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State Bar Court of California
Hearing Department
San Francisco

<p>Counsel For The State Bar</p> <p>Esther J. Rogers Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2258</p> <p>Bar # 148246</p>	<p>Case Number (s) 07-O-11161</p>	<p>(for Court's use)</p> <p align="center">PUBLIC MATTER</p> <p align="center">FILED</p> <p align="center">SEP 23 2009 <i>[Signature]</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Kristine M. Kelly Law Offices of Kristine M. Kelly 1265 W. Shaw Ave., Suite 100 Fresno, CA 93711 (559) 472-7007</p> <p>Bar # 212266</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Kristine M. Kelly</p> <p>Bar # 212266</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **January 12, 2001**.
- (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 **9** 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 reproof)
 - case ineligible for costs (private reproof)
 - 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 reproof 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 official 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 reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof 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 reproof 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
 - (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 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.

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- (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. **Respondent agreed to imposition of discipline without requiring a hearing.**
- (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. **Respondent admits that her conduct was improper and greatly regrets that she filed the adversary proceeding.**
- (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.

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- (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 reproof (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 reproof (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 **1 year**.
- (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 reproof.
- (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 reproof.
- No MPRE recommended. Reason: **Public protection does not require that the respondent take the MPRE.**
- (11) 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:

Attachment language (if any):

Attachment to Stipulation Re Facts and Conclusions of Law

IN THE MATTER OF: Kristine M. Kelly

CASE NUMBER(S): 07-O-11161

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct:

Statement of Facts

On or about May 19, 2000, Larry Fraga, who resided in Fresno, employed the law firm Duboff Law Group ("DLG"), located in Oregon, to provide copyright advice. On or about August 1, 2000, Fraga filed a chapter 7 bankruptcy petition. In or about September 2000, the bankruptcy court issued an order of relief. On or about January 23, 2002, Fraga received a discharge in the chapter 7 proceeding.

Fraga never informed DLG of the bankruptcy petition and did not list DLG as a creditor. Between in or about August 2000 and in or about October 2002, DLG continued to perform legal services for Fraga. Until in or about June 2001, Fraga paid DLG's invoices in full. In or about June 2001, Fraga ceased making regular payments to DLG.

On or about October 11, 2002, DLG filed a claim in Oregon state court for its outstanding invoices. At the time that DLG filed its claim, it was unaware that Fraga had filed a bankruptcy petition and that Fraga had received a discharge.

Prior to on or about January 22, 2003, DLG learned that Fraga had filed for bankruptcy. Thereafter, DLG abated its Oregon state court case and filed a proof of claim in Fraga's Chapter 7 bankruptcy proceeding for \$18,643.24. The bankruptcy trustee objected to the claim on the grounds that the debt was a post petition debt because the legal services were rendered after Fraga filed his bankruptcy petition and because the claim was filed after the claims bar date. Fraga did not oppose the trustee's findings and DLG's claim was disallowed by the bankruptcy court.

On or about January 22, 2003, the Oregon state court issued an order of default against Fraga. On or about March 16, 2005, the Oregon state court issued a judgment of \$35,001.72 plus interest against Fraga. On or about August 12, 2005, DLG filed a lawsuit in Fresno County Superior Court for a sister state judgment. Soon thereafter, DLG obtained a sister state judgment from the Fresno County Superior Court.

Prior to on or about December 21, 2005, respondent employed respondent to seek relief from the enforcement of DLG's judgment. At the time that Fraga employed respondent, she did not receive a copy of the Oregon state action file and was not aware of the contents of its file.

On or about December 21, 2005, respondent filed an application with the Fresno County Superior Court to stay enforcement of the judgment on the grounds that an adversarial proceeding was pending in bankruptcy court. Respondent made this application based upon Fraga's representation that Fraga's prior bankruptcy attorney had advised that it was proper. Respondent performed some research and based upon her research, she believed that it was proper to characterize the payments as pre-petition debt.

On or about January 3, 2006, the Fresno County Superior Court denied respondent's request for a stay on the grounds that the DLG fees were incurred after the termination of the bankruptcy proceeding and therefore were post petition debts that were properly subject to collection.

