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**State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION**

<p>Counsel For The State Bar Susan I. Kagan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2037 Bar # 214209</p>	<p>Case Number(s): 10-O-00630 [10-O-05850; 10-O-07799; 10-O-11174]</p>	<p>For Court use only PUBLIC MATTER FILED <i>[Signature]</i> MAR 22 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent Kenneth L. Kiddy Wilson & Kiddy 6240 Grigsby Pl Stockton, CA 95219 (209) 483-8758 Bar # 85060</p>	<p>Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> <p>kwiktag[®] 018 042 822 </p>	
<p>In the Matter of: Kenneth L. Kiddy Bar # 85060 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 March 6, 1979.
- (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 15 pages, not including the order.

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- (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 09-O-10959 [Supreme Court Case No. S181716]
 - (b) Date prior discipline effective June 25, 2010
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rules 3-110(A) and 3-700(D)(2) and Business and Professions Code section 6068(m)
 - (d) Degree of prior discipline one-year stayed suspension.
 - (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. See page 11.

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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. See page 11.
- (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. See page 11.
- (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. See page 11.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

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- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two (2) 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 three (3) 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 90 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.

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- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: Respondent has been ordered to provide proof of attendance at Ethics School within one year of June 25, 2010, as a condition of his probation in Supreme Court Case S181716. If respondent complies with the above referenced probation condition, he will not be required to attend Ethics School in this matter. If respondent does not comply with the probation condition in Supreme Court Case S181716, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of Ethics School, and passage of the test given at the end of that session within one (1) year of the effective date of discipline herein.
- (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 checked="" 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: Respondent has been ordered to provide proof of passage of the MPRE within one year of June 25, 2010, as a condition of his probation in Supreme Court Case S181716. If respondent complies with the above referenced probation condition, he will not be required to take the MPRE in this matter. If respondent does not comply with the probation condition in Supreme Court Case S181716, respondent must provide to the Office of Probation satisfactory proof of passage of the MPRE within one (1) year of the effective date of discipline herein.

- (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:** If respondent does not pay full restitution and remains actually suspended from the practice of law for two (2) years or more, he must remain actually suspended until he proves to the State Bar Court his rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

Attachment language (if any):

FACTS AND CONCLUSIONS OF LAW

Case No. 10-O-00630 [The Escobar matter]

Facts:

1. On December 8, 2008, respondent was hired by Gary Escobar ("Escobar") to file a complaint against Escobar's tenant, Stockton Cycles, for unpaid rent ("civil matter"). On December 8, 2008, Escobar paid respondent \$1,500.00 as advanced fees in the civil matter. On December 16, 2008, respondent drafted a complaint in the civil matter. Thereafter, respondent failed to file a complaint on behalf of Escobar in the civil matter, or perform any other work on behalf of Escobar in the civil matter.
2. On January 30, 2009, respondent was hired by Escobar file an unlawful detainer complaint against one of Escobar's tenants ("unlawful detainer matter"). On March 20, 2009, respondent filed a complaint in the unlawful detainer matter, Escobar v. Ambriz, San Joaquin County Superior Court Case No. 39-2009-00206769-CL-UD-STK. Thereafter, respondent failed to perform any work on behalf of Escobar in the unlawful detainer matter.
3. In July 2009, respondent ceased communicating with Escobar. In July 2009, respondent took no further action on behalf of Escobar in the civil or unlawful detainer matters, effectively terminating his representation. At no time did respondent advise Escobar that he was withdrawing from further representation in the civil and unlawful detainer matters.
4. From July 2009 through December 2009, Escobar repeatedly called the telephone number provided to him by respondent and left numerous messages for respondent inquiring about the status of his cases. Soon thereafter, respondent received the messages, but failed to respond to them.
5. Respondent did not perform any legal services of value for Escobar in the civil matter and did not earn the \$1,500.00 advanced by Escobar. As of July 2009, respondent effectively withdrew from representing Escobar in the civil matter. To date, respondent has failed to refund any portion of the \$1,500.00 to Escobar.

