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State Bar Court of California Hearing Department San Francisco		
Counsel For The State Bar Robin Brune Office of the Chief Trial Counsel 180 Howard Street San Francisco, California 9415 Bar # 149481	Case Number (s) 07-O-14196	(for Court's use) PUBLIC MATTER FILED  AUG 17 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent David McMonigle Long and Levitt 465 California Street Suite 500 San Francisco, California 94104 Bar # 258980	Submitted to: Settlement Judge	
In the Matter Of: Arlene Kock Bar # 80276 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input checked="" 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 June 23, 1978.
- (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."



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- (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.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

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

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case **05-O-0391 et.al.**
 - (b) Date prior discipline effective **not yet effective.**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **3-700(D)(2);4-100(B)(3).**
 - (d) Degree of prior discipline **one year of suspension, stayed, one year of probation, including thirty days of actual suspension.**
 - (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.
- (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. **There are numerous occasions upon which respondent showed disrespect to the Court.**
- (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 has been cooperative in reaching a stipulation in this matter.**
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one year**.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: Respondent recommended to be ordered to do Ethics School in case no. 05-O-03912 et.al., filed May 4, 2010.
- (8) 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.
- (9) 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:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

No MPRE recommended. Reason: Respondent recommended to be ordered to do MPRE in case no. 05-O-03912 et. al., filed May 4, 2010.

- (2) **Other Conditions:**

The stipulation in this case is related to the stipulation in case no. 05-O-03912 et.al., filed May 4, 2010. In case no. 05-O-03912, et.al., the parties stipulated as follows (page 6): "This stipulation will not be considered a prior record of discipline with respect to any pending cases that occurred during the same time period as the case set forth in this stipulation."

See statement in "Authorities Supporting Discipline" for further information.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Arlene Kock

CASE NUMBER(S): ET AL. 07-O-14196

FACTS AND CONCLUSIONS OF LAW.

In May, 2006, Laura Kessler hired respondent to represent her in her ongoing divorce and domestic violence matters, *Laura Kessler v. Michael Kessler*, case no. FFL09494, and *Michael Kessler v. Laura Kessler*, case no. FFL90911, both filed in Superior Court, County of Solano. The cases were eventually consolidated, with case no. FL90911(dissolution) as the lead case. The matters in this stipulation involve case no. FL90911.

May 15, 2006 hearing

Just prior to respondent's representation of her, Kessler appeared in Court with prior counsel, Heron, on May 15 2006. The Court ordered Heron to prepare the Order After Hearing (OAH). This obligation passed on to respondent when she assumed representation of Kessler.

Respondent did not prepare an OAH for the May 15, 2006 hearing.

June 19, 2006 hearing

Respondent appeared in court on behalf of Kessler for a hearing on June 19, 2006. At that time, respondent recited to the Court that the parties had agreed to file income and expense affidavits by the next hearing and provide each other with up-to-date pay stubs. Respondent also told the Court that the parties had agreed to psychiatric testing and an evaluation for custody purposes. At the June 19, 2006 hearing, the Court ordered respondent to file a formal substitution of attorney, substituting herself into the case, within the next ten days. Respondent indicated to the Court that she would prepare the Order After Hearing (OAH) for the June 19, 2006 hearing. The Court also advised respondent to use form FL 327 for the order for the psychological evaluator. The minute order for the Court's June 19, 2006 hearing stated that both parties shall file updated income and expense affidavits, with paystubs, and that respondent would prepare the OAH.

Respondent did not file her substitution of attorney within the ten day time frame (respondent filed it in November, 2006). Respondent did not file an OAH for the June 19, 2006 hearing. Respondent did not use or submit form FL 327 for the order for the psychological evaluator. Respondent did not submit an income and expense affidavit for her client by "the next hearing date." There were hearing dates on September 11, 2006 and October 26, 2006. Respondent did not file the income and expense affidavit for her client until November, 2006.

Respondent did not prepare and submit an OAH for the June 19, 2006 hearing.

September 11, 2006 hearing

On September 11, 2006, the parties again returned to court on the *Kessler* matter. The parties discussed the psychological evaluation and the Court again advised the parties to use the FL 327 form. The Court provided respondent with the form for the OAH for the September 11, 2006 hearing, indicating that respondent would prepare the OAH.

Respondent did not use or submit the FL 327 form in response to the Court's advisement on September 11, 2006. Respondent did not prepare an OAH for the September 11, 2006 hearing.

October 26, 2006 hearing

On October 26, 2006, the parties again returned to Court on the *Kessler* matter. The Court requested the parties to file preliminary disclosure documents by the next hearing, set for November 16, 2006. The Court also told respondent to prepare and submit a response to the petition for divorce filed by the husband.

Respondent did not file the preliminary disclosure documents by the next hearing. Respondent did not prepare and submit a response to the petition for divorce prior to the next hearing. Respondent did not prepare an OAH for the October 26, 2006 hearing.

November 16, 2006 hearing

On November 16, 2006 the parties again returned to Court. The Court then formally ordered that the preliminary disclosure documents be filed no later than December 6, 2006. The Court also asked respondent to go out and complete the substitution of attorney and the response to the divorce. Respondent then handwrote the substitution of attorney and response to the divorce and filed these documents at the courthouse on that same date. Respondent did not prepare an OAH for the November 16, 2006 hearing.

