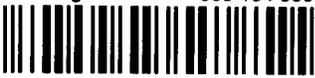


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State Bar Court of California

Hearing Department
Los Angeles

NOT FOR PUBLICATION

<p>Counsel For The State Bar</p> <p>Bitu Shasty Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015-2299</p> <p>Bar # 225177</p>	<p>Case Number (s) 07-O-13997</p>	<p>(for Court's use)</p> <p>FILED</p> <p>JAN 20 2009</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> 
<p>In Pro Per Respondent</p> <p>PATRICK KELLY MCCLELLAN 2211 Michelson Dr., Ste. 700 Irvine, California 92612</p> <p>Bar # 77352</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PRIVATE REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: PATRICK KELLY MCCLELLAN</p> <p>Bar # 77352</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 21, 1977**.
- (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 **10** 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.

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(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.
- (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.

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- (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. **Respondent has been a member of the California State Bar for 31 years.**
- (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. **Respondent promptly paid his Membership Dues as soon as he found out he had failed to pay them.**
- (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) **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 Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **1 year**.
- (2) During the condition period attached to the reproof, 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 reproof. 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 reproof 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.

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- (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:
- (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 TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PATRICK KELLY MCCLELLAN

CASE NUMBER(S): 07-O-13997

FACTS AND CONCLUSIONS OF LAW.

Respondent Patrick Kelly McClellan (“Respondent”) admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

FACTS

1. In or about November 2006, the State Bar of California mailed to Respondent his 2007 State Bar Membership Fee Statement by first-class mail by depositing it for collection by the United States Postal Service. Respondent’s Membership Fee Statement was mailed to Respondent’s official State Bar membership address of record, which at the time was 2151 Michelson Dr. #140, Irvine, CA, 92612-1334. However, at some point prior to November 2006, Respondent had moved his office to 2600 Michelson Dr. #700, Irvine, CA 92612, but did not comply with Bus. and Prof. Code section 6002.1 and update his official membership address of record with the State Bar.

2. On or about December 21, 2006, the United States Postal Service returned Respondent’s 2007 State Bar Fee Statement to the State Bar as undeliverable and marked “return to sender, not deliverable as addressed, unable to forward.” Respondent did not receive this fee statement.

3. In or about February 2007, the State Bar of California again mailed to Respondent his 2007 State Bar Membership Fee Statement by first-class mail by depositing it for collection by the United States Postal Service. The outside of the envelope was marked “2007 Fee Statement, Past Due.” This fee statement was mailed to Respondent’s official State Bar membership record address on file with the State Bar, which remained 2151 Michelson Dr. # 140, Irvine, CA 92612-1334. On or about March 30, 2007, this fee statement was returned to the State Bar as undeliverable and marked, “return to sender, attempted - not known, unable to forward.” Respondent did not receive this fee statement.

4. On or about April 27, 2007, the State Bar mailed Respondent a "Final Delinquent Notice" concerning his 2007 State Bar membership fees, which had not been paid. This notice was mailed by first-class mail by depositing it for collection by the United States Postal Service. This notice was mailed to Respondent's official State Bar membership record address on file with the State Bar, which remained 2151 Michelson Dr. #140, Irvine, CA 92612-1334. On or about May 11, 2007, this notice was returned to the State Bar as undeliverable and marked "return to sender, attempted - not known, unable to forward." Respondent did not receive this notice. Thereafter, Respondent did not timely pay his State Bar membership fees due for 2007.

5. Business and Professions Code section 6002.1 provides in pertinent part that "(a) [a] member of the State Bar shall maintain all of the following on the official membership records of the State Bar: (1) [t]he member's current office address and telephone number or, if no office is maintained, the address to be used for State Bar purposes or purposes of the agency charged with attorney discipline... . A member shall notify the membership records office of the State Bar of any change in the information required by paragraphs (1), (4) and (5) within 30 days of any change... ."

CONCLUSIONS OF LAW:

6. By failing to update his membership record address within 30 days of any change and, in particular, by failing to update his membership address of record with the State Bar from at least November of 2006 to September 10, 2007, Respondent willfully violated Business and Professions Code section 6002.1, and thereby violated Business and Professions Code section 6068(j).

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

The parties waive any variance between the Notice of Disciplinary Charges filed on September 22, 2008, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was December 12, 2008.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
07-O-13997	1	Business and Professions Code, section 6068(a)

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

Standard 2.6 provides that “[c]ulpability of a member of a violation of Business and Professions Code, section 6068(j) 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.”

Recently, the Supreme Court emphasized the importance of the standards and held that great weight should be given to the application of the *Standards* in determining the appropriate level of discipline. The Court indicated that unless it has “grave doubts as to the propriety of the recommended discipline,” it will uphold the application of the standards. *In re Silverton* (2005) 36 Cal. 4th 81, 91-92.

However, the Court in *Silverton* also indicated that the State Bar Court may deviate from the *Standards* where there exists grave doubt as to the propriety of applying them in a particular case. *Id.* at p. 92. For example, deviation from the *Standards* may be appropriate where extraordinary circumstances exist or where the imposition of discipline called for by the *Standards* would be manifestly unjust.

The parties submit that it would be manifestly unjust to apply *Standard 2.6* in this matter without deviation for the following reasons.

Respondent has been practicing law for the past 31 years without any prior imposition of discipline. Respondent had changed office locations and no longer had staff to manage his

office. Due to the failure to update his membership information with the State Bar of California, Respondent never had knowledge that he had failed to pay his membership dues. Therefore, his conduct was not intentional. Furthermore, as soon as Respondent became aware of the failure to pay his fees, he promptly corrected the problem and made a credit card payment over the phone with the State Bar Membership department.

As such, Respondent's conduct does not present a significant concern that he poses a future threat to the public or his clients.

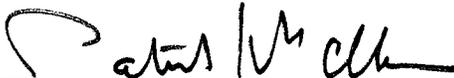
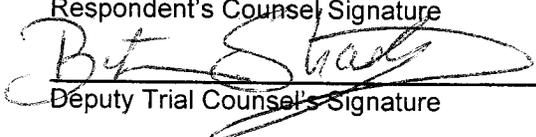
The parties further submit that the intent and goals of Standard 1.3 are met in this matter by the imposition of a private reproof with probationary conditions articulated herein, including that Respondent attend Ethics School and take the Multistate Professional Responsibility Examination.

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In the Matter of PATRICK KELLY MCCLELLAN	Case number(s): 07-O-13997
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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>1.13.09</u> Date	 Respondent's Signature	<u>PATRICK KELLY MCCLELLAN</u> Print Name
<u>1-14-09</u> Date	 Respondent's Counsel Signature Deputy Trial Counsel's Signature	<u>BITA SHASTY</u> Print Name

DECLARATION OF SERVICE BY REGULAR MAIL

CASE NUMBERS: 07-O-13997

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below, addressed to:

**Patrick K. McClellan
2211 Michelson Drive, Suite 700
Irvine, California 92612**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: January 14, 2009

Signed: _____

Charles C. Bagai
Declarant

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 January 20, 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:

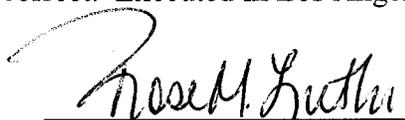
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PATRICK KELLY MCCLELLAN, ESQ.
2211 MICHELSON DR STE 700
IRVINE, CA 92612

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

BITA SHASTY, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 20, 2009.



Rose Luthi
Case Administrator
State Bar Court