Conclusions of Law:

1. By failing to file a complaint on behalf of Escobar in the civil matter, and by failing to perform any other work on behalf of Escobar in the civil matter, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
2. By failing to perform any work on behalf of Escobar aside from filing the complaint in the unlawful detainer matter, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
3. By failing to complete the services for which he was employed by Escobar, by failing to perform further work on behalf of Escobar in the civil and unlawful detainer matters, by failing to advise Escobar that he

was withdrawing from representation in those matters and by failing refund to Escobar any portion of the \$1,500.00 advanced fees which he had not earned, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

4. By failing to respond to Escobar's numerous messages inquiring about the status of his cases, respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of section 6068(m) of the Business and Professions Code.

Case No. 10-O-05850 [The Minyard matter]

Facts:

1. Prior to January 22, 2009, respondent was hired by Jackie Minyard ("Minyard") to represent Minyard in a mechanic's lien matter. On January 22, 2009, respondent filed a complaint of behalf of Minyard in the matter, Minyard Excavating v. CSS Construction, Contra Costa County Superior Court Case No. C09-00161 ("mechanic's lien matter"). Thereafter, respondent failed to perform any work on behalf of Minyard in the mechanic's lien matter and the matter was dismissed for respondent's failure to prosecute.
2. On May 19, 2009, the court in the mechanic's lien matter scheduled a case management conference ("CMC") to take place on August 4, 2009. Soon thereafter, respondent received notice of the August 4, 2009 CMC.
3. On August 4, 2009, a CMC was held in the mechanic's lien matter. Respondent failed to appear at the CMC. On or about the same date, the court issued an order requiring respondent to appear at a hearing on August 27, 2009 ("OSC hearing") and to show cause why the case should not be dismissed. The court stated that respondent's failure to appear at the OSC hearing will cause the court to dismiss the case. Soon thereafter, respondent received a copy of the court's August 27, 2009 order.
4. On August 27, 2009, the OSC hearing was held in the mechanic's lien matter. Respondent failed to appear at the OSC hearing. On August 31, 2009, the court issued a judgment of dismissal without prejudice for lack of prosecution. Soon thereafter, respondent received the court's August 31, 2009 order. At no time did respondent inform Minyard that the court had dismissed the mechanic's lien matter for his failure to prosecute.
5. On September 21, 2009, respondent sent an e-mail to Minyard falsely stating that there was a CMC that week in the mechanic's lien matter. At the time of making the statement in the September 21, 2009 e-mail, respondent knew the statement to be false. On September 23, 2009, respondent sent an e-mail to Minyard falsely stating that there was a continued court date in the mechanic's lien matter. At the time of making the statement in the September 23, 2009 e-mail, respondent knew the statement to be false. On November 3, 2009, respondent sent an e-mail to Minyard falsely stating that he believed the mechanic's lien matter was being set for trial in February. At the time of making the statement in the November 3, 2009 e-mail, respondent knew the statement to be false.

Conclusions of Law:

1. By failing to perform any work on behalf of Minyard aside from filing the complaint in the mechanic's lien matter and by allowing the case to be dismissed, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
2. By failing to appear at the August 27, 2009 OSC hearing, in violation of the court's August 4, 2009 order, respondent disobeyed an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear in willful violation of section 6103 of the Business and Professions Code.
3. By failing to inform Minyard that the court had dismissed the mechanic's lien matter, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in willful violation of section 6068(m) of the Business and Professions Code.
4. By making knowingly false statements to Minyard regarding the status of the mechanic's lien matter, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

Case No. 10-O-07799 [The Murillo matter]

Facts:

