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State Bar Court of California Hearing Department Los Angeles			kwiktag® 018 038 510 
Counsel For The State Bar Dane C. Dauphine Supervising Trial Counsel 1149 South Hill St. Los Angeles, CA 90015-2299 Tel. (213) 765-1293 Bar # 121606	Case Number (s) 09-O-17211	(for Court's use) PUBLIC MATTER FILED JAN 05 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
Counsel For Respondent Ellen A. Pansky Pansky Markle Ham LLP 1010 Sycamore Ave., #308 South Pasadena, CA 91030 Tel. (213) 626-7300 Bar # 77688	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter Of: Pierce Henry O'Donnell Bar # 81298 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 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 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 284, Rules of Procedure.
 - ☐ costs to be paid in equal amounts prior to February 1 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

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 04-C-12303
 - (b) ☒ Date prior discipline effective Pending with Supreme Court
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Conviction involving moral turpitude and other misconduct warranting discipline for misdemeanor violations of Government Code section 30418 (Improper Identification of Donors)
 - (d) ☒ Degree of prior discipline 60 days actual suspension (2 years stayed suspension and 2 years probation)
 - (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. Respondent has cooperated in entering into this stipulation to resolve the State Bar 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 acknowledges that he bore the ultimate responsibility to be completely accurate with the court and states that he deeply regrets that he did not do so. Respondent has expressed remorse for his conduct. Respondent was admitted pro hac vice after the Nevada court was advised of the California disciplinary proceeding and completed his representation in the Watanabe matter. Respondent's misstatements to the court did not cause any harm to his client.

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 sixty (60) days consecutive to the sixty-day actual suspension recommended in case no. 04-C-12303 currently pending with the Supreme Court.

- 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 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: Respondent will be required to complete Ethics School in case no. 04-C-12303 currently pending with the Supreme Court.
- (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 321(a)(1) & (c), Rules of Procedure.**
- ☒ No MPRE recommended. Reason: Respondent will be required to complete the MPRE in case no. 04-C-12303 currently pending with the Supreme Court.
- (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 HENRY O'DONNELL

CASE NUMBER(S):

09-O-17211

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.

FACTS:

1. On February 2, 2006, Respondent was convicted of misdemeanor violations of California Government Code section 30418 (Improper Identification of Donors) in the Los Angeles County Superior Court, case no. 4CR03404. Thereafter, a record of the conviction was transmitted to the State Bar Court.
2. On March 16, 2006, the State Bar Court referred for hearing the matter of Respondent's conviction for determination if the matter involved moral turpitude or other misconduct warranting discipline. On April 24, 2006, the State Bar Court augmented the order to include a recommendation of discipline, if any.
3. In or about January 2007, Respondent entered into a stipulation admitting to facts and conclusions of law that the facts and circumstances surrounding his convictions involved moral turpitude and other misconduct warranting discipline. On July 18, 2007, Respondent signed a contract and waiver for participation in the State Bar Court's Alternative Discipline Program, and the State Bar Court filed a confidential statement of alternative dispositions and orders which provided that, if Respondent completed the court's Alternative Discipline Program, the court would recommend to the Supreme Court that he be disciplined with an 18-month stayed suspension and a 2-year probation. The order also provided that, if he did not complete the program, the court would recommend that Respondent be disciplined with a 2-year stayed suspension, a 2-year probation and a 60-day actual suspension. Respondent was informed of the court's order.
4. On October 13, 2009, Respondent verified an application to the District Court of Clark County, Nevada, seeking to be associated as counsel for the defendant in the case entitled *State of Nevada v. Terence K. Watanabe*, case no. C254057 ("the Watanabe case"). In the application, Respondent answered a question so as to state that he was not currently subject to any disciplinary proceedings by any organization. Respondent did not disclose in the verified application the pending disciplinary proceedings in the State Bar Court. Respondent intended that the application would be submitted to a court.
5. At the time that Respondent verified the application for association of counsel, Respondent knew that he was the subject of pending disciplinary proceedings in the State Bar Court. He did not disclose the proceedings in his application because he considered them to be a diversion program.

6. On October 16, 2009, Daniel J. Albregts, a Nevada attorney, filed a motion in the Clark County District Court to associate Respondent as co-counsel for the defendant in the Watanabe case with Respondent's verified application attached.

