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Sta	te Bar Court of Califor Hearing Department Los Angeles	nia kwiktag® 035 130 199
Counsel For The State Bar	Case Number (s)	(for Court's use)
Larry DeSha Depuity Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336 Bar # 117910 Counsel For Respondent	08-C-10180-RAP	FILED OCT 1 6 2009
David A. Clare 444 W. Ocean Blvd.; Ste. 800 Long Beach, CA 90802 (562) 624-2837	PUBLIC N	MATTER
	Submitted to: Assigned Ju	ıdge
Bar # 44971 In the Matter Of:	STIPULATION RE FACTS, DISPOSITION AND ORDE	CONCLUSIONS OF LAW AND R APPROVING
DENNIS MICHAEL KEMP		
Bar # 92775 A Member of the State Bar of California (Respondent)	PUBLIC REPROVAL	ION 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 May 30, 1980.
- (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.
- (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 reproval) case ineligible for costs (private reproval)
 - Costs to be paid in equal amounts for the following membership years: **2011 and 2012** (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 reproval 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 officials 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 reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidents of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproval 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 reproval 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.
- (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. See Attachment to Stipulation, para. 11.
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct. See Attachment to Stipulation, para. 12.
- (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. See Attachment to Stipulation, para. 13.
- (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. See Attachment to Stipulation, paras. 6-8.
- (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. See Attachment to Stipulation, paras. 1-10.

- (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 reproval (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).

<u>or</u>

(2) Public reproval (Check applicable conditions, if any, below)

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproval for a period of two (2) years.
- (2) During the condition period attached to the reproval, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproval. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproval during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

⁽Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

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: The misconduct did not involve clients or the practice of law.

(11) The following conditions are attached hereto and incorporated:

Substance Abuse Conditions	Law Office Management Conditions

Medical Conditions
Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) During the two (2) year period of attached conditions, Respondent shall continue regular consultations with the psychiatrist of his choice, at a frequency of not less than once per calendar quarter, or on such other schedule as the psychiatrist may prescribe in writing.
- (2) If the treating psychiatrist prescribes any visit frequency other than once per quarter, Respondent shall adhere to that schedule, obtain a written statement from the doctor for such visit schedule, and attach such statement to his next quarterly report to the Office of Probation.
- (3) Respondent shall take all medications as prescribed. On each report to the Office of Probation, Respondent shall state that he has taken his medications as prescribed and shall report the date of his last visit to the psychiatrist.
- (4) Within sixty (60) days before his final report to the Office of Probation, Respondent shall submit to an examination by his psychiatrist and attach the doctor's report to the final report.

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Attachment language (if any):

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:DENNIS MICHAEL KEMPCASE NO.:08-C-10180-RAP

FACTS:

1. At all pertinent times Respondent was under the care of a psychiatrist for anxiety and depression, which conditions were successfully managed by two separate medications.

2. In June of 2005, Respondent became unemployed after 18 years in a successful law firm. He remained unemployed for about 15 of the next 18 months. In December 2006, he was given temporary employment at State Compensation Insurance Fund ("SCIF"), where he had previously worked for about six years ending in 1986. He was told that he would be considered for a permanent position when one became available.

3. On September 1, 2007, Respondent was told to expect a permanent position within the next two months. This was particularly good news to Respondent because he needed the financial security after the 15 months of unemployment, he would obtain the benefit of medical coverage for himself and his wife, and he would be covered by the PERS retirement system including restoration of credit for his six years of prior service.

4. On November 20, 2007, Respondent was informed that the decision regarding the offer of a permanent position would not be made until the following year."

5. Respondent became confused and distraught, and decided that he was unable to continue working that day. He left work early, at around 1:00 p.m., and headed for home. On the way home, he stopped at a Home Depot. At about 1:35 p.m., a store security guard observed Respondent stuffing a small hammer and a pair of work gloves into his shirt. Respondent then walked past the cashiers without paying and left the building.

6. The store security guard then confronted Respondent and asked him to return to inside the store. Respondent refused and placed the back of his hand against the security guard's chest, in an apparent effort to wave or push him aside. The security guard then wrestled Respondent to the pavement, handcuffed him, and arrested him for shoplifting. Respondent offered no resistance after the original refusal to return to inside the building. Respondent handed over the hammer and gloves, which had a price tag total of \$22.92. Respondent was booked at 3:15 p.m. and released on bail at 7:45 p.m.

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7. Respondent was initially charged with misdemeanor shoplifting and battery. On March 11, 2008, the local District Attorney dropped the shoplifting charge and Respondent pleaded guilty to the battery charge, Penal Code section 242. Respondent was sentenced to time served, fine and fees of \$635, and summary probation for three years. Additional terms of sentence were that Respondent would continue psychiatric treatment for at least six months and complete the State Bar's Lawyer Assistance Program.

8. Respondent promptly paid the fine and fees. He continued with the ordered psychiatric treatment, but did not complete the Lawyer Assistance Program. However, his treating psychiatrist has provided a written report to the State Bar showing that Respondent has been receiving appropriate treatment for his condition and is responding well. The State Bar accepts this treatment program as a suitable alternative to the Lawyer Assistance Program, and as compliance with the purpose and intent of the criminal court's order.

