


(Do not write above this line.)

State Bar Court of California
Hearing Department
San Francisco

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>MANUEL JIMENEZ State Bar of California 180 Howard Street San Francisco, CA 94105 (415) 538-2288</p> <p>Bar # 218234</p>	<p>Case Number (s) 06-O-13117, 06-O-12850, 06-O-14796, 07-O-11418, 07-O-11221, 06-O-15552</p>	<p>(for Court's use)</p> <p>FILED </p> <p>DEC 11 2008</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>PAUL NICHOLAS BOYLAN P.O. Box 719 Davis, CA 95617 (530) 297-7184</p> <p>Bar # 140098</p>	<p>Submitted to: Assigned Judge</p>	
<p>In the Matter Of: PATRICK J. DONNELLY</p> <p>Bar # 133926</p> <p>A Member of the State Bar of California (Respondent)</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>	

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 16, 1988**.
- (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 **16** 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. **As a result of respondent's misconduct, his client Arbaugh was ordered to indemnify her ex-husband for legal costs. Respondent's misconduct resulted in his client DeBold having to litigate her divorce in Virginia, because respondent delayed prosecution of the matter, and allowed the husband to have an open ended extension with which to file a response to the dissolution petition. Respondent's misconduct resulted in Edward Hernandez' being unable to pay his property taxes on time. Respondent's misconduct prevented his client, Ellis, from being able to hire subsequent counsel after respondent failed to perform.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **Respondent made no effort, even after repeated requests from his clients, to mitigate the damage to their cases he had caused by his misconduct.**

(Do not write above this line.)

- (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. **Respondent committed 19 violations, impacting 6 clients.**
- (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. **Respondent was admitted to practice on June 16, 1988, and has no previous record of discipline.**
- (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) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **five (5) 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 **five (5) 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 **three (3) 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:

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.

(Do not write above this line.)

- (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:
 - Substance Abuse Conditions
 - Medical Conditions
 - Law Office Management Conditions
 - 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 language begins here (if any):

I. Findings of Fact and Conclusions of Law

Boone Matter (06-O-14796)

On February 27, 2006, John Boone (hereinafter "Boone") employed respondent to represent him regarding a dispute with Troy Ziel. Respondent agreed to represent Boone in the matter of *Ziel v. Boone*, and also would file a cross complaint against Ziel for harassment, damages and attorney's fees. Boone paid respondent \$3,000 in advanced fees. Thereafter, respondent made a "judgment call," choosing not to file a cross complaint. Respondent did not communicate this decision to Boone.

On March 20, 2006, respondent appeared at a hearing in *Ziel v. Boone*. At the hearing, the court set an evidentiary hearing for May 1, 2006.

On March 22, 2006, respondent requested Boone provide him information relevant to a cross-complaint, including with a list of incidents where Ziel was the aggressor. In preparation for the May 1, 2006 hearing, Boone inquired about the cross-complaint several times. Respondent informed Boone that, "It's being handled." Boone provided respondent the names of five witnesses in support of his cross-complaint. The witnesses had no information regarding Boone's defense to the Ziel Complaint. Respondent informed Boone that he would interview the five witnesses, and subpoena them to testify at the May 1, 2006 hearing. On April 28, 2006, Boone paid respondent an additional \$3,000.

On May 1, 2008, the court held a hearing in the matter of *Ziel v. Boone*. Boone's subpoenaed witness were present at court, but never called. The court rejected Ziel's application for an order of protection. As the judge was leaving the bench, Boone asked respondent why respondent failed to present any evidence in support of his cross-complaint. Respondent stated that he made a "judgment call" and decided not to file the cross complaint. This was the first time respondent informed Boone that he did not file the cross-complaint.

By intentionally, recklessly or repeatedly failing to perform legal services with competence, respondent willfully violated Rules of Professional Conduct, rule 3-110(A). By failing to inform his client of significant developments, respondent willfully violated Business and Professions Code, section 6068(m).

