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PUBLIC MATTER

State Bar Court of California

Hearing Department

Los Angeles

ACTUAL SUSPENSION

| | | |
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| <p>Counsel For Respondent</p> <p>Pansky Markle Ham LLP 1010 Sycamore Ave., Unit 308 South Pasadena, CA 91030 (213) 626-7300</p> <p>Bar # 77688</p> | <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>In the Matter of: PIERCE H. O'DONNELL</p> <p>Bar # 81298</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 October 12, 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 17 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."

(Effective January 1, 2011)



- (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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: Two billing cycles following the effective date of the Supreme Court order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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 09-O-12345
 - (b) Date prior discipline effective February 23, 2011
 - (c) Rules of Professional Conduct/ State Bar Act violations: 6068(d)
 - (d) Degree of prior discipline 2 years suspension, stayed, 2 years probation including sixty(60) days actual suspension.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- See Attachment at pages 10-11.
- (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.

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- (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:

None.

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

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

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- (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:

See Attachment at page 11-12.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one (1) 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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of six (6) months.
- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (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 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.

- (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 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.
- (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 probation conditions.
- (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: Respondent attended Ethics School on April 28, 2011, and passed the test given at the end of the session. (See rule 5.135(A), Rules of Procedure of the State Bar of California).
- (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) 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 during the period of actual suspension or within

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one year, whichever period is longer. **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 5.162(A) & (E), Rules of Procedure.**

No MPRE recommended. Reason: In August 2011, Respondent took and passed the exam in compliance with a prior disciplinary order. (See In the Matter of Trousil (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 229, 244).

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PIERCE H. O'DONNELL

CASE NUMBER: 08-C-12900-RAP

FACTS AND CONCLUSIONS OF LAW.

PIERCE H. O'DONNELL ("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.

Case No. 08-C-12900-RAP (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On August 4, 2011, Respondent was convicted of two misdemeanor counts of violating 2 U.S.C. sections 441f/437g(d) [Illegal Campaign Contribution – Contribution Made in the Name of Another Person].

3. On May 31, 2012, the State Bar transmitted records of conviction of attorney to the Review Department of the State Bar Court stating that on March 5, 2012, the District Court sentenced Respondent and on March 16, 2012 the District Court filed its amended judgment and commitment order and that neither party had filed a notice of appeal with the statutory time period after entry of the amended judgment and commitment order on March 16, 2012.

4. On June 22, 2012, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted, namely two misdemeanor violations of 2 U.S.C. sections 441f/437g(d), involved moral turpitude or other misconduct warranting discipline.

FACTS:

5. During the early part of 2003, Respondent was asked by a friend to help raise money for the presidential campaign of John Edwards.

6. Respondent agreed and committed to raising \$50,000 for the Edwards campaign by March 31, 2003.

7. Respondent personally contributed \$2,000 to the Edwards campaign, the maximum amount allowed (at the time) for an individual in a calendar year.

8. Respondent attempted to raise the rest of the \$50,000 by seeking contributions by others and also by having his secretary solicit additional donations for the Edwards campaign from third parties. However, these efforts failed to raise the promised \$50,000.

9. A few days before the March 31, 2003 deadline, since he had not been successful in keeping his promise to raise \$50,000, Respondent asked his secretary to solicit employees of his law firm to make contributions to the Edwards campaign that he would subsequently reimburse.

10. Respondent expressed concern to his secretary that he could not let down his friend and break his promise to raise the \$50,000 by the March 31, 2003 deadline.

11. As a result of his secretary's efforts on Respondent's behalf, in total, between March 27, 2003 and March 31, 2003, thirteen individuals made \$2,000 contributions to the Edwards campaign after Respondent promised he would reimburse their contributions.

12. In April 2003, Respondent wrote out a series of personal checks and caused them to be delivered to the involved donors as reimbursement of their \$2,000 contributions to the Edwards campaign.

13. On July 24, 2008, the United States Department of Justice ("Government") filed a three-count felony indictment against Respondent alleging violations of the Federal Election Campaign Act ("FECA"). The indictment, in relevant part, charged in Count Two that Respondent had knowingly and willfully contributed in the name of another person in violation of 2 U.S.C. section 441f in amounts exceeding \$10,000.00 within a calendar year in violation of 2 U.S.C. section 437g(d).

