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State Bar Court of California  
Hearing Department  
Los Angeles

**PUBLIC MATTER**

|   |  |   |
|---|--|---|
| <p>Counsel For The State Bar</p> <p>Elina Kreditor<br/>Deputy Trial Counsel<br/>1149 S. Hill Street<br/>Los Angeles, CA 90015</p> <p>Bar # 250641</p> | <p>Case Number (s)<br/>10-O-00798</p>  | <p>(for Court's use)</p> <p><b>FILED</b></p> <p>DEC 22 2010</p> <p>STATE BAR COURT<br/>CLERK'S OFFICE<br/>LOS ANGELES</p> |
| <p>In Pro Per Respondent</p> <p>Patrick M. Passenheim<br/>2727 De Anza Rd. Spc M-22<br/>San Diego, CA 92109</p> <p>Bar # 140752</p>                   | <p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br/>DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> |   |
| <p>In the Matter Of:<br/>Patrick M. Passenheim</p> <p>Bar # 140752</p> <p>A Member of the State Bar of California<br/>(Respondent)</p>                |  |   |

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 7, 1989.
- (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: three billing cycles following the effective date of the Supreme Court Order.  
(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 06-O-12798
  - (b)  Date prior discipline effective January 9, 2009
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Rules 1-311(D); 1-311(F) and 4-100(A) of the Rules of Professional Conduct and section 6106 of the Business and Professions Code.
  - (d)  Degree of prior discipline Thirty (30) months actual suspension
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.  
89-C-13006; discipline effective on June 18, 1992, two years actual suspension.
- (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. Respondent's financial situation contributed to his inability to attend Ethics and CTA school.
- (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. Respondent has been going through separation and divorce proceedings with his wife.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

## D. Discipline:

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of five 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 five 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 Forty Eight (48) months. The actual suspension shall run concurrent with any ongoing actual suspension in State Bar Case No. 06-O-12798 where Respondent has been ordered actually suspended for 30 months and until he pays restitution..
- 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: .
- (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:

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- (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: PATRICK M. PASSENHEIM

CASE NUMBER(S): 10-O-00798

**FACTS AND CONCLUSIONS OF LAW**

Patrick M. Passenheim ("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.

**I. Facts**

1. On August 12, 2008, Respondent entered into a stipulation regarding facts, conclusions of law, and disposition in State Bar Court case no. 06-O-12798, including a stipulation that Respondent would comply with probation conditions.
2. On December 10, 2008, the California Supreme Court filed its Order in case no. S167431 approving the stipulation reached in case no. 06-O-12798. The Court ordered that Respondent be suspended from the practice of law for four years, that execution of the suspension be stayed, and that Respondent be placed on probation for four years with conditions, including that he be actually suspended for thirty months ("the Order"). On or about December 10, 2008, the California Supreme Court clerk served a copy of the Order on Respondent by mail. Respondent received a copy of the Order. The Order was effective January 9, 2009.
3. As a condition of the probation recommended by the Hearing Department and ordered by the Supreme Court, the Court ordered Respondent to comply with numerous conditions of Probation, including the following:
  - a. to comply with the State Bar Act and the Rules of Professional Conduct during the probation period; and,
  - b. to submit written quarterly reports to the Office of Probation ("Probation") on each January 10, April 10, July 10 and October 10 of the period of probation, certifying under penalty of perjury whether he had complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter;
  - c. provide proof to Probation of attendance at a session of the Ethics School, and passage of the test given at the end of that session (within one year of the effective date of discipline or by January 9, 2010).
  - d. provide proof to Probation of attendance at a session of Client Trust Accounting School and passage of the test given at the end of that session (within one year of the effective date of discipline or by January 9, 2010).
4. Respondent did not file the Quarterly Reports due by October 19, 2009, January 10, 2010, April 10, 2010, July 10, 2010 and October 10, 2010 with Probation.

5. Respondent did not attend a session of Ethics School and submit proof of attendance to Probation by January 9, 2010.
6. Respondent did not attend a session of Client Trust Accounting School and submit proof of attendance to Probation by January 9, 2010.

