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State Bar Court of California Hearing Department San Francisco		
Counsel For The State Bar Donald R. Steedman Supervising Trial Counsel State Bar of California 180 Howard St. 7th Fl. San Francisco, CA 94105 (415) 538-2345 Bar # 104927	Case Number (s) 07-O-14198 PUBLIC MATTER	(for Court's use) FILED  JUL 15 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Ephraim Margolin Attorney at Law 240 Stockton Street, 4th Fl. San Francisco, CA 94108 5318 (415) 421-4347 Bar # 32582	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter Of: Kelth Faulder Bar # 163802 A Member of the State Bar of California (Respondent)	PUBLIC REPROVAL <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 February 26, 1993.
- (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."



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- (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."

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- (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. Respondent was admitted to practice 16 years ago.
- (2) ☒ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct. Neither the District Attorney's case, nor the defendant's case, was harmed by respondent's actions.
- (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 fully cooperated in the investigation of 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. Respondent has expressed remorse for the 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. Respondent did not act with evil intent.
- (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

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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:

Respondent's misconduct occurred under unusual personal circumstances: At the time he appeared in the Mendocino District Attorney's office in the Garzini matter, (1) respondent was in the midst of a special election wherein he was a candidate for district attorney and (2) an attorney strike was being conducted by deputy district attorneys. At the time he appeared on behalf of Garzini, (1) respondent had recently been fired from his position at the District Attorney's office, with resultant loss of income and benefits for his family, and (2) he had just started private practice.

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 reproof for a period of one 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.

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- (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 reproval.
- (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 reproval.
- ☐ 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:

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Attachment language (if any):

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was June 18, 2009.

FACTS AND CONCLUSION OF LAW.

Respondent admits that the following facts are true, and that he is culpable of the following violation:

1. From approximately January 2000 until April 2007, respondent was employed by the Mendocino County District Attorney's Office ("MCDAO") as a public prosecutor. Following the death of the elected District Attorney, respondent served as MCDAO's interim District Attorney between on or about September 26, 2006 and January 11, 2007. In that capacity, respondent directed all operations of that office. Between on or about January 11, 2007 and on or about April 20, 2007, respondent served as the Assistant District Attorney, the second highest position in the MCDAO. On or about April 20, 2007, the newly elected District Attorney fired Respondent, and demanded his immediate removal from the office.

2. In or about October 25, 2006, the MCDAO, on behalf of the People of the State California ("People") filed a criminal complaint against Robert Albert Garzini ("Garzini"), charging Garzini with five felony counts relating to the manufacture, possession, and cultivation of a controlled substance and possession of a firearm by a felon. The case against Garzini, Mendocino County Superior Court Case No. SCUK-CRCR-06-74100, is hereinafter referred to as the "Garzini matter.") The Garzini matter was assigned to the marijuana suppression unit ("MSU"), a grant-funded unit within the MCDAO that prosecutes the commercial marijuana cases. The MSU has a deputy district attorney ("DDA") assigned to handle all the cases assigned to MSU.

3. Thereafter, Respondent prosecuted, aided and promoted MCDAO's criminal case against Garzini in the following ways:

a) On or about March 13, 2007, the non-management level attorneys in the MCDAO were on strike, including the DDA assigned to the MSU. Respondent was assisting the Attorney General's Office with case coverage in court. In that capacity, he conferred with the DDA assigned to the Garzini matter regarding an offer that the DDA had previously conveyed to Garzini's defense counsel. Respondent documented the offer in the MCDAO's file in the Garzini matter on what the staff in the MCDAO refer to as the "golden rod." Respondent reconveyed the same offer to Garzini's defense counsel.

b) On or about April 12, 2007, Respondent personally appeared in court on behalf of the MCDAO on a criminal master calendar. In that capacity, Respondent appeared on the Garzini matter, and set it for a hearing.

c) From the time of the filing of the Garzini matter until shortly before he was fired from the MCDAO's office on April 20, 2007, respondent continuously held a supervisory role in the office. Respondent however, did not have supervisory role over the MSU between January 11, 2007 and his termination date by a specific order of the Interim District Attorney.

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4. On or about April 20, 2007, respondent was fired from the MCDAO by his opponent in the special election. He then opened his own law office.