14. On March 16, 2009, Respondent filed a motion to dismiss all three counts of the indictment. The Respondent's motion to dismiss, in relevant part, argued that section 441f did not apply to Respondent's conduct as alleged in Count Two of the indictment because section 441f, by its express terms only prohibited a person from making a contribution in a false name, but it did not proscribe reimbursing a contribution made by another using a true name. In addition, Respondent argued that an examination of legislative history and the application of the rule of lenity meant that section 441f was to be narrowly construed. Thus, Respondent's motion concluded, in relevant part, that Count Two failed to allege a crime pursuant to section 441f.

15. The Government opposed Respondent's motion to dismiss arguing, in relevant part, that section 441f, as alleged in Count Two, was not limited to contributions in a false name but included circumstances where other persons became "straw donors" or "conduit contributors" for the actual source of the contribution, as was the case with Respondent's contributions to the Edwards campaign.

16. On June 8, 2009, the District Court judge filed his order granting the dismissal of Counts One and Two, but denying the dismissal of Count Three.

17. On June 15, 2009, the Government filed its notice of appeal of the District Court judge's dismissal of Counts One and Two.

18. On June 14, 2010, the Ninth Circuit issued its opinion reversing the District Court judge's dismissal of Counts One and Two on the basis that "...that § 441f unambiguously applies to a defendant who solicits others to donate to a candidate for federal office in their own names and either advances the money or promises to — and does — reimburse them for the gifts."

19. Following the issuance of the Ninth Circuit opinion, the parties negotiated a settlement of the matter and Respondent signed a plea agreement on July 27, 2011.

20. On August 2, 2011, the Government filed its First Superseding Information ("Information") charging Respondent with two misdemeanor counts of violating 2 U.S.C. sections 441f/437g(d) and alleging essentially the same facts as in Count Two of the original indictment. The Government never refiled Count Three.

21. On August 2, 2011, the Government filed the fully executed Plea Agreement. Pursuant to the Plea Agreement Respondent would plead guilty to two misdemeanor counts of 2 U.S.C. sections 441f/437g(d) as alleged in the Information.

22. On August 4, 2011, the District Court judge arraigned Respondent and after due inquiry regarding Respondent's understanding of all the terms, conditions and waivers of the plea agreement and admission of the factual basis for each count as true, accepted Respondent's guilty pleas on Counts One and Two of the Information. Then, the District Court judge set the matter for sentencing in November, 2011.

23. On November 14, 2011, the District Court judge held the sentencing hearing. At this hearing the District Court judge indicated that he was not prepared to follow the stipulations in the plea agreement. Specifically, the District Court judge stated that based on his review of all the pleadings and information provided to the Court that: (1) Respondent's conduct did not warrant any time in jail; (2) based on the reports of the doctors treating Respondent a one-year supervised release was not sufficient and that Respondent should be placed on a three year probation that included six months of home detention with electronic monitoring and required Respondent to continue with his psychiatric and psychological treatments until discharged by the attending doctor; and (3) that other conditions should be ordered, including a higher fine. The Government's attorney responded by stating that if the Court was not prepared to impose the sentence that was agreed to in the plea agreement, that the Government intended to proceed on the indictment and was seeking a trial date. Ultimately, the case was re-set for trial on January 31, 2012. However, at no time did Respondent withdraw the guilty pleas he previously made on August 4, 2011.

24. On February 22, 2012, the parties filed a "Stipulation regarding Sentencing." In this Stipulation, the parties recited that they had reached an agreement pertaining to sentencing on the two counts to which Respondent's guilty pleas remained in place.

25. On March 5, 2012, a sentencing hearing was held where the District Court judge indicated that he had read the parties' "Stipulation regarding Sentencing" and since it included a shorter term of imprisonment for Respondent and addressed some of the other concerns raised by the District Court Judge, he accepted the modified sentencing recommendation. The District Court Judge sentenced Respondent to 60 days imprisonment and then, upon release from imprisonment, to supervised release for a term of one year, including 120 days in a residential facility. In addition, Respondent was required to complete 200 hours of community service, was not permitted to engage in political fundraising without written approval of the Probation Department and was to pay a \$50.00 special assessment and a fine of \$20,000. During the 16 months after completion of Respondent's term of supervised release, Respondent was ordered to complete an additional 300 hours of monitored community service.