Arbaugh Matter (06-O-12850)

On January 28, 2008, Debbie Arbaugh was named as a respondent in a petition for dissolution in the matter of *Arbaugh v. Arbaugh*, Fresno County Superior Court, Case number 04 CE FL 00531. Arbaugh represented herself until November 11, 2004, when she hired respondent. On October 13, 2004, the court continued a hearing until December 15, 2004. The court required all parties to file disclosure statements by December 15, 2004.

On November 11, 2004, Arbaugh hired respondent. She paid respondent \$1,500 in advanced fees. At the time Arbaugh hired respondent, she provided respondent with the order requiring her to file disclosure documents by December 15, 2004, and with the notice of hearing scheduled for December 15, 2004. Thereafter, respondent failed to perform any services of value to Arbaugh, failed to substitute into the *Arbaugh v. Arbaugh* matter, failed to file the required disclosure documents and failed to appear at the December 15, 2004 hearing.

On February 10, 2005, the court issued a dissolution judgment which indicated that Arbaugh had not filed the required disclosure documents. Because of respondent's inaction, the order included a provision

that Arbaugh indemnify her ex-husband because she failed to disclose property.

Respondent constructively terminated his services soon after he was hired on November 11, 2004 by failing to perform any services for Arbaugh. Respondent failed to refund any of the unearned fees to Arbaugh.

By intentionally, recklessly and repeatedly failing to perform with competence, respondent violated Rules of Professional Conduct, rule 3-110(A). By failing to inform Arbaugh that he constructively terminated his services, respondent willfully violated Business and Professions Code, section 6068(m). By failing to return any of the \$1,500 Arbaugh paid in advanced fees, respondent violated Rules of Professional Conduct, rule 3-700(D)(2). By failing to take any steps to avoid reasonably foreseeable prejudice to Arbaugh, respondent violated Rules of Professional Conduct, rule 3-700(A)(2).

DeBold Matter (06-O-13117)

On January 19, 2006, Jennifer DeBold hired respondent to file a dissolution of her marriage. She paid respondent \$2,000 in advanced fees. Ms. DeBold's husband lived in Virginia. Ms. DeBold wanted to file for divorce in California, because the waiting period was only six months, and she wanted the matter expedited so that she could sell their residence, which would help fund her attendance at nursing school. Respondent told DeBold that he would file and serve the legal separation papers within a few weeks.

On January 19, 2006, respondent, knowing that his client wanted an expedited divorce, granted her husband's attorney an open extension to file a response to the petition. The open extension allowed Ms. DeBold's husband to litigate the divorce in Virginia.

On January 23, 2006, respondent filed a Petition for Legal Separation and a Summons. DeBold telephoned the respondent's office on the following dates; February 6, 2006; February 21, 2006; February 28, 2006; March 27, 2006; and April 4, 2006. On April 6, 2006, DeBold wrote to respondent and outlined her efforts in attempting to determine the status of her separation. In that letter, DeBold requested that respondent provide her with a status update regarding the steps necessary to complete the divorce. Respondent failed to respond to the DeBold's April 6th correspondence.

On April 15, 2006, respondent finally had DeBold's husband served with a Summons, Petition, and blank response form. Without consulting or subsequently informing his client, on May 19, 2006, respondent agreed to extend to DeBold's husband's attorney, Gregory Brislain, an "open extension" of time in which to file responsive pleadings.

On May 23, 2006, DeBold terminated respondent, because he failed to handle the divorce expeditiously and because he granted DeBold's husband an open extension to respond to the petition.

By intentionally, recklessly or repeatedly failing to perform legal services with competence by failing to handle DeBold's divorce expeditiously, respondent willfully violated Rules of Professional Conduct, rule 3-110(A). By failing to inform DeBold that he granted DeBold's husband an open extension of time to respond to the petition, respondent willfully violated Business and Professions Code, section 6068(m).