1. On August 8, 2008, respondent was hired by Rafael Murillo ("Murillo") to draft and file a bankruptcy petition on Murillo's behalf ("bankruptcy matter"). On the same date, Murillo paid respondent \$3,000.00 as advanced fees in the bankruptcy matter. Thereafter, respondent failed to file a bankruptcy petition on behalf of Murillo and Murillo had to hire another attorney to handle the bankruptcy matter.
2. On September 8, 2009, Murillo sent a letter to respondent terminating respondent's services and requesting a refund of unearned fees. Soon thereafter, respondent received Murillo's September 8, 2009 letter. Respondent did not perform any legal services of value for Murillo in the bankruptcy matter and did not earn the \$3,000.00 advanced by Murillo. To date, respondent has failed to refund any portion of the \$3,000.00 to Murillo.

Conclusions of Law:

1. By failing to file a bankruptcy petition on behalf of Murillo, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
2. By failing to refund to Murillo any portion of the \$3,000.00 advanced fees which he had not earned, respondent failed to refund unearned fees in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 10-O-11174 [The Servidio matter]

Facts:

1. On July 29, 2010, respondent was hired by Debbie Servidio ("Servidio") to file a notice of eviction ("first eviction matter"). On the same date, Servidio paid respondent \$500.00 as advanced fees in the first eviction matter.
2. On September 27, 2010, respondent was hired by Servidio to file a notice of eviction ("second eviction matter"). On the same date, Servidio paid respondent \$500.00 as advanced fees in the second eviction matter.
3. Thereafter, respondent failed to file a notice of eviction on behalf of Servidio in either eviction matter.
4. On November 2, 2010, Servidio sent a letter to respondent terminating respondent's services and requesting a refund of unearned fees. Soon thereafter, respondent received Servidio's November 2, 2010 letter. Respondent did not perform any legal services of value for Servidio in the eviction matters and did not earn the \$1,000.00 advanced by Servidio. To date, respondent has failed to refund any portion of the \$1,000.00 to Servidio.

Conclusions of Law:

1. By failing to file a notice of eviction on behalf of Servidio in the first and second eviction matters, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
2. By failing to refund to Servidio any portion of the \$1,000.00 advanced fees which he had not earned, respondent failed to refund unearned fees in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to on page two, paragraph A (7) was February 9, 2011.

STATE BAR ETHICS SCHOOL

If respondent attends State Bar Ethics School as part of this stipulation (see page 5), respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the State Bar has informed respondent that as of February 9, 2011, the estimated prosecution costs in this matter are approximately \$5,473.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES

AGGRAVATING CIRCUMSTANCES

Standard 1.2(b)(i). Respondent has a prior record of discipline.

Standard 1.2(b)(ii). Respondent's 12 counts of misconduct represent multiple acts of wrongdoing.

Standard 1.2(b)(iv). Respondent's misconduct caused significant harm to his clients.

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(v). Respondent displayed spontaneous candor and cooperation to the State Bar during the disciplinary proceedings.

Standard 1.2(e)(vii). Respondent displayed remorse for his misconduct.

SUPPORTING AUTHORITY

Standard 2.3 requires an actual suspension or disbarment for a respondent that has committed an act of moral turpitude.

Standard 2.4(b) requires reproof or suspension for a respondent who has wilfully failed to perform services in which he was retained.

Standard 2.6 requires that a violation of Business and Professions Code sections 6068(m) and 6103 shall result in disbarment or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

Standard 2.10 requires that a violation of any provision of the Rules of Professional Conduct not specified in the standards (e.g., rules 3-700(A)(2) and 3-700(D)(2)) shall result in reproof or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior proceeding was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Generally, discipline for failing to perform and communicate ranges from reproof to actual suspension. (See *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32 [one-year stayed

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suspension for abandonment in single client matter; no prior record of discipline]; Van Sloten v. State Bar (1989) 48 Cal.3d 921 [six-month stayed suspension for abandonment in single client matter; no prior record of discipline]; Harris v. State Bar (1990) 51 Cal. 3d 1082 [90-day actual suspension for abandonment in single client matter; no prior record of discipline]; Martin v. State Bar (1978) 20 Cal.3d 717 [one-year actual suspension for misconduct six client matters; no prior record of discipline in over 28 years of practice]; Rose v. State Bar (1989) 49 Cal.3d 646 [two years' actual suspension for misconduct in seven client matters; no prior record of discipline; extensive mitigation evidence].)