26. On March 16, 2012, the District Court Judge signed and filed the amended Judgment and Commitment Order in the underlying criminal matter.

CONCLUSIONS OF LAW:

27. The facts and circumstances surrounding Respondent's conviction for violation of 2 U.S.C. sections 441f/437g(d) [Illegal Campaign Contribution – Contribution Made in the Name of Another Person], a misdemeanor, did not involve moral turpitude but did involve other misconduct warranting discipline.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline: Respondent has two prior records of discipline that are not remote in time. (Standard 1.2(b)(i)).

In the first prior matter, in the year 2000 Respondent pledged to raise \$50,000.00 in campaign contributions for then-Los Angeles Mayor James Hahn's re-election campaign. Respondent was unable to raise the \$50,000 by the required deadline. Respondent, through his assistant, notified his law office staff that if they agreed to make an individual contribution to the Hahn campaign he would subsequently reimburse those contributions. Ultimately, 26 individuals contributed to the Hahn campaign with the understanding that Respondent would reimburse each donor for his or her contribution.

In May 2004, after the conduct that forms the basis of the current proceeding which occurred before any indication that the conduct violated any law, the Los Angeles City Attorney filed 26 misdemeanor counts against Respondent for violation of Government Code section 84301 (using a false name in making a campaign contribution). On February 2, 2006, Respondent pled guilty and was convicted of five misdemeanor counts of section 84301 and the remaining 21 counts were dismissed.

Following this conviction Respondent was referred to the State Bar Court Hearing Department for a hearing in March 2006. On July 18, 2007, Respondent was accepted into the Alternative Discipline Program (ADP) because he was able to establish through expert witness and other evidence that a causal connection and nexus existed between his misconduct and his previously undiagnosed bi-polar disorder.

Due to misconduct that formed the basis of Respondent's second record of discipline (described below), on August 2, 2010 Respondent was terminated from the ADP program and the high level of discipline was imposed. The parties stipulated that Respondent's conviction in this matter "...involved moral turpitude and other misconduct warranting discipline." However, the California statute that Respondent was convicted of in this prior disciplinary proceeding [Government Code section 84301 (using a false name in making a campaign contribution)], is not identical to the matter federal statute [2 U.S.C. section 441/437g(d) (Illegal Campaign Contribution – Contribution Made in the Name of Another Person)] that Respondent was convicted of in the instant matter. Respondent was suspended for two years, stayed, two years' probation with standard conditions including the successful passage of the MPRE and State Bar Ethics School as well as a 60-day actual suspension. Also, In addition, the parties stipulated to one aggravating circumstance (multiple acts) and to several mitigating circumstances including no prior record of discipline in 29 years, no harm, candor and cooperation, remorse, emotional and physical difficulties that "were directly responsible for the misconduct," good moral character and significant charitable work and contributions over a long period of time.

In the second prior disciplinary proceedings, Respondent stipulated to misleading a judge or judicial officer by an artifice or false statement of fact or law in willful violation of Business and Professions Code, section 6068(d) when he stated in an application for association of counsel that he was not currently subject to any disciplinary proceedings by any organization and stated during a court hearing that he would not be disciplined as a result of the State Bar Court proceedings when he knew that he was subject to disciplinary proceedings in California which would result in discipline.

