

(Do not write above this line.)

**State Bar Court of California  
Hearing Department  
Los Angeles  
ALTERNATIVE DISCIPLINE PROGRAM**

<p>Counsel For The State Bar</p> <p>MONIQUE T. MILLER DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, California 90015-2299 213-765-1486</p> <p>Bar # 212469</p>	<p>Case Number (s) 07-O-11706 <del>09-O-13246</del></p> <p align="center"><b>PUBLIC MATTER LODGED</b></p> <p align="center"><del>APR 01 2010</del></p> <p align="center"><del>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</del></p>	<p>(for Court's use)</p> <p align="center"><b>FILED</b></p> <p align="center">NOV 03 2010</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>JOHN W. NELSON Weisenberg &amp; Nelson, Inc. 12437 Lewis Street, Suite 204 Garden Grove, CA 92840-4652 (714) 703-7070</p> <p>Bar # 73958</p>	<p>Submitted to: <b>Program Judge</b></p> <p><b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Kathleen M. Fitzgerald</p> <p>Bar # 145252</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 December 13, 1989.
- (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 8 pages, excluding 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) 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 04-O-14672
  - (b)  Date prior discipline effective July 13, 2005
  - (c)  Rules of Professional Conduct/ State Bar Act violations: B&P Code Section 6126-Unauthorized practice of law.
  - (d)  Degree of prior discipline Public Reproval - (12) months.
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:  
02-O-12629(02-O-14382; 03-O-00840): 9/18/03 effective date, Violations: RPC Rule 3-700(D)(2): Failure to refund unearned fees, 4-100(B)(3): Failure to provide accounting, 3-110(A): Failure to perform competently, B&P code Section 6068(m): Failure to communicate; Degree Prior Discipline: Public Reproval-(12) months: 03-O-02533: 6/30/04 effective date, Violations: B&P code Section 6068(i): Failure to cooperate in State Bar investigation, Degree prior Discipline: Public Reproval -(12) months.
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

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

IN THE MATTER OF: Kathleen Fitzgerald

CASE NUMBER(S): 07-O-11706 and 09-O-13246

**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 August 12, 2009 in Case No. 07-O-11706, and the facts and conclusions of law contained in this stipulation. The parties also waive the issuance of an amended Notice of Disciplinary Charges relating to Case No. 07-O-11706 that is a subject matter of this stipulation.

**WAIVER OF ISSUANCE OF NOTICE OF DISCIPLINARY CHARGES IN CASE NO. 09-O-13246**

In addition, the parties hereby agree to resolve Case No. 09-O-13246 by this ADP stipulation.

**INCORPORATION OF PRIOR STIPULATION**

This stipulation is an addendum intended to supplement the Stipulation re: Facts and Conclusions of Law in Case No. 06-H-12126, which the parties lodged with this Court on February 26, 2007 (the “Prior Stipulation”). The Prior Stipulation is also incorporated as if fully set forth herein.

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.

**FACTS AND CONCLUSIONS OF LAW IN CASE NOS. 09-O-13246**

**FACTS**

1. Between September 16 and September 30, 2004, Respondent was suspended from the practice of law in California by the California Supreme Court, order number S126962, due to her failure to pay membership fees to the State Bar of California.
2. Between September 16 and October 18, 2004, Respondent was not entitled to practice law in California due to her failure to comply with Minimum Continuing Legal Education rules.
3. Respondent knew or reasonably should have known that she was not authorized to practice law from September 16 through October 18, 2004.
4. On September 21, 2004, when Respondent was not entitled to practice law, Greg Baker (“Baker”) employed Respondent to provide legal representation in a family law matter pending with

Nghi Vo (“Vo”) in the Orange County Superior Court entitled, *In the Matter of Greg Baker and Nghi Vo*, case number 04P000738, and paid Respondent a \$500 advance fee for the representation.

5. On September 22, 2004, when Respondent was not entitled to practice law, Baker paid Respondent a \$2,500 advance fee for the representation.

6. Baker informed Respondent that a hearing was set in the matter for October 6, 2004 on child support and custody issues when he employed Respondent. Respondent told Baker that she would attend the hearing with Baker.

7. Between September 21 and October 18, 2004, Respondent did not disclose to Baker that she was not entitled to practice law in California, but held herself out as entitled to practice law to Baker during that period.

8. By holding herself out as entitled to practice law to Baker between September 21 to October 18, 2004, Respondent violated Business and Professions Code sections 6125 and 6126 (“sections 6125 and 6126”).

