

**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p>Katherine Kinsey Deputy Trial Counsel State Bar of California 1149 S. Hill Street Los Angeles, CA 90015 213-765-1503</p> <p>Bar # 183740</p>	<p>Case Number(s): 09-O-13295</p> <p align="center">PUBLIC MATTER</p>	<p>For Court use only</p> <p align="center">FILED</p> <p align="center">MAY 04 2011 <i>he</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Martin Edgar Keller 323 W. Court St., Ste 302 San Bernardino, CA 92401 909-889-2681</p>		
<p>Bar # 104159</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of:</p> <p>Martin Edgar Keller 323 W. Court St., Ste 302 San Bernardino, CA 92401</p> <p>Bar # 104159</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 11/22/82.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.



- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 10 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☒ 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: (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
 - (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.
- (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.

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

Additional mitigating circumstances:

Respondent has no prior record of discipline over 28 years of practice.

Respondent displayed candor and cooperation with the State Bar during the disciplinary proceedings.

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 30 days.
- 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.
- (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:
- | | |
|---|---|
| <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 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:** _____

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Martin Edgar Keller

CASE NUMBER(S): 09-O-13295

FACTS AND CONCLUSIONS OF LAW:

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. 09-O-13295 (Complainant: Linda L. Way)

FACTS:

1. In June 2001, Linda L. Way ("Way") purchased a mobile home from Mapleridge Realty ("Mapleridge"). The property had roof problems, and Way was required to repair the roof to secure a loan. Way's real estate agent, Patricia Wolpak ("Wolpak"), recommended roofer Andy Dalton ("Dalton"). Way hired Dalton to perform the repairs to her roof. Six months after moving into the mobile home, the unit suffered extensive water damage from rain coming through the roof.
2. In April 2002, Way employed Respondent on a contingency fee basis to represent her in claims against the manufacturer, real estate agent and/or the roofing contractor for the faulty repairs to the roof of her mobile home.
3. On May 7, 2003, Way telephoned Respondent regarding her case. On May 7, 2003, Respondent told Way he would file a lawsuit on her behalf by the end of the week.
4. On June 3, 2003, Way called Respondent to request an update on her case. On June 3, 2003, Respondent told Way he would file a lawsuit against Dalton at the end of the week. Way suggested to Respondent that they also include Maplewood as a defendant in the lawsuit.
5. On June 23, 2003, Respondent informed Way that he had drafted a complaint against Dalton and Mapleridge and was hoping to file the complaint within a week.
6. At no time did Respondent file a civil complaint on Way's behalf or otherwise pursue any legal action on her behalf.
7. On August 14, 2003, Respondent informed Way that he was in the process of serving the defendants. At the time Respondent made this representation to Way, he knew that he had not filed a civil complaint on Way's behalf and would not be serving a complaint.

8. On November 17, 2003, Way spoke to Respondent who told her he had served Wolpak on November 10, 2003 and had to wait thirty days for a response. At the time Respondent made this representation to Way, he knew that he had not filed a civil complaint and had not served Wolpak.

9. On December 15, 2003, Respondent informed Way that Mapleridge had been improperly served, but he now had the correct name and address of the legal agent and would re-serve Mapleridge. At the time Respondent made this representation to Way, he knew that he had not filed a civil action and had not tried to serve Mapleridge.

10. From in or about 2004 through in or about 2006, Respondent continued to misrepresent to Way that she had a pending legal action.

11. In July 2008, Respondent told Way that he had received a settlement offer of \$35,000 in her case but said he would be holding out for more money. At the time Respondent made this representation to Way, he knew that a \$35,000 settlement offer had not been made.

12. In November 2008, Respondent told Way that he had received a \$90,000 settlement offer from Dalton's insurance company, and that the settlement funds should be received by December 2008. At the time Respondent made this representation to Way, he knew that Dalton's insurance company had not made a settlement offer for \$90,000 or for any amount.

13. In December 2008, Way called Respondent for a status update. Respondent told Way that nothing would happen on her matter until after the holidays.

14. In February 2009, Respondent informed Way that he would fax a release for her signature and that Way would have her settlement funds two to three weeks later.

15. On March 23, 2009, Way wrote to Respondent expressing her frustration at the length of time it was taking Respondent to resolve the issues with her leaking roof. In the letter, Way the case number of her lawsuit.

16. By April 2009, Way had still not received settlement funds, a settlement release, copies of the inspection reports and had not received the case number of her lawsuit. As a result, Way employed new counsel, Brian Brandt ("Brandt").

17. In April 2009, Brandt contacted Respondent and requested Way's file. After reviewing the file, Brandt discovered that Respondent had not filed a lawsuit on Way's behalf and the statute of limitation had run.

18. On May 21, 2009, Brandt filed a legal malpractice action against Respondent on Way's behalf. In or about October 2009, Respondent and Way settled the legal malpractice action and has paid the full settlement to Way.

CONCLUSIONS OF LAW:

19. By failing to file and pursue a civil action on Way's behalf, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

20. By making misrepresentations to Way that a lawsuit had been filed and served and by making misrepresentations to Way that the settlement monies had been negotiated and would be sent to her, Respondent committed an act involving moral turpitude or dishonesty in willful violation of Business and Professions Code, section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 14, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.3 states that culpability of a member of an act of moral turpitude or intentional dishonesty toward a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of misconduct is harmed or misled.

In *In the Matter of Johnston* (1997) 3 Cal. State Bar Ct. Rptr. 585, the respondent failed to perform on a client's behalf, failed to communicate and misrepresented the status of the case to the client. The respondent also failed to cooperate with the State Bar, and the matter proceeded by default. The Review Department found the respondent culpable of moral turpitude in violation of Business and Professions Code section 6106 based on his misrepresentations to the client. The Review Department also found that the respondent violated Rules of Professional Conduct, rule 3-110(A) and Business and Professions Code sections 6068(m) and 6068(i). In *Johnston*, the respondent had no prior record of discipline after 12 years of practice.

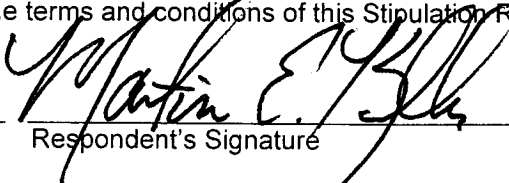
The Review Department in *Johnston* recommended that the respondent be suspended for one year, that execution of the suspension be stayed and that he be placed on probation for two years subject to conditions, including actual suspension for the first 60 days of probation.

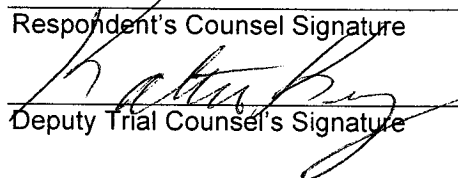
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In the Matter of: Martin Edgar Keller	Case number(s): 09-O-13295
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SIGNATURE OF THE PARTIES

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>4-14-11</u>		<u>Martin E. Keller</u>
Date	Respondent's Signature	Print Name

<u>4/14/11</u>		<u>Katherine Kinsey</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
Martin Edgar Keller

Case Number(s):
09-O-13295

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

05-02-11

Judge of the State Bar Court

RICHARD A. PLATEL

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 May 4, 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:
- MARTIN EDGAR KELLER
KELLER & HOLT
323 W COURT ST STE 302
SAN BERNARDINO CA 92401
- ☐ 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:

KATHERINE KINSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 4, 2011.



Angela Carpenter
Case Administrator
State Bar Court