Respondent stipulated to the imposition of a two year suspension, stayed on certain conditions including two years' probation with standard conditions, compliance with rule 9.20 and a 60-day actual suspension to run consecutively with the 60 day actual imposed in the first prior (i.e., Respondent was to serve a total of 120 days actual suspension). Also, the State Bar stipulated to one aggravating circumstance (prior record of discipline) and to several mitigating circumstances including no harm, candor and cooperation and remorse.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Good Character: In this matter, thirty-six character references were submitted to the State Bar. The vast majority of these references were from highly reputable attorneys from across the nation. The remaining references were from a retired United States District Court judge and several prominent non-attorneys from across the nation. These character references all stated that they have known Respondent for a significant period of time and attested to Respondent's character for truthfulness and honesty. All the character witnesses also attested to Respondent's absolute diligence in his representation of client, a deep devotion to his family and

a selfless dedication to his community. Also, the District Court judge in the underlying criminal case cited Respondent's "impeccable character." (See *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 471 – testimony of a wide variety of highly reputable character witnesses attesting to respondent's otherwise high standing in the legal community and high ethical standards and demonstration of diligence on behalf of clients, as well as substantial community service and pro bono activities, are entitled to significant weight.)

Charitable and Pro Bono Work: Beginning many years before his indictment in his matter and continuing up through the present date, Respondent regularly gave his time and resources to a varied list of community groups that worked on behalf of the poor and disadvantaged, schools and other youth-focused organizations. Respondent has consistently contributed thousands of dollars annually (sometimes over \$100,000.00) to many groups. Respondent also participated as a volunteer, fundraiser, officer and supporter of these groups. (See *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359; *Porter v. State Bar* (1990) 52 Cal.3d 518, 529 – civic service and charitable work can be mitigation.) In addition, Respondent performed significant pro bono work on behalf of clients. See also *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 664 – Respondent entitled to mitigating credit for practice on behalf of poor and disadvantaged clients.)

No Harm to Any Clients: Respondent's conduct underlying his convictions did not involve any clients or take place in the context of an attorney-client relationship. (See *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 413 – the lack of client harm is a relevant mitigating circumstance in the context of criminal conviction.)

Psychological Difficulties: According to the report of a psychiatrist that was submitted to the State Bar, at the time Respondent committed the criminal conduct herein he was suffering from an undiagnosed Bi-Polar disorder. Further, according to the report, Respondent's very high profile practice subjected him to extreme pressure and stress, but he had consistently been able to perform excellent work for his clients and had not realized he was suffering from a psychological condition. Respondent experienced other trauma and stress at the time the events in this matter occurred, including the death of his mother and a serious physical disease that required surgery. Also, according to the report, Respondent has since been diagnosed and has participated in individual and group therapy from the time of the diagnosis up through the present. Finally, according to the report, Respondent has made considerable progress in his treatments such that he no longer experiences episodes where he swings from mania to extreme depression. (See *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688 – where respondent suffered from an adjustment disorder and not any chronic psychological condition, and where prior to his crimes respondent had done excellent work despite being under great stress, Review Department concluded that respondent entitled to mitigation.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to

this source.) The primary purposes of disciplinary proceedings and of the sanctions imposed 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.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

The instant matter is Respondent’s third record of discipline. Consequently, Standard 1.7(b) is applicable. Standard 1.7(b) provides that a member who “...is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.”

The facts and circumstances surrounding Respondent’s conduct in this proceeding are unique because they occurred during a period in which the applicable law was unsettled and no case authorities existed that found Respondent’s conduct to constitute criminal misconduct and because the Respondent’s conduct was isolated over a discreet period of a few days. Where, as in this matter, a lawyer has not yet been charged or put on notice that his or her conduct was a violation of legal ethics, the prior record of discipline has diminished weight in the level of discipline analysis.

Standard 1.7 cannot be applied without regard to the other provisions of the standards, particularly standard 1.3 which describes the primary purposes of the Standards as “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”. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 131, 136.) To properly fulfill these purposes of lawyer discipline, the nature and chronology of Respondent’s record of discipline must be examined. (Compare, *McCray v. State Bar* (1985) 38 Cal.3d 257, 274.) In *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, the Review Department held that the fact of whether misconduct in the pending matter occurred before, contemporaneously with or after the misconduct in a prior record of discipline is significant to the level of discipline analysis and whether or not a matter is a “true” prior.