9. Respondent did not appear for the hearing on October 6, 2004, but sent another attorney to appear and continue the hearing to November 17, 2004 without Baker’s knowledge or consent.

10. On November 16, 2004, the parties entered into a stipulated judgment for paternity, and child custody, visitation and support in the matter. Respondent informed Baker that she would appear on his behalf at the hearing regarding child custody, visitation and support set for November 17, 2004 and file the stipulated judgment, so that the judgment could be entered. Respondent informed Baker that he need not appear for the hearing.

11. On November 17, 2004, Respondent appeared at the November 17, 2004 hearing, but did not file the stipulated judgment. Respondent represented that the matter had been resolved. Therefore, the court took the hearing off calendar without issuing any orders regarding child custody, visitation or support.

12. Respondent took no action in the matter until November 9, 2005, when Respondent filed an at issue memorandum in the matter on behalf of Baker. However Respondent had not substituted into the matter as the attorney for Baker, so the court could not set the matter for a trial setting conference.

13. Respondent took no further action to obtain a judgment for Baker between December 2005 and March 2007.

14. On March 2, 2007, Vo set the matter for a hearing regarding child custody and visitation on April 9, 2007, and the court ordered the parties to mediation.

15. On April 9, 2007, Respondent filed a substitution of attorney naming her as Baker’s attorney in the matter. Respondent also filed a declaration, signed by Baker in October 2005 and by Vo in December 2005, in support of the entry of an uncontested judgment regarding child custody, visitation and support, along with the stipulated judgment that had been signed by the parties in November 2004. The court entered the judgment on April 18, 2007.

16. Between March and October 2006, Baker left several messages in which he requested the status of his family law matter from Respondent. Respondent did not contact Baker with the status of his family law matter.

17. Baker terminated Respondent's employment by letter dated March 5, 2007. In the letter, Baker requested that Respondent execute a substitution of attorney and release his client file. Respondent received the letter. Respondent did not release the client file to Baker, despite his subsequent attempts to obtain the file from Respondent on April 13 and 18, 2007.

18. On April 20, 2007, the State Bar of California ("State Bar") opened an investigation identified as case number 07-O-11706, concerning a complaint submitted by Baker against Respondent regarding her representation in the family law matter.

19. On or about June 22, 2007, a State Bar investigator sent a letter to Respondent regarding the allegations raised by Baker's complaint at her membership records address of 1 City Blvd. W., #1442, Orange, CA 92868. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service ("USPS") in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter.

20. In the June 22, 2007 letter, the investigator requested a response to the allegations raised by Baker's complaint by July 6, 2007. Respondent did not respond to the letter.

21. On September 10 and 11, 2007, a State Bar investigator left telephone messages for Respondent in which he requested a response to the allegations raised by Baker's complaint.

22. To date, Respondent has not provided a response to the investigator to the allegations raised by Baker's complaint.

#### CONCLUSIONS OF LAW

23. By accepting the \$3,000 in advance fees from Baker when she was not entitled to practice law in California, Respondent wilfully entered into an agreement for, charged, and collected an illegal fee, in violation of Rules of Professional Conduct, rule 4-200(A).

24. By violating sections 6125 and 6126, Respondent wilfully failed to support the laws of this state, in violation of Business and Professions Code section 6068(a).

25. By not appearing at the October 2004 hearing, by not filing the stipulated judgment in November 2004; and by not obtaining the judgment for Baker until April 2007, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

26. By not contacting Baker with the status of his family law matter, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client, in violation of Business and Professions Code section 6068(m).

27. By not releasing the client file to Baker, Respondent wilfully failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client's papers and property, in violation of Rules of Professional Conduct, rule 3-700(D)(1).

28. By not providing a response to the investigator to the allegations raised by Baker's complaint, Respondent wilfully failed to cooperate and participate in a disciplinary investigation pending against Respondent, in violation of Business and Professions Code section 6068(i).

## **FACTS AND CONCLUSIONS OF LAW IN CASE NO. 09-O-13246**

### FACTS

29. On July 2, 2007, Valerie Tedesco ("Tedesco") employed Respondent to represent the Tedesco family in filing for probate.

30. On July 2, 2007, Tedesco paid Respondent \$1,000 advanced costs.

31. Thereafter, Respondent failed to perform any legal service on behalf of Tedesco and her family.

32. By failing to perform any legal service on behalf of Tedesco and her family, Respondent did not utilize any portion of the \$1,000 advanced costs.

33. In late August 2009, Respondent refunded the \$1,000 unutilized costs to Tedesco.

### CONCLUSIONS OF LAW

34. By failing to perform any legal service on behalf of Tedesco and her family, Respondent failed to complete legal services, in willful violation of Rules of Professional Conduct, rule 3-110(A).

