

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

Counsel For The State Bar  <b>Miho Murai</b> <b>Deputy Trial Counsel</b> <b>1149 S. Hill Street</b> <b>Los Angeles, CA 90015-2299</b> <b>213-765-1219</b>	Case Number (s) <b>06-O-11414</b>	(for Court's use)  <div align="center"> <b>FILED</b>  <b>AUG 26 2008</b> <i>mc</i>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div> <div align="center"> <b>PUBLIC MATTER</b> </div>
Bar # <b>235178</b> Counsel For Respondent  <b>John William Nelson</b> <b>12437 Lewis Street, Ste. 204</b> <b>Garden Grove, CA 92840</b> <b>714-703-7070</b>		
Bar # <b>73958</b> In the Matter Of: <b>SYDNEY KEYTH ERICSON</b>  Bar # <b>50457</b>  A Member of the State Bar of California (Respondent)		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **January 5, 1972**.
- (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 **11** 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: **two (2) billing cycles following the effective date of the Supreme Court order.**  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - ☐ costs entirely waived

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

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
  - (b) ☐ Date prior discipline effective
  - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
  - (d) ☐ Degree of prior discipline
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **Respondent's misconduct significantly harmed his elderly client, in that she has to wait until September 1, 2008, or on or before the expiration of 120 days after the death of her ex-husband, whichever comes first, to collect her portion of the settlement proceeds.**
- (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:**

N/A

**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. **Respondent has been candid and cooperative with the State Bar during its investigation and disciplinary 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**

**No Prior Record of Discipline: Respondent has been an attorney for approximately thirty-five (35) years and does not have a prior record of discipline.**

**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 **three (3) 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .

- (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:**

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

IN THE MATTER OF:        SYDNEY KEYTH ERICSON

CASE NUMBER(S):        06-O-11414

**FACTS AND CONCLUSIONS OF LAW**

Sydney Keyth Ericson ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**FACTS**

1. Respondent was admitted to the practice of law in the State of California on January 5, 1972, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. On July 2, 2004, Peggy J. O'Hara Gible ("Ms. O'Hara") retained Respondent and attorney John Balent ("attorney Balent") to seek spousal support arrears and pension and annuity benefits and arrears from her ex-husband under a 1978 dissolution of marriage settlement. At the time that Ms. O'Hara retained Respondent and attorney Balent, she was in her late seventies.
3. On July 2, 2004, a written retainer agreement was executed by Ms. O'Hara, Respondent, and attorney Balent. Respondent and attorney Balent were retained on a contingency fee basis, which entitled them to retain forty percent (40%) of "all monies collected" and to "deduct same from gross monies collected remitting the balance of sixty percent (60%) less costs within three (3) days of the clearing of the payment check to Mrs. Peggy O'Hara." Ms. O'Hara paid attorney Balent a total of five thousand dollars (\$5,000.00) as a retainer fee. Respondent did not receive any portion of the \$5,000.00 from Ms. O'Hara, but acknowledges receipt of two thousand dollars (\$2,000.00) from Mr. Balent.
4. On September 2, 2005, Respondent negotiated a settlement that included both an up-front cash payment of \$164,000.00 and a three-year, 7% interest-bearing promissory note, valued at \$200,000.00, payable in three years or upon the death of Ms. O'Hara's ex-husband, whichever came first. The total dollar settlement amount was \$406,000.00, which included the \$164,000.00 up-front cash payment, the \$200,000.00 promissory note, and \$42,000 in interest on the promissory note.

5. On the way home after the settlement negotiation held on September 2, 2005, Respondent obtained Ms. O'Hara's verbal consent that he would be entitled to the entire up-front cash payment, totaling \$164,000.00, as his and attorney Balent's attorney fees, leaving the promissory note and its interest to Ms. O'Hara as her portion of the settlement funds. Respondent failed to disclose the terms of this agreement in writing to Ms. O'Hara and failed to advise her to seek the advice of an independent lawyer of her choice prior to consenting to the terms of this agreement. Furthermore, Respondent failed to obtain Ms. O'Hara's written consent that she agreed to this disbursement.
6. On October 4, 2005, pursuant to the settlement agreement, Respondent received a cashier's check, dated September 30, 2005, from opposing counsel for the sum of \$164,000.00 as the up-front cash payment on the settlement. The cashier's check was made payable to "Sydney K. Ericson Client Trust Account."
7. On the same day, pursuant to the settlement agreement, a promissory note, valued at \$200,000.00, was secured by a deed of trust on the real property located at 3 Bridgeview, Irvine, California by the Trustee and new wife of Ms. O'Hara's ex-husband, Valerie Vinar Gible ("Mrs. Gible"). The promissory note included interest at the rate of 7% per annum and became payable "on or before September 1, 2008 or on or before the expiration of 120 days after the death of Ms. O'Hara's ex-husband, George Ward Gible, whichever comes first." The original, duly-executed, promissory note was mailed to Respondent at his State Bar membership records address by opposing counsel. Respondent received the promissory note.
8. On October 5, 2005, Respondent deposited the entire up-front cash settlement, totaling \$164,000.000, into his client trust account.
9. On October 6, 2005, Respondent sent a letter to Ms. O'Hara with a breakdown of the settlement proceeds. In the letter, Respondent advised Ms. O'Hara that the attorney fees amounted to \$164,400.00 and that the total costs expended amounted to \$4,090.00. Respondent further advised Ms. O'Hara that, "This settlement will be received through our office and we will pay forthwith your settlement to you as received. There is a balance owing on attorney fees and costs of \$2,494.00 that will be subtracted from the monies received from the Promissory Note pay off."
10. Thereafter, from October 11, 2005 to October 20, 2005, Respondent withdrew the entire up-front cash payment, less \$36,910.00, from his client trust account to pay off personal obligations.
11. On October 18, 2005, Respondent issued client trust account check number 1589, in the amount of \$26,910.00, to attorney John Balent, as his portion of the attorney fees. The



