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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Hugh G. Radigan Deputy Trial counsel 1149 South Hill Street Los Angeles, California 90015 213-765-1206 Bar # 94251	Case Number(s): 08-J-11461 <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	For Court use only <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">MAY 16 2011</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel For Respondent Marie C. Mirch 701 B Street # 1310 San Diego, California 92101 619-501-6220/6329 Bar # 200883	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Kevin John Mirch Bar # 106973 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 6, 1982.
- (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 16 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):
- 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 96-J-05803
 - (b) Date prior discipline effective July 22, 1988
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rule 3-100(A)
 - (d) Degree of prior discipline private reproof
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (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. Respondent's bad faith as exhibited by the pursuit of frivolous and unfounded theories of recovery against parties not only caused significant harm to the involved clients but to the public and the administration of justice as well.

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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:

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. Since the filing of these charges, Respondent has displayed spontaneous candor and cooperation to the State Bar.
- (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.

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- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of two years.
- 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 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 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.

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- (2) During the probation period, 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 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: .

- (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:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions 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

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Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within 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:

- (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:**

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Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Kevin J. Mirch

CASE NUMBER(S): 08-J-11461

AGREEMENTS AND WAIVERS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6049.1.

1. Respondent's culpability determined in the disciplinary proceeding in the state of Nevada would warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the misconduct was committed; and
2. The proceeding in the above jurisdiction provided respondent with fundamental constitutional protection.

FACTS AND CONCLUSIONS OF LAW.

Respondent acknowledges that he has read the provisions of Business and Professions Code section 6085.5 and rule 5.56 of the Rules of Procedure of the State Bar. Respondent pleads nolo contendere to the charges set forth in this stipulation and completely understands that this plea will be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

Case No. 08-J-11461 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. At all relevant times to the stipulated facts herein, Respondent was a member of the State Bar of California and Nevada.
2. Respondent caused to be filed a complaint on June 15, 2004, styled Mirch v. McDonald Carano & Wilson, LLP, et al., case no. CV02-05644, which contained a first amended complaint which was in most material respects found frivolous.
3. The following allegations made in the First Amended Complaint in Mirch, et al. v. McDonald Carano & Wilson LLP, et al were made without factual or legal foundation and are frivolous:

FACTS:

3. These Defendants [McDonald Carano & Wilson, LLP and Leigh Goddard, Esq.] have devised a scheme to prevent Mr. Mirch from disclosing to the Franks' Creditors monies that they are due. These Defendants' scheme involves Bankruptcy Fraud. (3:7-9)¹

¹ Citations are to pages and lines of the First Amended Complaint in Mirch, et al. v. McDonald Carano & Wilson, LLP, et al.

11. During the course of the most recently filed federal action Mr. Mirch disclosed the bankruptcy fraud to Leigh Goddard. Ms. Goddard threatened Mr. Mirch with reprisal including suing him for malpractice if a disclosure was made to the Bankruptcy Court. (4:18-21)
12. Ms. Goddard made it very clear that Mr. Mirch would not be successful in the federal litigation because her firm had the ability to obtain favorable judgments in the Federal Court. (4:22-24)
14. During the course of the litigation, Ms. Goddard has destroyed or failed to provide documents which prove the bankruptcy fraud perpetrated by the Franks upon their creditors and has destroyed and/or failed to provide documents which proved that Mr. Mirch was entitled to a fee exceeding \$1,000,000 (5:4-7)
15. During the course of this litigation, Ms. Goddard and/or her agents have contacted other of Mr. Mirch's clients and instructed them not to pay amounts due to his firm in an attempt to interfere with his business. (5:8-10)
17. Defendants intentionally interfere (sic) with Plaintiff's business in order to gain an unfair advantage in another litigation. The interference included interfering with the contractual obligation of Mr. and Mrs. Frank and their related entities to pay to Mr. Mirch over \$1,000,000. Defendants also participated in a scheme to cause Ms. Denise Reed to renounce her contract with Mr. Mirch. Defendants participated with Ms. Reeds' counsel and other counsel in the Reno area to deprive Mr. Mirch of his fee (5:15-21)
20. Defendants' conduct substantially interfered with the ongoing business of Plaintiffs and was intentional. It was intentionally done in order to stop Mr. Mirch from disclosing bankruptcy fraud to the United States Bankruptcy Court. (5:26-6:2)
28. Defendants intentionally conspired with the Franks to commit bankruptcy fraud and to interfere with Mr. Mirch's business relationships with his clients. (6:25-7:1)
30. Defendants committed the following overt acts in order to accomplish the above conspiracy. Ms. Goddard threatened reprisal against Mr. Mirch. The reprisals included suing Mr. Mirch for malpractice even though he had obtained a multimillion dollar judgment;