## **RULE 133 NOTICE OF PENDING PROCEEDINGS**

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on November 10, 2009.

(Do not write above this line.)

In the Matter of KATHLEEN M. FITZGERALD	Case number(s): 07-O-11706; 09-O-13246
--------------------------------------------	-------------------------------------------

### 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.

11/10/09  
Date

Kathleen M. Fitzgerald  
Respondent's Signature  
Kathleen M. Fitzgerald  
Print Name

11/10/09  
Date

John 'Jack' W. Nelson  
Respondent's Counsel Signature  
John 'Jack' W. Nelson  
Print Name

Nov. 17, 2009  
Date

Monique T. Miller  
Deputy Trial Counsel's Signature  
Monique T. Miller  
Print Name



(Do not write above this line.)

In the Matter Of <b>KATHLEEN M. FITZGERALD</b>	Case Number(s): <b>07-O-11706; 09-O-13246</b>
---------------------------------------------------	--------------------------------------------------

**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.)

3-30-10

Date



Judge of the State Bar Court

**RICHARD A. PLATEL**

## 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 April 1, 2010, I deposited a true copy of the following document(s):

AGREEMENT AND ORDER AMENDING CONTRACT AND WAIVER FOR PARTICIPATION IN TH STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM; ORDER AMENDING CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS; 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:

JOHN WILLIAM NELSON  
WEISENBERT & NELSON INC  
12437 LEWIS ST STE 204  
GARDEN GROVE CA 92840

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:

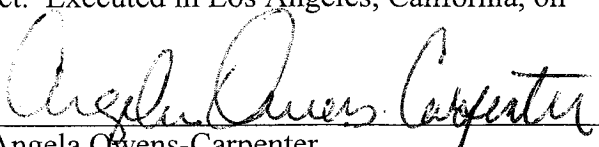
by fax transmission, at fax number \_\_\_\_\_. No error was reported by the fax machine that I used.

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:

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 1, 2010.

  
\_\_\_\_\_  
Angela Owens-Carpenter  
Case Administrator  
State Bar Court

ORIGINAL

PUBLIC MATTER

FILED

(Do not write above this line.)

State Bar Court of California  
Hearing Department

NOV 03 2010  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

Counsel For The State Bar <b>DAVID T. SAUBER</b> Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 Bar # 176554      Tel: (213) 765-1252	Case Number (s)  06-H-12126	(for Court's use)  <b>RECEIVED</b>
<b>JOHN W. NELSON</b> 12437 Lewis Street, Suite 204 Garden Grove, California 92840  Bar # 73958      Tel: (714) 703-7070	<del> <b>LODGED</b>          SEP 19 2007          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </del>	<b>FEB 26 2007</b> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Submitted <del>LOS ANGELES</del> Judge		
In the Matter Of:  <b>KATHLEEN MARGARET FITZGERALD</b>  Bar # 145252  A Member of the State Bar of California (Respondent)	<b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 13, 1989
- (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, if Respondent is not accepted into the Lawyer Assistance 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 (6) pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." -See Attachment
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". -See Attachment
- (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 04-O-14672
- (b)  Date prior discipline effective July 13, 2005
- (c)  Rules of Professional Conduct/ State Bar Act violations: B&P Code §6126 - Unauthorized Practice of Law
- (d)  Degree of prior discipline Public Reprimand - (12) Months
- (e)  If Respondent has two or more incidents of prior discipline, use space provided below:  
02-O-12629 (02-O-14382; 03-O-00840): 9/18/03 effective date, Violations: RPC Rule 3-700(D)(2): Failure to refund unearned fees, 4-100(B)(3): Failure to provide accounting, 3-110(A): Failure to perform competently, B&P Code §6068(m): Failure to communicate; Degree Prior Discipline: Public Reprimand - (12) Months; 03-O-02533: 6/30/04 effective date, Violations: B&P Code §6068(i): Failure to cooperate in State Bar Investigation, Degree Prior Discipline: Public Reprimand - (12) Months.
- (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.

(Do not write above this line.)

---

- (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:**

ATTACHMENT TO  
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: KATHLEEN MARGARET FITZGERALD MEMBER # 189654 <sup>145252</sup> *AMP*

CASE NUMBER(s): 06-H-12126

**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. *AMP*

Facts for Case No. 06-H-12126

1. On or about June 7, 2005, Respondent entered into a Stipulation As To Facts and Disposition ("Stipulation") with the State Bar of California in Case No. 04-O-14672.