On or about December, 2006, Kessler terminated respondent's services. Kessler disputed respondent's fees. Pursuant to this stipulation between the State Bar and respondent, respondent agrees that \$11,364.50 is due and payable as unearned fees, plus the rate of ten per cent per annum from the date of May 1, 2008. Respondent failed to refund these unearned fees to Kessler until May, 2010.

Conclusions of Law

1. By failing to file the OAH's for the Court hearings for May 15, 2006; June 19, 2006; September 11, 2006 and November 16, 2006; by failing to promptly file a substitution of attorney, which was ordered on June 19, 2006 but not filed until November, 2006; by failing to promptly file the income and expense affidavits after advising the Court on June 19, 2006 that she would do so; by failing to file the preliminary disclosure documents as requested by the Court on October 26, 2006, to be filed by the next hearing date of November 16, 2006; by failing to use the FL-327 form as requested by the Court; and by failing to file a response to the divorce until November, 2006, respondent failed to maintain respect to the Court, in violation of Business and Professions Code, section 6068(b).

2. By failing to refund \$11,364.50 to Kessler until May, 2010, when the representation concluded in December, 2006, respondent failed to promptly refund unearned fees, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was July 29, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 27, 2010, the prosecution costs in this matter are \$2,339.16. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.6 (a) Culpability of a member of a violation of Business and Professions Code, section 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3 (protection of the public, the courts, and the legal profession).

Standard 1.7(a) specifies that when there is prior discipline, successive discipline should be greater than the prior. If the period of misconduct of the prior discipline overlaps the same time frame as the period of discipline in the current discipline, then the Court should take the overlapping time frame into consideration, and address the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought in one case. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, at 618-619; *In the Matter of Hagen*, (1992) 2 Cal. State Bar Ct. Rptr. 153, at 171. In this case, respondent's first disciplinary matter, 05-O-03912 et. al., is a stipulation which was signed by the parties in April, 2010, (filed date stamped May 4, 2010) and which is currently not yet approved by the Supreme Court. The time frame in the present case, May-November 2006, overlaps the same time frames as in the Khav, Orosco, and Luis matters identified in 05-O-03912 et. al. Thus, it is appropriate for this Court to consider the totality of the two cases to determine what the discipline would have been had all the charged misconduct been brought in one case.

In case no. 05-O-03912, the State Bar stipulated as follows (page 6): "This stipulation will not be considered a prior record of discipline with respect to any pending cases that occurred during the same time period as the cases set forth in this stipulation."

These precedents were taken into consideration in reaching the settlement in this matter.

Case law demonstrates that the level of discipline for failing to show respect to the Court ranges from reprimand to actual suspension. *Moesian v. State Bar* (1972) 8 Cal.3d 60; *Hogan v. State Bar* (1951) 36 Cal.2d 807; *Ramirez v. State Bar* (1980) 28 Cal.3d 402. In *Moesian*, the attorney gave false testimony to the Court in an adversarial proceeding which involved family members. The Court found he failed to maintain respect to the Court, in violation of Business and Professions Code, section 6068(b), and imposed a public reprimand. In *Hogan*, the attorney made disparaging remarks against the Court in his pleadings. He was found culpable of violation of Business and Professions Code sections 6103, 6068(f) and 6068(b) and given a three month actual suspension. In *Ramirez*, the attorney made

disparaging remarks against the Court and was found to be in violation of Business and Professions Code sections 6068(f), 6068(b) and 6067, and received thirty days of actual suspension.

STATE BAR ETHICS SCHOOL EXCLUSION.

It is not recommended that respondent attend State Bar Ethics School since respondent was recently ordered to attend Ethics School in case no. 05-O-03912 et.al, filed May 4, 2010.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES (FINANCIAL CONDITIONS, RESTITUTION).

Respondent made full payment of restitution in the amount of \$11,364.50 plus the rate of ten percent per annum from May 1, 2008, as a condition precedent to this stipulation.

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION EXCLUSION.

It is recommended that respondent not be required to take the Multistate Professional Responsibility Examination because the parties anticipate that she will be ordered to take and pass the examination pursuant to the stipulation in case nos. 05-O-03912, et.al, which was approved by this Court on May 4, 2010.


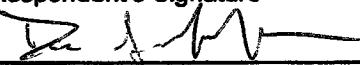
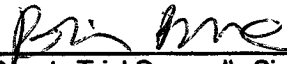
Respondent admits that the aforementioned facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

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In the Matter of ARLENE KOCK	Case number(s): 07-O-14196;
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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>8/2/10</u> Date	 Respondent's Signature	<u>ARLENE KOCK</u> Print Name
<u>8/4/10</u> Date	 Respondent's Counsel Signature	<u>DAVID MC MONIGLE</u> Print Name
<u>8/5/2010</u> Date	 Deputy Trial Counsel's Signature	<u>ROBIN BRUNE</u> Print Name

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In the Matter Of Arlene Kock	Case Number(s): 07-O-14196
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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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 2, the prior case number is 05-O-3912, and not 05-O391.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

August 17, 2010


PATRICE 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 August 17, 2010, 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:

**DAVID S. MCMONIGLE
LONG & LEVIT LLP
465 CALIFORNIA ST STE 500
SAN FRANCISCO, CA 94104**

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 17, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court