Failure to Cooperate (Arbaugh, Boone and DeBold matters)

In the Arbaugh Matter, State Bar Investigator Michal Gilbert sent respondent a correspondence on August 18, 2008, requesting that respondent respond in writing to allegations of misconduct. Respondent did not respond to the letter.

In the Boone Matter, State Bar Investigator Amanda Gormley sent respondent a letter on December 1, 2006, requesting that respondent write to allegations of misconduct. Respondent failed to respond to the letter.

In the DeBold matter, State Bar Investigator Julia Shure sent respondent a correspondence on November 7, 2006, requesting that respondent respond in writing to allegations of misconduct. Respondent did not respond to the letter.

Fairbanks Matter (06-O-15552)

Hyle Fairbanks hired respondent to represent him in a marital dissolution matter, *Hodsdon-Law v. Fairbanks*, Butte County Superior Court, case number FL031449. On July 29, 2006, Fairbanks paid respondent \$1,000 in advanced fees.

On August 8, 2006, respondent wrote to Fairbanks and enclosed a Family Law Retainer and Fee Agreement; an Income and Expense Declaration and Schedule of Assets and Debts forms. Soon thereafter, Fairbanks completed, signed and returned the forms to respondent. Thereafter, respondent failed to file a response to the dissolution petition on Fairbanks' behalf.

On August 22, 2006, Fairbanks was served with an Order to Show Cause ("OSC") with a hearing date of September 12, 2006. Fairbanks immediately faxed the OSC to respondent. Thereafter, respondent failed to file a response to the OSC and failed to submit any papers on Fairbanks' behalf in opposition to the OSC.

On September 12, 2006, Fairbanks appeared at the scheduled hearing for the OSC. When respondent appeared, he was unprepared, had not substituted into the matter, failed to calculate support payments, and had not filed any response on Fairbanks' behalf. Respondent did not have the paperwork Fairbanks had sent him.

On September 13, 2006, Fairbanks called respondent to complain about respondent's court performance. Respondent told Fairbanks that he would gather the necessary paperwork and contact him. Thereafter, respondent failed to contact Fairbanks.

On September 19, 2006, Fairbanks terminated respondent via telephone and facsimile. In the faxed letter, Fairbanks requested an accounting and a return of unearned fees. Fairbanks also included a substitution of attorney for respondent to sign and return. At the time of respondent's termination, he had not earned any of the \$1,000 he received in advanced fees. Respondent failed to respond, failed to return unearned fees, and failed to return the substitution of counsel.

In September, 2006, Fairbanks' new attorney, Ron Chaplin, requested in person and by telephone that respondent provide him with Fairbanks' client file. Respondent failed to provide him with the file.

On October 12, 2006, Fairbanks sent respondent a letter requesting an accounting and a return of unearned fees. Respondent did not respond to the letter and did not return unearned fees.

By intentionally, recklessly and repeatedly failing to perform with competence by failing to file a response to the dissolution petition, failing to respond to the OSC, being unprepared at the OSC hearing, respondent wilfully violated Rules of Professional Conduct, rule 3-110(A)

By failing to provide Fairbanks with an accounting in response to his September 19, 2006 and October 3, 2006 letter, respondent wilfully violated rules of Professional Conduct, rule 4-100(B)(3).

By failing to return any of the \$1,000 Fairbanks paid in advanced fees, respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2).

By failing to release Fairbanks' client file to Chaplin or Fairbanks, respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2)

Hernandez Matter (07-O-11221)

On April 1, 2004, Edward Hernandez ("Hernandez") hired respondent to represent him in a marital dissolution matter he initiated, entitled *Dissolution of the Marriage of Hernandez*, Butte County Superior Court case number FL027360. Soon thereafter, Hernandez requested that respondent cease work on the case because he and his wife had reconciled.