Importantly, Respondent’s conduct in the instant matter occurred **prior** to the time that Respondent became aware that his conduct could result in criminal liability. That is, it was not until 2004 that Respondent was criminally charged for his conduct in arranging conduit contributions to then-Mayor James Hahn’s re-election campaign (which ultimately became

Respondent's first record of discipline.) Thus, before 2004, Respondent was **not on notice** that his conduct in this instant matter (which occurred in March-April 2003) was potentially criminal and/or that his conduct could lead to professional discipline by the State Bar.

Where misconduct addressed by a current disciplinary proceeding resembles misconduct addressed by a prior disciplinary proceeding and occurred **after** the filing of a notice to show cause in the prior proceeding, the filing alerted the attorney to the ethically questionable nature of the misconduct. (*In the Matter of Harney* (Review Dept. 1995), 3 Cal. State Bar Ct. Rptr. 266, 283.) However, here the misconduct occurred **before** any criminal charges and long before the filing of the notice to show cause in the two prior records of discipline. Therefore, pursuant to caselaw precedent Respondent cannot be said to have been alerted to the ethically questionable nature of his misconduct in the current matter.

In *In the Matter of Bach*, under a similar circumstance where the misconduct in the pending matter occurred before instigation of any State Bar proceedings in the prior record of discipline, the Review Department stated "[t]hus, respondent's misconduct in the present matter, even though it is similar to the misconduct in the prior matter, does not reflect a failure on the part of respondent to learn from his prior misconduct. Nevertheless, the prior should be considered as a factor in aggravation, and the discipline in this matter should be greater than in the previous matter." *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 (citing Stds. 1.2(b)(i), 1.7(a).) (Emphasis added)

Thus, in this matter, the aggravating weight of Respondent's first prior record of discipline is greatly diminished because Respondent had committed the misconduct in both the prior and instant matters before any involvement by the State Bar. Therefore, the application of Standard 1.7(b) is not warranted. However, the existence of the prior records of discipline is an aggravating circumstance that triggers the application of Standard 1.7(a) requiring a progressive level of discipline to be imposed in the instant matter.

As stated above, Respondent's misconduct in the instant matter did not involve moral turpitude but does involve other misconduct warranting discipline. The reason for this is two-fold. First, it has been long established that culpability that is debatable, that is, not established by rule or by caselaw, will not support discipline. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 615; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 289; *In the Matter of Respondent K* (Review Dept. 1993) 335, 351.) Here, prior to the Ninth Circuit opinion in the underlying criminal matter, there was no reported opinion that squarely addressed whether or not reimbursing a contribution made by another in the name of another constituted a violation of section 441f. Further, as evidenced by the District Court order granting dismissal, reasonable minds (in this case the mind of a very experienced federal judge) could differ on whether Respondent's conduct was a violation of section 441f or even that it constituted a crime. (See *In re Fahey* (1973) 8 Cal.3d 842, 845-46 - "We must resolve all reasonable doubts in favor of the accused respondent in deciding whether a particular crime or act involves moral turpitude.")

Second, Respondent's conduit contributions were not undertaken for the purpose of personal financial gain nor was there any "quid pro quo" arrangement between Respondent and Senator Edwards or the Edwards campaign. Further, although Respondent's conduit

contributions were wrongful and ultimately deemed to be criminal conduct, there was no evidence that they were committed with an intent to defraud. In fact, an intent to defraud is not an element of a section 441f violation. All that is required is a knowing and willful act. (See *In re Fahey*, supra., 8 Cal.3d at p. 846 – “...although respondent knowingly and unlawfully failed to file the tax returns, his failure to do so was not for the purpose of personal financial gain or with intent to avoid ultimate payment of his tax obligations and that his offense did not involve acts of deception or disregard of professional standards in his practice of law....We conclude accordingly that respondent’s offense and the circumstances of its commission did not involve moral turpitude within the meaning of Business and Professions Code sections 6101-6102...”) Also, Respondent’s conduct was isolated over a discrete period days.

Therefore, Respondent’s criminal conduct herein did not involve moral turpitude but rather involved other misconduct warranting discipline because Respondent’s criminal violation of section 441f constituted a breach of the his responsibility to society as an attorney. (See, e.g., *In re Carr* (1988) 46 Cal.3d 1089; *In re Rohan* (1978) 21 Cal.3d 195, 203 – an “...attorney as an officer of the court and counselor at law occupies a unique position in society...” and his “...refusal to obey the law, and the bar’s failure to discipline him for such refusal, will not only demean the integrity of the profession but will encourage disrespect for and further violations of the law.”) Consequently, the standard applicable to this case is Standard 3.4.

