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<b>State Bar Court of California</b> Hearing Department <b>PUBLIC MATTER</b> Los Angeles ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar  Monique T. Miller, Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1486  Bar # 212469	Case Number (s)  07-O-10693	(for Court's use)  <div style="text-align: center;"> <p><b>FILED</b></p> <p>JUL 02 2010</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div> <div style="text-align: center; margin-top: 20px;"> <p>kwiktag® 018 039 629</p>  </div>
Counsel For Respondent  Ellen Anne Pansky 1010 Sycamore Ave., Unit 308 South Pasadena, CA 91030 (213) 626-7300  Bar # 77688	Submitted to: <b>Program Judge</b>  <b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of:  JOHN H. KIBBLER  Bar # 164834  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 June 17, 1993.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 7 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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

- (1)  **Prior record of discipline** [see standard 1.2(f)]
  - (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing 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. In 8/06, prior to the filing of the complaint to the State Bar by the client, Respondent revealed to the client that he had used a portion of the client's funds for his own purposes.
- (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. Prior to the complaint being filed on 1/31/07, Respondent made arrangements to borrow money from his sister. The loan to the sister got funded in early 2/07 and Respondent paid the client back on 2/16/07.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings. See Remorse
- (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. Respondent was going through a contentious divorce
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

Additional mitigating circumstances: Respondent has been practicing since June 1993 without a prior record of discipline. MTA EAF OK

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

IN THE MATTER OF:                      JOHN HAMILTON KIBBLER  
  
CASE NUMBER:                            07-O-10693

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties hereby waive any variance between the Notice of Disciplinary Charges (“NDC”) filed on December 2, 2009 in Case No. 07-O-10693, and the facts and conclusions of law contained in this stipulation.

Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to the cases that are the subject matter of this stipulation.

**FACTS AND CONCLUSIONS OF LAW.**

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, or has otherwise committed acts of misconduct warranting discipline, as follows:

**Facts for Case No. 07-O-10693**

1. In June 2005, John Gutierrez (“John”) employed Respondent for John’s dissolution from Sidonie Gutierrez (“Sidonie”). John’s mother paid Respondent \$1,100 in advanced fees. Sidonie was represented by attorney Charles Morris (“Morris”). On or about July 6, 2005, Respondent filed a petition in the matter entitled *In re the Marriage of Petitioner John Luis Gutierrez and Respondent Sidonie G. Gutierrez* (the “Gutierrez matter”), Los Angeles Superior Court Case No. KD064957.
2. On September 12, 2005, the parties stipulated that: (i) Respondent shall hold the net proceeds from the sale of the marital residence in his client trust account (“CTA”); (ii) Respondent shall distribute \$25,000 to each party as an advance against their final distribution; and (iii) the balance of the proceeds shall be deposited into an interest-bearing account under the names of John Gutierrez and Sidonie Gutierrez. On September 19, 2005, the court ordered that the stipulated facts take effect upon the sale of the marital residence.
3. On or about September 12, 2005, Respondent deposited into his client trust account (“CTA”), Bank of America Account no. xxxxx-x9721,<sup>1</sup> \$227,649.11, a sum received from John and Sidonie Gutierrez’s escrow funds.
4. In September 2005, Respondent made the following disbursements:

<u>Date</u>	<u>Amount</u>	<u>Payee and Manner of Disbursement</u>
09/16/05	\$ 2,450.00	CTA check to Sidonie
09/16/05	\$ 2,450.00	CTA check of \$2,050 and \$400 cash to John
09/26/05	\$21,393.90	CTA check to John

<sup>1</sup> The full account number is omitted for privacy purposes.