In January, 2006, Hernandez requested that respondent resume the dissolution matter. On January 5, 2006, Hernandez paid respondent \$200 in advanced. On February 7, 2006, Hernandez paid respondent an additional \$2000 in advanced fees. On September 12, 2006, Hernandez notified respondent that he no longer wanted to pursue the divorce and requested the refund of the unused portion of his advanced fees. Hernandez informed respondent that he needed money to pay property taxes. As of September 12, 2006, respondent had not earned all of the \$2,000 Hernandez paid in advanced fees.

Between September 12, 2006 and November 20, 2006, Hernandez telephoned respondent several times to request the return of his unearned fees. Respondent received the messages, but failed to respond and failed to return the unearned fees.

On November 20, 2006, Hernandez made an appointment to meet with respondent on November 27, 2006, and requested that respondent provide him with an accounting and a refund of unearned fees. Thereafter, respondent failed to provide an accounting and failed to provide a refund.

On January 2, 2007, Hernandez waited for respondent in the parking lot outside respondent's office. When respondent arrived, Hernandez asked respondent to dismiss the dissolution matter and return the unearned fees. Respondent advised Hernandez not to drop the divorce, and to seek help from his mortgage lender to pay his property taxes. Respondent advised Hernandez to think about it overnight, and if he felt the same way the following day, respondent would refund his money.

On January 3, 2006, Hernandez informed respondent that he still wanted to drop the divorce action and requested a refund of his money. Respondent informed Hernandez that the check was not ready but would be sent in the mail. Thereafter, respondent failed to refund any money to Hernandez.

On February 14, 2007, Hernandez filed a small claims action against respondent in the matter *Hernandez v. Donnelly*, Butte County Superior Court Case No. PSC7500. Hernandez claimed damages of \$1,972, which was the amount respondent failed to return in unearned fees. On March 6, 2007, respondent sent Hernandez an accounting and a refund of \$1,665.

On March 21, 2007, Hernandez filed a complaint against respondent with the State Bar on March 21, 2007. On April 16, 2007, respondent called Hernandez to ask what he wanted in terms of money. Hernandez indicated that he wanted a refund of \$500, which is the amount Hernandez calculated respondent still owed him. Respondent agreed to refund \$500 and stated that "If I pay you, you will call [State Bar investigator Amanda Gormley] and get her off my back? If I send you the \$500 then I want [the State Bar] off my ass." On April 24, 2007, Hernandez informed respondent that he could not control whether the State Bar decided to go forward with the case. Thereafter, respondent failed to refund any additional money to Hernandez.

By waiting until March 6, 2007 to return unearned fees that Hernandez first requested in September, 2006, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

By requiring Hernandez to withdraw his State Bar complaint to receive \$500, respondent willfully violated Business and Professions Code, section 6090.5(a)(2)

Ellis Matter (07-O-11418)

On October 16, 2006, Kimberly Ellis hired respondent to represent her in a pending family law action. At that time, Ellis paid respondent advanced fees of \$2,500. Ellis explained the serious nature of the issues between her and her ex-husband, including incidents of domestic violence and a pending restraining order.

Respondent agreed to represent Ellis, and agreed to appear at an October 19, 2006 hearing regarding child custody, support and visitation issues. Respondent appeared at the hearing. The court continued the matter to December 21, 2006 for the respondent to file Findings and Order after Hearing for the October 19, 2006 hearing. Thereafter, respondent failed to file the required documents.

On December 21, 2006, respondent was not present when Ellis matter was initially called. Respondent appeared two hours late. The matter was recalled and the court continued the child support issues until April 24, 2007. Respondent was required to file Findings and Order after Hearing for the December 21, 2006 hearing. Respondent failed to do so.

Between December 21, 2006 and January 23, 2007, Ellis telephoned respondent several times to obtain a status update on the Findings and Order. Each time she called, Ellis left a message with respondent's secretary requesting that respondent provide her with a status update and the balance remaining on the advanced fees she paid. Respondent received the messages, but thereafter failed to provide Ellis with a status update or an accounting.