check was cashed by attorney Balent on October 24, 2005.

12. On October 31, 2005, Respondent issued client trust account check number 1594, in the amount of \$10,000.00, jointly to Peggy O'Hara Gible and John A. Balent, to cover the costs of the attorney fees associated with the Qualified Domestic Relations Order, which attorney Balent agreed to file and handle for Ms. O'Hara.
13. On or about November 16, 2005, Ms. O'Hara began making demands to Respondent, both verbally and in writing, that he return her 60% share of the \$164,000.00 cash payment. To date, Respondent has failed to pay Ms. O'Hara any portion of the up-front cash settlement despite her requests to do so.

## **CONCLUSIONS OF LAW**

By knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to his client without fully disclosing the terms of the transaction and transmitting them in writing in a manner which should reasonably have been understood by Ms. O'Hara, without advising her in writing that she may seek the advice of an independent lawyer and is given a reasonable opportunity to seek that advice, and by failing to obtain Ms. O'Hara's written consent to the terms of the transaction, Respondent willfully violated rule 3-300 of the Rules of Professional Conduct.

## **PENDING PROCEEDINGS**

The disclosure date referred to, on page two paragraph A.(7), was July 24, 2008.

## **AUTHORITIES SUPPORTING DISCIPLINE**

Pursuant to standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct ("standards"), the primary purposes of disciplinary proceedings and imposing sanctions for professional misconduct are, "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys[;] and the preservation of public confidence in the legal profession."

Here, the requested discipline furthers the purposes set forth in standard 1.3.

Standard 2.8 states in pertinent part that, "[c]ulpability of a member of a willful violation of rule 3-300, Rules of Professional Conduct, *shall result in suspension* unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof" (emphasis added).

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. 4<sup>th</sup> 81, 91, 92. Further, although the standards are not mandatory, it is well-established that the standards may be deviated from only when there is a 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.

The State Bar recognizes that the standards should not be applied in a talismanic fashion. *Gary v. State Bar* (1988) 44 Cal. 3d 820, 828. However, Respondent bears the burden to demonstrate that the State Bar should deviate from the standards.

In the case at bar, Respondent has not provided any reason, let alone “a compelling, well-defined reason” to deviate from the standards. Also, there do not appear to be “grave doubts” as to the propriety of the recommended level of discipline. Finally, the significant harm caused to his client by his misconduct warrants the recommended level of discipline.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that, as of July 24, 2008, the costs in this matter are \$1,983.00. If Respondent fails to pay any installment of disciplinary costs within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c), the remaining balance of the costs is due and payable immediately unless relief has been granted under rule 286 of the Rules of Procedure of the State Bar of California. The payment of costs is enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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.

(Do not write above this line.)

In the Matter of <b>SYDNEY KEYTH ERICSON</b>	Case number(s): <b>06-O-11414</b>
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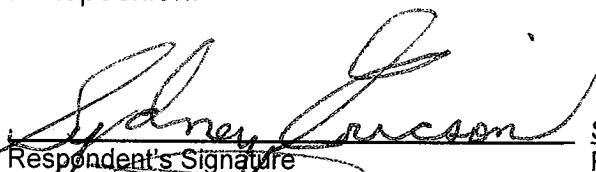
### SIGNATURE OF THE PARTIES

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

8-11-08  
Date

08/11/08  
Date


8/12/08  
Date

  
Respondent's Signature

Sydney Ericson  
Print Name

  
Respondent's Counsel Signature

John William Nelson  
Print Name

  
Deputy Trial Counsel's Signature

Miho Murai  
Print Name

In the Matter Of  
**SYDNEY KEYTH ERICSON**

Case Number(s):  
**06-O-11414**

### 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.)**

8/21/08  
Date

  
Judge of the State Bar Court

**DONALD F. MILES**

# CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 26, 2008, I deposited a true copy of the following document(s):

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

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

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

JOHN WILLIAM NELSON  
WEISENBERG & NELSON, INC.  
12437 LEWIS ST STE 204  
GARDEN GROVE, CA 92840

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

MIHO MURAI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 26, 2008.



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Tammy Cleaver  
Case Administrator  
State Bar Court