2. On June 22, 2005, the Hearing Department of the State Bar Court filed an Order approving the Stipulation and recommending respondent receive a public reproof with conditions (the "Order").

3. On or about June 22, 2005, the Order was properly served by mail upon Respondent. Respondent received the Order.

4. The Order and the public reproof became effective on July 13, 2005.

5. Pursuant to the Order, Respondent was required to comply with certain terms and conditions attached to the public reproof for a period of one year, including the following conditions:

a. To comply with the State Bar Act and the Rules of Professional Conduct during the condition period attached to the reproof; and

b. To submit to the Probation Unit written quarterly reports each January 10, April 10, July 10, and October 10 of each year or part thereof during the condition period attached to the reproof, certifying under penalty of perjury that she has complied with all provisions of the State Bar Act and the Rules of Professional Conduct during the preceding calendar quarter or part thereof covered by the report and to file the final report no earlier than twenty days prior to the expiration of the condition period attached to the reproof and no later than the last day of said period.

6. On June 23, 2005, the Office of Probation of the State Bar of California wrote a letter to Respondent in which it reminded Respondent of the terms and conditions of her reproof. The letter also listed the reporting due-dates for the Quarterly Reports and Ethics School. The June 23, 2005 letter also specifically warned Respondent that failure to timely submit reports or any other proof of compliance will result in a non-compliance referral to the Enforcement Unit of the Office of the Chief Trial Counsel. Attached to the letter was a copy of the portion of the Stipulation setting forth the conditions of Respondent's reproof, and Quarterly Report Instructions.

7. The letter was mailed on or about June 23, 2005 via United States Postal Service, first class mail, postage-paid, addressed to Respondent at her official State Bar membership records address. The June 23, 2005 letter was not returned as undeliverable by the United States Postal Service.

8. Respondent received the June 23, 2005 letter from the Probation Unit.

9. As set forth below respondent was late in filing three of her required Quarterly Reports:

- a. Quarterly Report due on October 10, 2005 was filed on November 23, 2005;
- b. Quarterly Report due on January 10, 2006 was filed on June 28, 2006; and
- c. Quarterly Report due on April 10, 2006 was filed on June 28, 2006.

**Conclusions of Law for Case No. 06-H-12126**

10. By failing to comply with the conditions of her reproof as set forth in the Stipulation, Respondent willfully violated California Rules of Professional Conduct, Rule 1-110.

(Do not write above this line.)

In the Matter of KATHLEEN MARGARET FITZGERALD MEMBER #145252	Case number(s): 06-H-12126
--------------------------------------------------------------------	-------------------------------

### 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, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

\_\_\_\_\_  
Date  
02/23/07  
Date  
2/26/07  
Date

  
\_\_\_\_\_  
Respondent's Signature  
  
\_\_\_\_\_  
Respondent's Counsel Signature  
  
\_\_\_\_\_  
Deputy Trial Counsel's Signature

\_\_\_\_\_  
KATHLEEN M. FITZGERALD  
Print Name  
\_\_\_\_\_  
JOHN W. NELSON  
Print Name  
\_\_\_\_\_  
DAVID T. SAUBER  
Print Name



(Do not write above this line.)

In the Matter Of KATHLEEN MARGARET FITZGERALD MEMBER #145252	Case Number(s): 06-H-12126
--------------------------------------------------------------------	-------------------------------

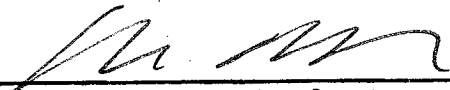
**ORDER**

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(b), Rules of Procedure.)

09-18-07  
Date

  
Judge of the State Bar Court

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 19, 2007, I deposited a true copy of the following document(s):

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND  
ORDERS; STIPULATION RE FACTS AND CONCLUSIONS OF LAW;  
CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR  
COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

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


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

**JOHN W NELSON  
WEISENBERG & NELSON INC  
12437 LEWIS ST STE 204  
GARDEN GROVE CA 92840**

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

**ERIC HSU, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 19, 2007**.

  
**Angela Owens-Carpenter**  
Case Administrator  
State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 January 26, 2011, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS; (2) 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:

JOHN W NELSON  
WEISENBERG & NELSON INC  
12437 LEWIS ST STE 204  
GARDEN GROVE CA 92840

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:

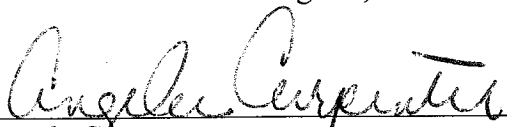
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 26, 2011.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court