On January 23, 2007, Ellis sent respondent a letter terminating respondent and requesting that respondent provide her with an accounting of the unearned fees she paid. Respondent received the letter soon after it was sent, but failed to provide her with an accounting or a refund.

In February, 2007, respondent telephoned Ellis and informed her that the court required him to file the Findings and Order after Hearing prior to substituting off her case. During the Conversation, Ellis informed respondent that she intended to retain new counsel for her case and required the refund of her retainer in order to hire the new attorney.

On March 1, 2007, Ellis hand delivered to respondent a letter informing him that she intended to pick up her file and the balance of her retainer the following day. On March 2, 2007, Ellis went to respondent's office and respondent's secretary informed Ellis that respondent had not completed the work on her case and she would not receive anything until respondent was finished.

On March 28, 2007, respondent filed the Findings and Order After Hearing for the October 19, 2006 hearing. On April 3, 2007, respondent filed the Findings and Order after Hearing for the December 21, 2006 hearing.

On May 1, 2007, Ellis sent respondent a letter requesting that respondent provide her with an accounting and the refund of unearned fees. Respondent received the letter soon after it was sent, but failed to respond to the letter, failed to provide an accounting and failed to refund any unearned fees. At the time, respondent had not earned all of the \$2,500 he was paid in advanced fees. According to an accounting respondent contended he provided to Ellis, respondent owed Ellis \$1,545 in unearned fees.

At the time Ellis employed respondent, respondent knew that Ellis was concerned about her and her daughter's safety. Respondent delayed in preparing and filing the Findings and Order after Hearing. Respondent's delay jeopardized Ellis's daughter's safety because the documents were to be presented to Child Services and established the anger management class requirements for her ex-husband. Respondent failed to handle Ellis' family law matter expeditiously by waiting until late March and early April, 2007 to file the Findings and Orders after Hearings.

By failing to prepare and file the Findings and Orders after Hearing expeditiously, respondent willfully violated Rules of Professional Conduct, rule 3-110(A).

By failing to return any of the unearned portion of the \$2,500 Ellis paid in advanced fees, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

By failing to provide Ellis with an accounting, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

II. Pending Proceedings

The disclosure date referred to on page 2, paragraph A(7), is October 8, 2008. As of October 8, 2008, there are no pending investigations or proceedings not covered by this agreement.

III. Costs of Disciplinary Proceedings

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent (with this stipulation) that as of October 8, 2008, the estimated prosecution costs in this matter are approximately \$4,920.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in a final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

IV. Authorities in Support of Discipline

A. *The Standards*

The Standards provide for a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 2.6(a), and 2.10).

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession, the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.6(a) provides that the sanction imposed shall be the most severe of the different applicable sanctions. Standard 1.6(a) provides in pertinent part that:

"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 . . . If two or more acts of professional misconduct are found . . . 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."

Standard 2.4(a) provides, that culpability of a member of a pattern of willfully failing to perform services demonstrating the member's abandonment of causes in which he was retained shall result in disbarment.

Standard 2.6 provides that culpability of a member of a violation of...[Business and Professions Code section 6068]...shall result in disbarment or suspension depending on 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 2.10 provides that culpability of a member of a violation of any provision of the Business and Professions Code not otherwise specified in the standards, violation of a Rule of Professional Conduct shall result in reproof or suspension according to the gravity of the offense or harm to the victim.

B. Case Law

The Court should also look at case authority in determining the appropriate level of discipline to determine whether the discipline is consistent or disproportional to prior decisions on the same set of facts. *Snyder v. State Bar* (1990) 49 Cal.3d 1302.

In determining the appropriate level of discipline, the court should look to the Standards for Professional Misconduct. In *In re Morse* (1995) 11 Cal.4th 184, 206, the California Supreme Court stated;

“To determine the appropriate level of discipline ... we... must first look to the standards for guidance. ‘These guidelines are not binding on us, but they promote the consistent and uniform application of disciplinary measures. Hence we have said that ‘we will not reject a recommendation arising from application of the standards unless we have grave doubts as to the propriety of the recommended discipline.’”