## **II. Conclusions of Law**

By failing to (i) file the October 19, 2009, January 10, 2010, April 10, 2010, July 10, 2010 and October 10, 2010 Quarterly Reports; (ii) attend and submit proof of attendance of a session of Ethics School; and (iii) attend and submit proof of attendance of a sessions of Client Trust Accounting School, Respondent willfully failed to comply with all conditions attached to any disciplinary probation in violation of Business and Professions Code, section 6068(k).

### **PENDING PROCEEDINGS**

The disclosure date referred to, on page 2, paragraph A(7), of the instant Stipulation, was November 3, 2010.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 3, 2010, the costs in this matter are \$2296.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

### **MITIGATING CIRCUMSTANCES**

Respondent suffered a cerebral hemorrhage in 2002 which has led to some cognitive impairment, including episodes of forgetfulness and confusion. Respondent often feels depressed and anxious. He is currently under the care of a doctor and taking oral medication to curb these symptoms.

Respondent has experienced severe financial problems in the past several years and his sole source of income is social security.

Respondent's wife filed for a dissolution of marriage on August 16, 2010, following a protracted period of marital strife.

### **AUTHORITIES SUPPORTING DISCIPLINE**

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 2.6(a) of the Standards provides that violations of section 6068 shall result in disbarment or suspension depending upon the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

Standard 1.7(a) provides that where a member has previously been found culpable of any misconduct, the degree of discipline imposed shall be greater than that imposed in the prior proceeding. Thus, the Standards dictate that Respondent's discipline in this matter at least exceed the discipline imposed in his prior matter, specifically, one year stayed suspension, three years probation, and 30 days actual suspension.

Standard 1.7(b) provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding should be disbarment unless the most compelling mitigating circumstances clearly predominate.

Although the standards are guidelines (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and afforded great weight (*In re Silverton* (2005) 36 Cal.4th 81, 91-92), they are not applied in a talismanic fashion (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994). The appropriate discipline is determined in light of all relevant facts, including mitigating and aggravating circumstances. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Respondent's first imposition of discipline stemmed from criminal conduct committed by the Respondent between 1977 and 1978, approximately 10 years before his admission to the Bar.

Respondent's second disciplinary sanction was imposed in 2008, approximately 30 years after committing the acts that led to his initial discipline.

Because Respondent's misconduct that led to his first imposition of discipline occurred many years before he was a member of the State Bar and because the discipline itself was imposed 18 years ago, the weight of his first prior discipline is diminished. The remoteness in time of his first disciplinary sanction, coupled with the mitigating factors articulated above, supports a deviation from a strict application of Standard 1.7(b), and the recommended discipline serves to adequately protect the public and preserve the purposes of discipline.

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| In the Matter of<br><b>PATRICK C. PASSENHEIM</b> | Case number(s):<br><b>10-C-00798</b> |
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**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

|                   |  |   |
|-------------------|--|---|
| <u>11-07-2010</u> |  | <u>Patrick M. Passenheim</u>                |
| Date              | Respondent's Signature   | Print Name                                  |
| Date              | Respondent's Counsel Signature   | Print Name                                  |
| <u>12/08/2010</u> | <u>Paul O'Brien for Elina Kreditor</u>   | <u>Paul O'Brien</u><br>(for Elina Kreditor) |
| Date              | Deputy Trial Counsel's Signature   | Print Name                                  |

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In the Matter Of  
**PATRICK C. PASSENHEIM**

Case Number(s):  
**10-O-00798**

### 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.)**

Date

12/20/10

Judge of the State Bar Court

**RICHARD A. HONN**

**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 December 22, 2010, 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:

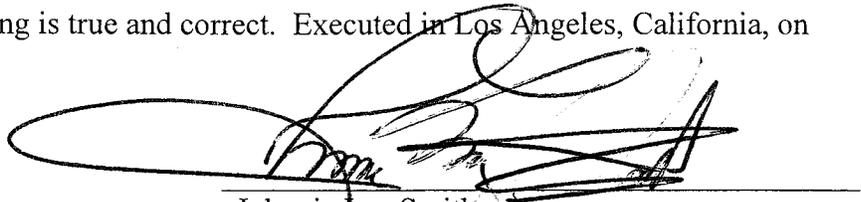
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PATRICK M. PASSENHEIM  
2727 DE ANZA RD SPC M22  
SAN DIEGO, CA 92109

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

Paul T. O'Brien, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 22, 2010.



Johnnie Lee Smith  
Case Administrator  
State Bar Court