7. The prosecutor in the Watanabe case learned of Respondent's disciplinary proceedings and brought them to the attention of the court. On November 2, 2009, Respondent appeared before the Clark County District Court for a continued hearing on the motion to associate him as counsel. In responding to questions about the disciplinary proceedings pending in the State Bar Court, Respondent represented to the Clark County District Court that he had worked out a diversionary resolution in lieu of discipline and that there would be no suspension, stay of suspension, fine, sanction or other disability in his ability to practice law and that he would not be disciplined publicly, privately or otherwise.

8. At the time that Respondent appeared before the Clark County District Court, Respondent knew that he would be disciplined at the conclusion of the proceedings in the State Bar Court with at least a stayed suspension. Respondent did not disclose to the Clark County District Court that he would be disciplined as a result of the pending State Bar Court proceedings because he believed that no discipline would be imposed during the time that he was counsel in the Watanabe case.

CONCLUSIONS OF LAW:

9. By stating in the application for association of counsel that he was not currently subject to any disciplinary proceedings by any organization and by stating to the court at the 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 sought to mislead the 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).

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was December 8, 2010.

WAIVERS TO EXPEDITE TO SUPREME COURT

The parties agree to waive any right to seek review following the approval of this stipulation by the State Bar Court so that the Supreme Court may immediately issue an order imposing discipline in this matter with the actual suspension to be consecutive to the suspension recommended in case no. 04-C-12303 previously transmitted to the Supreme Court. The parties agree that the court may issue orders in both this cases to impose consecutive suspensions and avoid the imposition of separate periods of suspension. This stipulation also recommends that the Court order compliance with rule 9.20, Cal. Rules of Court, since the consecutive suspensions will provide for a continuous period of 120 days actual suspension.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct (the "Standards"):

Standard 2.6 states that culpability of violation of section 6068 of the Business and Professions Code warrants disbarment or suspension depending on the gravity of the offence or the harm, if any, to the victim, with due regard to the purposes of discipline.

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Case Law

Although prior to the implementation of the Standards for Attorney Sanctions, some cases involving the misleading of a court imposed a public reproof, the case law applying the Standards has imposed discipline ranging from stayed suspension to six months actual suspension. See, for instance, *Drociak v. State Bar* (1991) 52 Cal.3d 1085 (**30 days actual suspension** for use of presigned verifications to interrogatories without consulting the client as to truth of the responses); *Bach v. State Bar* (1987) 43 Cal.3d 848 (**60 days actual suspension** for misrepresenting whether the attorney had been advised or ordered to produce his client at a mediation hearing); *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844 (**75 day actual suspension** for misrepresenting that his clients wanted to pursue an appeal as well as appearing without authority, failing to communicate and release client file); *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166 (**6 months actual suspension** for false representation that he had personally served an opposing party with a summons and complaint); *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211 (**stayed suspension**, no actual, for concealing the death of his client from the court at a mandatory settlement conference); *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490 (**6 months actual suspension** for misrepresenting that a witness was under subpoena and for failure to cooperate in the State Bar investigation).

Respondent's misconduct involved misleading statements and harm to the administration of justice but not to any client. In mitigation, he has cooperated in the State Bar proceedings in stipulating to a disposition of this matter. Respondent has been a member since 1978, and there is pending with the Supreme Court a recommendation for a 60-day actual suspension for his 2006 misdemeanor convictions. A 60-day suspension in this matter to be ordered consecutive to the suspension in the pending matter will provide for appropriate discipline within the standards and case law.

(Do not write above this line.)

In the Matter of
Pierce Henry O'Donnell, #81298

Case number(s):
09-O-17211

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.

12-10-10

Date

12/14/10


Date

12-16-10


Date


Respondent's Signature

Pierce H. O'Donnell
Print Name


Respondent's Counsel Signature

Ellen A. Pansky
Print Name


Deputy Trial Counsel's Signature

Dane C. Dauphine
Print Name

(Do not write above this line.)

In the Matter Of
Pierce Henry O'Donnell, #81298

Case Number(s):
09-O-17211

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 135(b), 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.)**

1/5/11
Date


Judge of the State Bar Court

DONALD F. MILES

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

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

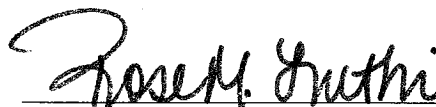
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY, ESQ.
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:

DANE DAUPHINE, ESQ., Enforcement, Los Angeles

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



Rose Luthi
Case Administrator
State Bar Court