Based on the standards and the case law, as well as the aggravating circumstances in this matter, most significantly respondent's prior record of discipline for similar misconduct, a 90-day actual suspension with a condition that respondent pay restitution before he is relieved from actual suspension, is appropriate and will meet the purposes of attorney discipline.

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In the Matter of: Kenneth L. Kiddy	Case Number(s): 10-O-00630 [10-O-05850; 10-O-07799; 10-O-11174]
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Gary Escobar	\$1,500.00	12/8/08
Rafael Murillo	\$3,000.00	8/8/08
Debbie Servidio	\$1,000.00	9/27/10

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation ~~not later than~~.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- 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.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

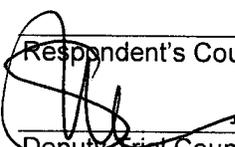
- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

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In the Matter of: Kenneth L. Kiddy	Case number(s): 10-O-00630 [10-O-05850; 10-O-07799; 10-O-11174]
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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>3-3-2011</u> Date	 Respondent's Signature	<u>Kenneth L. Kiddy</u> Print Name
<u> </u> Date	 Respondent's Counsel Signature	<u>N/A</u> Print Name
<u>3/3/11</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name

(Do not write above this line.)

In the Matter Of KENNETH L. KIDDY	Case Number(s): 10-O-00630 [10-O-5850; 10-O-07799; 10-O-11174]
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

On page 5 of the stipulation, in paragraph E(8), the last two sentences are DELETED so that the conditional Ethics School requirement is deleted. (See Rules Proc. of State Bar, rule 5.135(A).) Paragraph E(8) now reads in its entirety: "No Ethics School Recommended. Reason: Respondent has been ordered to provide proof of attendance at Ethics School within one year of June 25, 2010, as a condition of his probation in Supreme Court Case S181716."

On page 6 of the stipulation, the text in paragraph F(1) is DELETED so that the conditional MPRE requirement is deleted, and the following text is inserted in its place so that paragraph F(1) now reads in its entirety: "No MPRE Recommended. Reason: The Supreme Court ordered respondent to take and pass the MPRE within one year after June 25, 2010, in case number S181716. If respondent fails to pass the MPRE within that time, he will be suspended from the practice of law until he does. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; but see also Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 5.162.)"

On page 6 of the stipulation, paragraph F(5) is DELETED in its entirety. The conditional standard 1.4(c)(ii) requirement in Paragraph F(5) is a redundant variation of conditional standard 1.4(c)(ii) requirement already selected by the parties in paragraph E(1) on page 4 of the stipulation.

On page 10 of the stipulation, the paragraph under the subheading "State Bar Ethics School" is DELETED in its entirety because no Ethics School probation condition is recommended.

(Do not write above this line.)

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.)**

March 22, 2011
Date

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on March 22, 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:

KENNETH LEE KIDDY
WILSON & KIDDY
6240 GRIGSBY PL
STOCKTON, CA 95219

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:

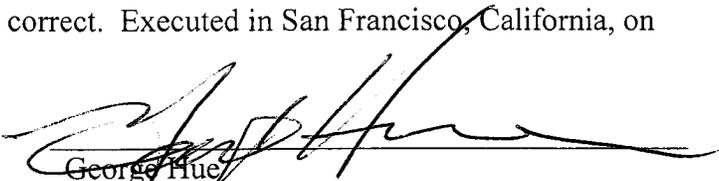
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Susan Kagan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 22, 2011.


George Hue
Case Administrator
State Bar Court