5. Thereafter, Respondent took part in the defense of the Garzini matter by doing the following:

a) In or about September 2007, Garzini contacted Respondent and asked him to represent him in the Garzini matter. Before agreeing to represent Garzini, respondent did not advise the MCDAO or the court that he was going to represent a criminal defendant in the same action where he had previously represented the MCDAO. Respondent did not obtain the consent of the MCDAO or the court to this representation. Respondent communicated with Garzini concerning the criminal matter in the course of discussions leading to his employment and during the course of his representation of Garzini.

b) On or about September 18, 2007, Respondent made a special appearance for Garzini in the Garzini matter and requested a continuance. Neither respondent or the DDA told the court that Respondent had previously represented the MCDAO in the Garzini matter during the September 18, 2007 hearing.

c) On or about October 9, 2007, respondent appeared in court as defense counsel for Garzini in the Garzini matter. Respondent inter alia waived formal reading of the charges, entered a plea of not guilty on Garzini's behalf, and waived time. However, the DDA refused to waive time and asked that the Garzini matter be set for a prompt jury trial. Respondent asked for trial delay to January. At this point, the assigned DDA for the first time brought to the court's attention respondent's prior involvement as a public prosecutor on behalf of the MCDAO in the Garzini matter. Respondent told the court and the DDA that he did not believe that there was a conflict and that he did not remember working on the case although he may have set dates. The DDA then stated that respondent had made a settlement offer in the case. The court suggested, and respondent agreed, that the issue should be resolved at a later time. The court then turned to discussion of the trial date. Respondent again argued for a delayed trial date. However, the court set the Garzini matter for jury trial beginning November 26, 2007, set a pretrial conference on November 6, 2007, and informed respondent that he would need to file a noticed motion if he wanted a continuance.

d) Between October 9, 2007 and October 24, 2007, respondent continued to represent Garzini and did not withdraw as his attorney, despite the conflict of interest.

6. Respondent has informed the State Bar that, when he participated in Garzini's defense, he was unaware that he had previously participated in its prosecution. Respondent did not contact the MCDAO to check for this conflict, but has informed the State Bar that he did not have access to records or files belonging to or in the possession of the MCDAO at any time after he was fired.

7. On or about November 2, 2007, Respondent filed a Motion for Leave to Withdraw as Attorney, stating that he had learned that he was statutorily barred from representing Garzini in the Garzini matter. Respondent filed this motion after he had received a letter from the MCDAO, dated October 24, 2007, advising him about Business and Professions Code section 6131. On November 6, 2007, the court granted respondent's motion to withdraw.

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8. Respondent prosecuted, and aided and promoted the prosecution of the Garzini matter in his capacity as district attorney and public prosecutor when he engaged in conduct mentioned in paragraph 3a, b and c, above. Afterwards, Respondent violated Business and Professions Code section 6131(b) by directly and indirectly advising Garzini in the Garzini criminal matter and taking part in the defense of the Garzini matter as set forth in paragraph 5a, b, c and d, above.

AUTHORITIES SUPPORTING DISCIPLINE

The Supreme Court has approved reduced discipline for violations of section 6131 in mitigated cases (*Price v. State Bar* (1982) 30 Cal.3d 537). In this case, the State Bar took into account respondent's representation that he participated in the Garzini defense at a time when he had forgotten his prior involvement in that case as a prosecutor.

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In the Matter of
Keith FaulderCase number(s):
07-Q-14198**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.

6.23.09
Date
Respondent's SignatureKeith Faulder
Print Name6/24/09
Date
Respondent's Counsel SignatureEohraim Margolin
Print Name6/25/09
Date
Deputy Trial Counsel's SignatureDonald R. Steedman
Print Name

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In the Matter Of
Keith FaulderCase Number(s):
07-Q-14198

ORDER

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

Date

July 13, 2009

Judge of the State Bar Court

Bar McBurney

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 July 15, 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:

**EPHRAIM MARGOLIN
LAW OFFICE OF EPHRAIM
MARGOLIN
240 STOCKTON STREET, 4TH FL.
SAN FRANCISCO, CA 94108 - 5318**

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

DONALD STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 15, 2009.


Laretta Cramer
Case Administrator
State Bar Court