Standard 3.4 provides that the final “...conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime’s commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.”

Applying Standard 3.4, we must first determine what standard in part B would apply by comparing the nature and extent of Respondent’s misconduct to the misconduct at issue in part B standards. Respondent’s conduct in this matter is not specified in the Standards and as such Standard 2.10 would apply.

Standard 2.10 provides that the culpability “...of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to 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. As discussed above, given the nature of Respondent’s underlying conduct in an undecided area of law, coupled with Respondent’s mitigation, the stipulated discipline herein is warranted.

Further, Standard 1.7(a) requires that the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was remote in time or was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

The discipline in the two prior proceedings were both effective on February 23, 2011. Further, the misconduct underlying those two priors occurred in 2000 and 2009, respectively.

Thus, neither discipline is remote in time. Further, both prior disciplines resulted in consecutive 60 day actual suspensions for a total of 120 days of actual suspension. This actual suspension is not minimal in its severity and is in fact significant discipline. Therefore, applying Standard 2.10 together with the progressive discipline requirement of Standard 1.7(a), the appropriate disposition in this matter would be a one year suspension, stayed on certain conditions including two years' probation on standard terms and conditions set forth herein, including a six month period of actual suspension. This level of discipline best serves the purposes of discipline as defined in Standard 1.3.

E. PENDING PROCEEDINGS.

The disclosure date referred to on page two, paragraph A.(7) was January 7, 2013.

F. COSTS OF DISCIPLINARY PROCEEDINGS.


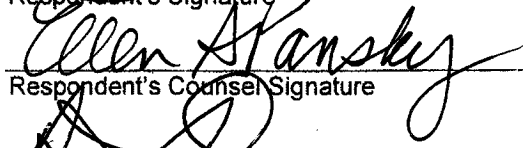
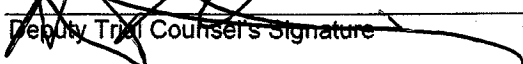
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 7, 2013, the prosecution costs in this matter are \$5,223.50. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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| In the Matter of: PIERCE H. O'DONNELL | Case number(s): 08-C-12900-RAP |
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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 Facts, Conclusions of Law, and Disposition.

| | | |
|------------------------|---|---------------------|
| <u>January 9, 2013</u> |  | Pierce H. O'Donnell |
| Date | Respondent's Signature | Print Name |
| <u>1/9/13</u> |  | Ellen A. Pansky |
| Date | Respondent's Counsel Signature | Print Name |
| <u>1/9/13</u> |  | Ashod Mooradian |
| Date | Deputy Trial Counsel's Signature | Print Name |

(Do not write above this line.)

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| In the Matter of: PIERCE H. O'DONNELL | Case Number(s): 08-C-12900-RAP |
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ACTUAL SUSPENSION 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.

On page 11, line 7 of the second paragraph, the word "matter" is deleted.

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 5.58(E) & (F), 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 1/18/13


RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 28, 2013, 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:

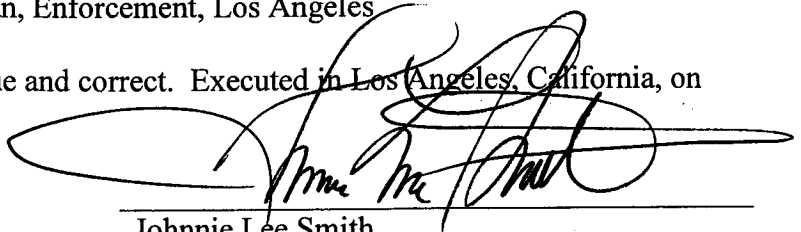
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY
PANSKY MARKLE HAM LLP
1010 SYCAMORE AVE UNIT 308
SOUTH PASADENA, CA 91030

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

Ashod Mooradian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 28, 2013.



Johnnie Lee Smith
Case Administrator
State Bar Court