a) supports an increase of the level of discipline from the discipline imposed in a prior proceeding. Respondent was privately reproved in 2003 for failing to cooperate in a State Bar investigation.

Standard 2.4(b) calls for reproval or suspension for failing to communicate with a client, depending on the extent of the misconduct and the degree of harm to the client.

Standard 2.10 provides for reproval or suspension for violations of the Business and Professions Code that are otherwise unspecified in the Standards [such as §6068(i)]. Where the extent of the misconduct is relatively small, and Respondent fully cooperated with the State Bar's investigation, imposition of a reproval is warranted.

OTHER AUTHORITIES SUPPORTING DISCIPLINE

In the Matter of Respondent G (Review Dept. 1992) 2 Cal State Bar Ct. Rptr. 175: A private reproval was imposed where the violation was deemed a minor incident of failure to perform services with competence (but which was followed by the respondent's candor and cooperation). In this case the imposition of a public reproval complies with the standards and adequately protects the public and the profession.

(Do not write above this line.)

In the Matter of	Case number(s):
William L. McKinney	06-0-10709

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.

9-29-06		William L. McKinney
Date	Respondent's signature	Print name
10-1-06		SUSAN L. MARGOLIS
Date	Respondent's Counsel's signature	Print name
10/06/06		Paul T. O'Brien
Date	Deputy Trial Counsel's signature	Print name

(Do not write above this line.)

In the Matter of	Case number(s):
William L. McKinney	06-0-10709

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 court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or futher modifies the approved stipulation. (See rule 125(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.

10-16-06
Date

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 Los Angeles, on October 24, 2006, 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:

SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

PAUL O'BRIEN , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 24, 2006.**

Johnnie Lee Smith
Case Administrator
State Bar Court