contacting Mr. Mirch's clients and informing them not to pay on their contingent fee contracts; destroyed and/or hidden documents which prove Mr. Mirch is entitled to in excess of \$1,000,000.00; and using her firm's political influence to affect Mr. Mirch's legal career (7:5-11)

31. Defendants participated with Ms. Reeds' counsel and other counsel in the Reno area to deprive Mr. Mirch of his fee. (7:12-13)

33. Defendants' conduct was intentional and illegal. Mr. Mirch has refused to participate in the bankruptcy fraud engineered by Ms. Goddard and her firm and as a result has been maligned with his clients and in the legal community. It was intentionally done in order to stop Mr. Mirch from disclosing bankruptcy fraud to the United States Bankruptcy Court. (7:16-20)

40. Defendants intentionally conspired with the Franks to commit bankruptcy fraud and to interfere with Mr. Mirch's business relationships with his clients. (8:15-17)

42. Ms. Goddard threatened reprisal against Mr. Mirch. The reprisals included suing Mr. Mirch for malpractice even though he had obtained a multi-million dollar judgment; contacting Mr. Mirch's clients and informing them not to pay on their contingent fee contracts; destroyed and/or hidden documents which prove Mr. Mirch is entitled to in excess of \$1,000,000.00; and using her firm's political influence to affect Mr. Mirch's legal career. (8:21-26)

43. Defendant's participated with Ms. Reeds' counsel and other counsel in the Reno area to deprive Mr. Mirch of his fee. (9:1-2)

46. Defendants' conduct was intentional and illegal. Mr. Mirch has refused to participate in the bankruptcy fraud engineered by Ms. Goddard and her firm and as a result has been maligned with his clients and in the legal community. It was intentionally done in order to stop Mr. Mirch from disclosing bankruptcy fraud to the United States Bankruptcy Court. (9:7-11)

4. The alleged conversation between Leigh Goddard ("Goddard") and Dr. Frank that occurred in Mr. Mirch's office during a break in a deposition in which Goddard told Dr. Frank to get rid of or destroy the written fee agreement between Dr. Frank and respondent did not occur.

5. McDonald Carano & Wilson, LLP ("MCW") and Goddard did not devise a scheme to prevent respondent from disclosing to the Franks' creditors monies that they are due. MCW and Goddard did not engage in bankruptcy fraud.

6. Goddard did not threaten respondent with reprisal including suing him for malpractice if a disclosure of alleged bankruptcy fraud was made to the bankruptcy court by respondent.

7. Goddard did not say that respondent would not be successful in the federal litigation because MCW had the ability to obtain favorable judgments in federal court.

8. Goddard did not destroy or fail to provide documents which proved the alleged bankruptcy fraud or documents which prove that respondent was entitled to a fee exceeding \$1,000,000.00.

9. Neither Goddard nor anyone acting as her agent contacted any of respondent's clients and instructed them not to pay amounts due to respondent's firm in an attempt to interfere with respondent's business.

10. MCW and Goddard did not intentionally interfere with respondent's business in order to gain unfair advantage in other litigation, did not interfere with the contractual obligation of the Franks and their related entities to pay a fee to Mr. Mirch of over \$1,000,000.00 and did not participate in a scheme to cause Ms. Denise Reed to renounce her contract with respondent or otherwise participate with Ms. Reed's counsel and other counsel in the Reno Area to deprive respondent of his fee. To the contrary, the panel finds that the case of Mirch, et al v. McDonald Carano & Wilson, LLP, et al, was initiated by respondent in order to gain an unfair advantage by disrupting the representation of Dr. Frank by MCW and Goddard.