09/27/05

\$22,550.00

CTA check to Sidonie

5. Subsequent to September 2005, the balance of the proceeds from the sale of the Gutierrez residence amounted to approximately \$178,805.21.
6. Subsequent to the disbursements made to John and Sidonie in September 2005, Respondent was required by court order to deposit the balance of \$178,805.21 in an interest-bearing account under the names of John Gutierrez and Sidonie Gutierrez. Subsequent to September 2005, Respondent failed to open an interest-bearing account on behalf of John and Sidonie Gutierrez.
7. By October 28, 2005, the balance of Respondent's CTA was \$148,678.43, even though Respondent had not made any additional disbursement to John and/or Sidonie after September 27, 2005.
8. On January 24, 2006, Morris, the opposing counsel, sent Respondent a letter on behalf of Sidonie, requesting bank statements evidencing the transfer of the escrow proceeds. Respondent did not provide the requested bank statements to Morris.
9. On January 28, 2006, Respondent disbursed a CTA check for \$2,350.00 to Sidonie.
10. On February 7, 2006, Morris sent Respondent a second letter requesting bank statements evidencing the transfer of the escrow proceeds. Respondent did not provide the requested bank statements to Morris.
11. On February 10, 2006, Respondent disbursed a CTA check for \$8,950.00 to Sidonie, and a CTA check for \$6,050.00 to John.
12. On June 16, 2006, Respondent disbursed a CTA check for \$10,000.00 to Sidonie.
13. On July 14, 2006, Respondent disbursed a CTA check for \$10,000.00 to John.
14. On July 25, 2006, Morris sent Respondent a third letter requesting bank statements evidencing the transfer of the escrow proceeds. Respondent did not provide the requested bank statements to Morris.
15. On August 21, 2006, Respondent disbursed a CTA check for \$83,137.75 to Sidonie.
16. On August 21, 2006, the balance of Respondent's CTA was \$66.93, even though Respondent was required to maintain approximately a balance of \$64,367.46 on behalf of John and Sidonie Gutierrez.
17. In August 2006, John and Sidonie reconciled and requested the balance of their funds from Respondent. On or about August 24, 2006, Respondent drafted a promissory note, promising to pay back \$59,000 with interest to John Gutierrez. John Gutierrez did not sign the note.
18. On February 16, 2007, Respondent gave Sidonie a cashier's check for \$57,894.27 and a CTA check for \$873.31, thus paying back the monies owed to John and Sidonie Gutierrez.

19. By failing to maintain the balance of the proceeds from the sale of the Gutierrez residence in his CTA or in an interest-bearing account under the names of John Gutierrez and Sidonie Gutierrez, Respondent misappropriated funds belonging to John and Sidonie Gutierrez.

**Conclusions of Law for Case No. 07-O-10693**

20. By failing to maintain approximately \$64,367.46 on behalf of John and Sidonie Gutierrez in his CTA or in an interest-bearing account under the names of John and Sidonie Gutierrez, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

21. By failing to hold the balance of the proceeds from the sale of the Gutierrez residence in an interest-bearing account under the names of John Gutierrez and Sidonie Gutierrez, Respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code section 6103.

22. By misappropriating funds belonging to John and Sidonie Gutierrez, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(6), was January 5, 2010.

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In the Matter of  JOHN H. KIBBLER, #164834	Case number(s):  07-O-10693
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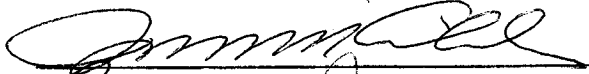

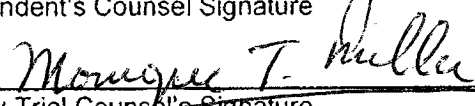
### SIGNATURE OF THE PARTIES

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 Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>1-18-2010</u> Date	 Respondent's Signature	John H. Kibbler Print Name
<u>1/22/2010</u> Date	 Respondent's Counsel Signature	Ellen Anne Pansky Print Name
<u>1/27/2010</u> Date	 Deputy Trial Counsel's Signature	Monique T. Miller Print Name

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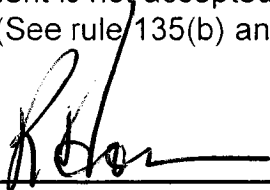
**ORDER**

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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- 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 further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

7/2/10  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court  
**RICHARD A. HONN**



**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 July 6, 2010, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

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

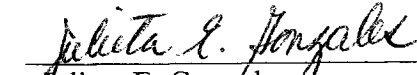
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN A PANSKY ATTORNEY AT LAW  
PANSKY MARKLE HAM LLP  
1010 SYCAMORE AVE UNIT 308  
SOUTH PASADENA, CA 91030

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

Monique T. Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 6, 2010.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Case Administrator  
State Bar Court