9. Respondent did indeed receive his appointment to a permanent position at SCIF in January 2008, greatly relieving his anxiety and depression. He has had no subsequent problems with the civil authorities, and the State Bar has not received any subsequent complaints of misconduct.

10. Respondent's psychiatrist has provided the State Bar with a medical report, dated August 7, 2008, in which he reported that he examined Respondent shortly after the arrest and evaluated the shoplifting events as "a confluence of factors creating a perfect storm" of circumstances and stress which resulted in irrational behavior and "a momentary lapse of judgment." He further described it as "a confused emotional state of anxiety, panic, and despair," during which Respondent was temporarily overwhelmed mentally. If called to do so, the psychiatrist will testify that Respondent exhibits no antisocial or sociopathic behavior, and that he considers the event as a momentary inability of Respondent to conform to what is required of him by himself and society. The psychiatrist concludes that the shoplifting incident does not exhibit a need for any corrective action by himself or civil authorities; and his prognosis is that Respondent should continue to function normally under his current circumstances.

11. Respondent has had no prior discipline since his admission to practice on May 30, 1980. There has been only one other report of misconduct, which was closed by the State Bar in 1995 on grounds of insufficient evidence. Respondent was not required to respond to the allegations and was not notified of them until this year.

12. Respondent's misconduct caused no harm to the Home Depot nor to any of its employees. The misconduct did not involve legal services or clients.

13. Respondent did not contest the criminal charges, and he has readily admitted all of the operable facts to the State Bar's investigators.

14. Respondent practices law for a government agency and does not represent individuals. This matter was referred to the State Bar by the prosecuting attorney, as required by law.

CONCLUSIONS OF LAW:

1. By his violation of Penal Code section 242, Respondent failed to support the laws of the State of California in willful violation of Business and Professions Code section 6068(a).

2. The facts and circumstances surrounding the offense do not involve moral turpitude.

3. The facts and circumstances surrounding the offense involve other misconduct warranting the imposition of discipline.

SUPPORTING AUTHORITY:

Standard 2.6(a) of the Standards for Attorney Sanctions for Professional Misconduct is applicable to § 6068(a) violations. It requires "disbarment or suspension depending upon the gravity of the offense or the harm, if any, to the victim."

In *Kitsis v. State Bar* (1979) 23 Cal.3d 857, 866, the California Supreme Court held that moral turpitude would usually require a "deliberate and knowing violation" of the law.

In *In re Lesansky* (2001) 25 Cal.4th 11, 16, the California Supreme Court provided the following guidance : "Criminal conduct ... reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law ... or such a flagrant disrespect for the law or societal norms that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession. (Citations.)"

In the Matter of Babero (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 327 holds that driving under the influence of alcohol and fighting in public were not such "disrespect for the law or dangerous or violent criminal behavior or other aggravating circumstances" as to warrant discipline.

In *In re Kelly* (1990) 52 Cal.3d 487, attorney Kelly was convicted for the second time of driving under the influence of alcohol, which offense occurred while she was still on criminal probation for her first offense. The California Supreme Court held that this was not moral turpitude, but was other conduct warranting discipline. There were mitigating circumstances of no harm to the public or the courts, good character, and candor and cooperation. There were no aggravating circumstances. The imposed discipline was a public reproval with conditions of probation for three years and attendance at the State Bar's alcohol abuse program.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, paragraph A.(7), was September 24, 2009.

COSTS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 24, 2009, the estimated prosecution costs in this matter are approximately \$1,636.00. Respondent acknowledges that this figure is an estimate only.

If Respondent fails to pay any installment within the time provided in paragraph A.(8) above or as modified by the State Bar Court pursuant to section 6068.10 (c), the remaining balance of costs will be due and payable immediately and enforceable as a money judgment unless relief is granted under rule 286 of the Rules of Procedure of the State Bar of California.

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In the Matter of	Case number(s):	
DENNIS MICHAEL KEMP	08-C-10180-RAP	

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.

10/ 7/09		Dennis Michael Kemp
Date	Respondent's Signature	Print Name
10/13/69 June 2009	In a C	David A. Clare
Date	Respondent's Counsel Signature	Print Name
10/14/09	Lam Delka	Larry DeSha
Date	Deputy Trial Obunsel's Signature	Print Name
	•	

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

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(Do not write above this line.)	
In the Matter Of	Case Number(s):
DENNIS MICHAEL KEMP	08-C-10180-RAP

ORDER

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

October 16,2009 Date

Judge of the State Bar Qourt

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004: 12/13/2006.)

Reproval Order

Page

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 October 16, 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:

DAVID CLARE ATTORNEY AT LAW 444 W OCEAN BLVD STE 800 LONG BEACH CA 90802

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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:

LARRY DESHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 16, 2009.

Acenter

Angela Ówens-Carpenter Case Administrator State Bar Court