11. MCW and Goddard did not conspire with the Franks to commit bankruptcy fraud or to interfere with respondent's business relationships with his clients.

12. Assuming, *arguendo*, that Dr. Frank committed bankruptcy fraud such was not "engineered" by Goddard or MCW.

13. Goddard did not threaten reprisal against respondent.

14. Respondent had no attorney-client relationship with any of the Doe Plaintiffs named in the First Amended Complaint in the case of Mirch, et al. v. McDonald Carano & Wilson, LLP, et al. and had no legal or factual basis upon which to seek damages on their behalf.

15. The American Bar Association's Annotated Model Rules of Professional conduct, Fifth Edition, June 2003, states in its discussion of rule 3.1²:

"Although motives do not determine whether a claim is frivolous, such claims are often occasioned by an intent to harass, embarrass, or otherwise injure or inconvenience a party, or by some other improper motive."

Respondent intended to harass, embarrass and otherwise injure and inconvenience MCW and Goddard in their representation of Dr. Frank in the underlying federal action.

16. Respondent is a seasoned and experienced litigator who knew full well what he was doing and the effect it would have on MCW and Goddard, but did it anyway.

17. Respondent refused to accept responsibility for anything that was done in connection with the underlying litigation including his delivery of a so-called courtesy copy of the First Amended Complaint to Goddard just before she was scheduled to take the deposition of respondent's wife, respondent's failure and refusal to accept the offer of Bruce Laxalt, Esq., counsel for MCW and Goddard to accept service of the First Amended Complaint on behalf of his clients and the almost 120 day delay in serving the First Amended Complaint which respondent blamed on someone else in his office who was allegedly responsible for seeing that such mundane matters were attended to.

18. Respondent attempted to justify the Third Cause of Action in the First Amended Complaint, which states that it is a "Whistle Blower" cause of action by arguing that it is an anti-SLAPP claim brought under the provisions of NRS 41.635 to 41.670 but the Third Cause of Action is no such thing.

CONCLUSIONS OF LAW:

19. Respondent's conduct in the other jurisdiction as set forth above would warrant the imposition of discipline in California as violation(s) of the following:

² Respondent was charged with violating SCR 170. While this proceeding was pending SCR 170 was replaced by Rule 3.1 of the Nevada Rules Professional Conduct. SCR 170 and NRPC 3.1 are identical.

20. By bringing an action and asserting a position in litigation without probable cause for the purpose of harassing or maliciously injuring any person, Respondent intentionally, recklessly, or repeatedly sought a prohibited objective of employment by pursuing the subject litigation in willful violation of Rules of Professional Conduct, rule 3-200.
21. By maintaining the subject litigation Respondent failed to maintain an action or proceeding that was not just or legal in willful violation of Business and Professions Code section 6068(c).
22. By maintaining the subject litigation Respondent failed to employ only those means as are consistent with the truth and mislead the court by artifice or false statement of fact or law in willful violation of Business and Professions Code section 6068(d).
23. By maintaining the subject litigation Respondent continued an action from a corrupt motive of passion or interest in willful violation of Business and Professions Code section 6068(g).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 25, 2010.

AUTHORITIES SUPPORTING DISCIPLINE.

Nevada Supreme Court Rule 170 in force and effect at the time of Respondent's acts of misconduct provided in pertinent part:

“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law ...”

By virtue of the violation of the above-referred rule, the Respondent's conduct equivalently runs afoul of rule 3-200 of the Rules of Professional Conduct and Business and Professions Code sections 6068 (c), (d) and (g).

Standard 1.6(a) provides that, “The appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single

disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.”

Standard 1.6(b)(i) provides that where aggravating circumstances surround the particular misconduct it may very well enhance the degree of sanction/discipline to be assessed.

Standard 1.7(a) provides that where the member has a record of one prior discipline, the degree of discipline in the current proceeding shall be greater than that imposed in the prior proceeding, unless the prior discipline was remote in time and the offense minimal in severity, such that imposing greater discipline would be manifestly unjust.

