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State Bar Court of California
Hearing Department
Los Angeles

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<p>Counsel For The State Bar</p> <p>Paul T. O'Brien 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1378</p> <p>Bar # 171252</p>	<p>Case Number (s) 09-O-10245-RAP</p> <p>(for Court's use)</p> <p>FILED</p> <p>JAN 05 2011 <i>[Signature]</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>	
<p>Counsel For Respondent</p> <p>Susan L. Margolis Margolis & Margolis, LLP 2000 Riverside Drive Los Angeles, CA 90039-3758 (323) 953-8996</p> <p>Bar # 104629</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: KIMBERLY S. DANIELS</p> <p>Bar # 195839</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 June 5, 1998.
- (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 11 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".

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - case ineligible for costs (private reproof)
 - costs to be paid in equal amounts for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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.
- (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. These personal/family problems interfered with her ability to respond to the State Bar investigation in this matter.
- (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. Respondent has provided letters and/or declarations from witnesses in the legal and general communities that attest to her reputation for good character.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Respondent has contributed significant time as a volunteer to local civic and charitable organizations.

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
 - (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
 - (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproval for a period of one year.
- (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.

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 reproof.
- (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 reproof.
 No MPRE recommended. Reason:
- (11) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions
 - Medical Conditions
 - Law Office Management Conditions
 - Financial Conditions

F. Other Conditions Negotiated by the Parties:

4. In late 2006 or early 2007, Respondent advised White that she was winding down her law practice and starting a new job as the general manager of the San Luis Obispo County Employees Association (“SLOCEA”), an employee union. Respondent continued assisting White while winding down her law practice.
5. In or about mid-2007, Respondent sent White a billing statement showing that the fees he advanced had been exhausted. By that time, White had relocated, leaving his position at ASH. Respondent did not believe that sufficient evidence was developed to warrant any action before the State Personnel Board. When White relocated, after discussing the move and his new position with Respondent, she mistakenly believed that White was no longer interested in pursuing his claims of discrimination against ASH. Respondent failed to clearly communicate to White that she had left the practice of law and that she would no longer be available to handle any legal claims on his behalf.
6. In her new position at SLOCEA, Respondent was not required to practice law. Thereafter, she allowed her active membership to lapse, effective August 16, 2007 by not paying State Bar membership dues. Further, Respondent was administratively suspended by the State Bar, as she did not comply with Mandatory Continuing Legal Education (“MCLE”) requirements. To date, Respondent has continuously been enrolled as “not-entitled” to practice law due to her administrative suspensions.
7. Respondent did not advise White that, as of August 16, 2007, she was not entitled to practice law and was no longer able to represent him.
8. In a June 26, 2008 email, White wrote to Respondent and sought her assistance in having ASH provide employment verification information to White’s mortgage lender. In an email dated June 26, 2008, Respondent replied “OK James...I’ll focus on this tomorrow morning.”

Respondent did not advise White that she was not entitled to practice law or advise him to seek out other legal counsel for advice.

9. In a July 29, 2008 email, White wrote to Respondent and asked her for suggestions on whom to contact in connection with bringing a claim against CALCSEA/SEIU 1000 (a matter unrelated to his previous employment claims versus ASH). In an email dated July 29, 2008, Respondent wrote a reply email stating, in sum, that White's claim would fall within the jurisdiction of PERB and that PERB would be the body to hear the complaint. Respondent did not advise White in her reply that she was not entitled to practice law and was therefore unable to provide legal advice.
10. On February 5, 2009, a State Bar Investigator sent a letter to Respondent's State Bar Membership Record address requesting her response to the allegations in the complaint received from White. The letter was sent by first class mail and was not returned as undeliverable. Respondent did not provide a response to the letter.
11. On February 24, 2009, the State Bar Investigator sent a follow-up letter to Respondent at her membership records address, requesting her response to the allegations in the complaint received from White. Again, the letter was sent by first class mail and was not returned as undeliverable. Respondent did not provide a response to the letter.

CONCLUSIONS OF LAW

By failing to advise White that, as of August 16, 2007, she was not entitled to practice law and unable to represent him or provide legal advice, Respondent failed to communicate a significant development to her client in a matter or matters with regard to which she had agreed to provide legal services, in violation of Business and Professions Code section 6068(m).

By providing legal advice to White by email at a time when Respondent was not entitled to practice law, Respondent violated Business and Professions Code section 6068(a) by violating sections 6125 and 6126.

By not providing a response to the State Bar Investigator regarding the allegations raised by White, Respondent willfully failed to cooperate and participate in a disciplinary investigation pending against Respondent, in violation of Business and Professions Code section 6068(i).

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), was December 14, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 14, 2010, the prosecution costs in this matter are \$ 3,654. 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

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
09-O-10245	One	RPC 3-110(A)
09-O-10245	Two	B&P § 6106
09-O-10245	Three	RPC 3-700(A)(2)
09-O-10245	Five	B&P § 6106

STATE BAR ETHICS SCHOOL.

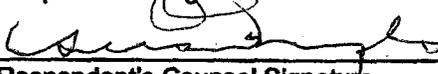
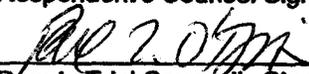
Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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In the Matter of KIMBERLY S. DANIELS, No. 195839	Case number(s): 09-O-10245-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 Fact, Conclusions of Law and Disposition.

<u>Dec. 14, 2010</u> Date	 Respondent's Signature	<u>KIMBERLY S. DANIELS</u> Print Name
<u>12/20/10</u> Date	 Respondent's Counsel Signature	<u>SUSAN L. MARGOLIS</u> Print Name
<u>12/21/10</u> Date	 Deputy Trial Counsel's Signature	<u>PAUL T. O'BRIEN</u> Print Name

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ORDER

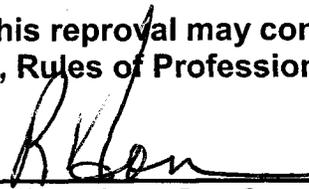
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.

1/3/11
Date



Judge of the State Bar Court
RICHARD A. HONN

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 5, 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 Los Angeles, California, addressed as follows:

SUSAN MARGOLIS
MARAGOLIS & MARGOLIS LLP
2000 RIVERSIDE DRIVE
LOS ANGELES CA 90039

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:

PAUL O'BRIEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 5, 2011.



Angela Carpenter
Case Administrator
State Bar Court