Despite the need to examine cases on an individual basis, it is a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been largely achieved through the application of the Standards of Attorney Sanctions for Professional Misconduct. (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.)

The standards provide guidance and deserve "great weight." (*In re Morse*, supra, 11 Cal.4th at p. 205; *In re Naney* (1990) 51 Cal.3d 186, 190; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 933, fn. 5.) "[A]dherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct." (*In re Naney*, supra, 51 Cal.3d at p. 190; see also *In re Brown* (1995) 12 Cal.4th 205, 220.) The California Supreme Court accepts a disciplinary recommendation resulting from application of the standards unless it has "grave doubts" about the recommendation's propriety. (*In re Morse*, supra, 11 Cal.4th at p. 206; *In re Lamb* (1989) 49 Cal.3d 239, 245.)

Ridley v. State Bar (1972) 6 Cal.3d 551. Respondent, with a prior private reproof, was disbarred for failure to perform services, failure to return unearned fees in six matters over a seven year period.

Cooper v. State Bar (1987) 43 Cal.3d 1016. Respondent, with no prior record of discipline, was disbarred after engaging in a pattern of misconduct by abandoning several clients, misappropriating money, failing to honor medical liens and entering into an improper business transaction with a client.

(Do not write above this line.)

Bowles v. State Bar (1989) 48 Cal.3d 100. Respondent, with no prior discipline, was disbarred for failing to perform services for his clients, failing to return unearned fees, failing to deposit trust funds, failing to advise clients about the receipt of trust funds. He also committed acts of moral turpitude and wrote a bad check which he failed to make good.

In the Matter of
Patrick J. Donnelly

Case number(s):
06-O-12850 [06-O-13117; 06-O-14796; 06-O-15552;
07-O-11221; 07-O-11418]

A Member of the State Bar

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Kimberly Ellis a/k/a Kincaid	\$1,445	May 1, 2007
Debbie Arbaugh	\$1,500	Nov. 11, 2004
Jennifer Debold	\$1,600	May 23, 2006

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate


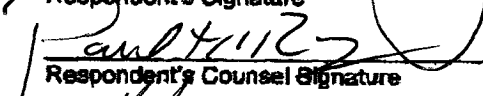

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Do not write above this line.)

In the Matter of Patrick J. Donnelly	Case number(s): 06-O-12850 [06-O-13117; 06-O-14796; 06-O-15552; 07-O-11221; 07-O-11418]
-----------------------------------------	--------------------------------------------------------------------------------------------

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>11/12/08</u> Date		Patrick J. Donnelly Print Name
<u>11/13/08</u> Date		Paul Nicholas Boylan Print Name
<u>12/1/2008</u> Date		Manuel Jimenez Print Name

(Do not write above this line.)

In the Matter Of Patrick J. Donnelly	Case Number(s): 06-O-12850 [06-O-13117; 06-O-14796; 06-O-15552; 07-O-11221; 07-O-11418]
------------------------------------------------	-------------------------------------------------------------------------------------------------------

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.)**

Dec 8, 2008
Date

Pat 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, December 11, 2008, 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:

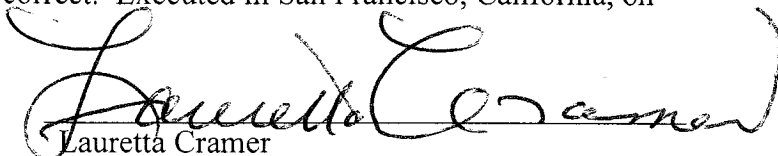
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**PAUL NICHOLAS BOYLAN
PO BOX 719
DAVIS, CA 95617**

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 11, 2008.


Laretta Cramer
Case Administrator
State Bar Court