Standard 2.4(b) provides for a reproof or suspension where culpability is found for a willfully failing to perform services in an individual matter not demonstrating a pattern of misconduct demonstrating abandonment of the causes in which he was retained.

Standard 2.6 provides for disbarment or suspension depending upon the gravity of the offense and harm to the victim, where culpability is found, for a violation of section 6068 of the Business and Professions Code.

Standard 2.10 provides for reproof or suspension depending upon the gravity of the harm or offense for violation of rule 3-200 of the Rules of Professional Conduct.

Additional guidance is to be found in *In the Matter of Scott* 4 Cal. State Bar Court Rptr. 446 (2002), wherein the Respondent was suspended for filing and pursuing a series of frivolous lawsuits with ill motive. Moreover, in *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 190, it was noted that Respondent's total lack of repentance was a significant factor in determining that disbarment was appropriate where the danger was very real based upon his track record, that Respondent would fail to comply with probationary terms should a lesser discipline be imposed. The Standards should be followed whenever possible. *In re Silverton* (2005) 36 Cal. 4th 81, 92. In imposing discipline, the court should consider the appropriate discipline in light of the standards, but in so doing the court may consider any ground that may form a basis for an exception to application of the standards. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. Inasmuch as the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. *Bates v. State Bar* (1990) 51 Cal. 3rd 1056, 1061.

In consideration of the facts and circumstances surrounding Respondent's misconduct, and the aggravating and mitigating circumstances present, the parties submit that the intent and goals of the

Standards are met in this matter with the imposition of a six month actual suspension, two year stayed suspension and two year probation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 25, 2011, the prosecution costs in this matter are approximately \$4,163.00. 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: KEVIN JOHN MIRCH	Case Number(s): 08-J-11461
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Nolo Contendere Plea Stipulations to Facts, Conclusions of Law, and Disposition

The terms of pleading nolo contendere are set forth in the Business and Professions Code and the Rules of Procedures of the State Bar. The applicable provisions are set forth below:

Business and Professions Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere will be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court will find the member culpable. The legal effect of such a plea will be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based.

Rules of Procedure of the State Bar, rule 5.56. Stipulations to Facts, Conclusions of Law, and Disposition

“(A) **Contents.** A proposed stipulation to facts, conclusions of law, and disposition must comprise:

[¶] . . . [¶]

(5) a statement that the member either:

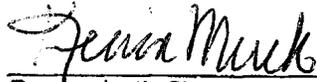
- (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
- (b) pleads nolo contendere to those facts and misconduct;

[¶] . . . [¶]

(B) **Plea of Nolo Contendere.** If the member pleads nolo contendere, the stipulation must also show that the member understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.”

I, the Respondent in this matter, have read the applicable provisions of Business and Professions Code section 6085.5 and rule 5.56 of the Rules of Procedure of the State Bar. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea will be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

5-2-2011
Date


Respondent's Signature

Kevin Mirch
Print Name

(Do not write above this line.)

In the Matter of: Kevin John Mirch	Case number(s): 08-J-11461
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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>5-2-2011</u> Date	<u>Kevin Mirch</u> Respondent's Signature	<u>Kevin John Mirch</u> Print Name
<u>5-2-11</u> Date	<u>Marie Mirch</u> Respondent's Counsel Signature	<u>Marie C. Mirch</u> Print Name
<u>May 3 '11</u> Date	<u>Hugh G. Radigan</u> Deputy Trial Counsel's Signature	<u>Hugh G. Radigan</u> Print Name

(Do not write above this line.)

In the Matter of: Kevin John Mirch	Case Number(s): 08-J-11461
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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:

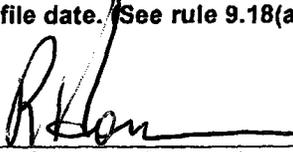
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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

5/10/11

Judge of the State Bar Court


RICHARD A. HORN

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 San Francisco, On May 16, 2011, 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:

MARIE C. MIRCH
MIRCH LAW
701 B ST STE 1310
SAN DIEGO, CA 92101

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

HUGH RADIGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 16, 2011.


Laretta Cramer
Case Administrator
State Bar Court