On or about January 3, 2006, respondent filed an adversary proceeding against DLG in bankruptcy court alleging that DLG violated the bankruptcy stay by pursuing its case in Oregon state court and in the Fresno County Superior Court. In her supporting papers, respondent stated that DLG's fees primarily consisted of pre-petition fees. Respondent made this representation based upon the incomplete documentation she received from her client. Respondent did not obtain a copy of the Oregon bankruptcy matter or the Oregon state court collection matter prior to filing the adversary proceeding in bankruptcy court.

After receiving notice of the Fresno County Superior Court's denial of her stay request, respondent failed to inform the bankruptcy court that Fresno County Superior Court ruled that the DLG fees were post petition fees and that Fraga's motion to stay enforcement of the judgment was denied.

On or about March 9, 2006, DLG filed a motion for summary judgment in the bankruptcy court and sought Rule 9011 sanctions for filing a frivolous complaint. In opposition to the summary judgment motion, respondent provided the bankruptcy court with an altered document DLG filed in Oregon state court by omitting DLG's description of the post petition legal services it provided. Respondent received this document from Fraga and was unaware at the time that she submitted it that it was incomplete.

Furthermore, respondent ignored the controlling Ninth Circuit authority DLG's attorney provided respondent which directly contradicted the claims respondent asserted in the adversary proceeding. After reviewing the authorities, respondent failed to dismiss the adversary proceeding because she believed that the cases were controlling because of factual differences between those cases and Fraga's case.

On or about April 6, 2006, the bankruptcy court granted DLG's motion for summary judgment. On or about April 18, 2006, the bankruptcy court granted DLG's motion for Rule 9011 sanctions and subsequently ordered respondent and Fraga, jointly and severally, to pay DLG sanctions of \$17,752.81. On or about October 6, 2006, Fraga paid DLG the Rule 9011 sanctions.

Respondent timely filed a notice of appeal of the bankruptcy court's order denying summary judgment and imposing Rule 9011 sanctions. The bankruptcy appellate panel concluded that respondent's filing of the adversary proceeding was without legal support and respondent should have voluntarily dismissed the adversary proceeding after opposing counsel informed her of controlling Ninth Circuit authority directly contradictory to the claims respondent asserted in the adversary proceeding.

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Conclusion of Law

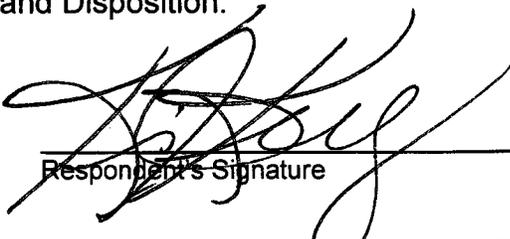
By filing the adversary proceeding without reviewing the Oregon bankruptcy and state court collection matters, by failing to comprehend that the controlling Ninth Circuit authority was contradictory to the adversary proceeding and by failing to voluntarily dismiss the adversary proceeding after opposing counsel cited her to those authorities, respondent recklessly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

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In the Matter of Kristine M. Kelly	Case number(s): 07-O-11161
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SIGNATURE OF THE PARTIES

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

<u>8-27-09</u> Date		_____ Kristine M. Kelly Print Name
_____ Date	_____ Respondent's Counsel Signature	_____ Print Name
<u>8/31/09</u> Date		_____ Esther J. Rogers Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	_____ Print Name

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In the Matter Of Kristine M. Kelly	Case Number(s): 07-O-11161
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 further 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 reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

September 23
Date

Pat E. McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 23, 2009, 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:

KRISTINE M. KELLY
LAW OFFICES OF KRISTINE M. KELLY
1265 W SHAW AVE STE 100
FRESNO, CA 93711

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

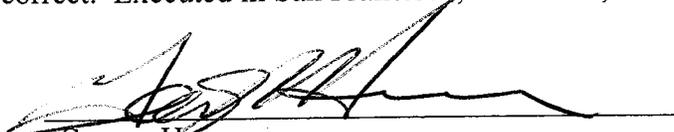
- by overnight mail at , California, addressed as follows:

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Esther Rogers, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 23, 2009.


George Hue
Case Administrator
State Bar Court