

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

<p>Counsel For The State Bar</p> <p>Office of the Chief Trial Counsel Maria J. Oropeza 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 182660</p>	<p>Case Number(s): 11-H-11479</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED <i>Rm</i></p> <p>MAY 18 2011</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Ephraim Margolin Law Offices of Ephraim Margolin 240 Stockton Street, 4th Floor San Francisco, CA 94108</p> <p>Bar # 32582</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Kay Del Carmen Holley</p> <p>Bar # 87549</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted October 23, 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 9 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):
 - Costs are added to membership fee for calendar year following effective date of discipline.
 - 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 07-O-11100
 - (b) Date prior discipline effective March 2, 2010
 - (c) Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code §§6068(j), (m)
 - (d) Degree of prior discipline public reproof
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (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.

(Do not write above this line.)

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of one year.

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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of one year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

(1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: Respondent took State Bar Ethics School in April 2011.
- (8) 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.
- (9) 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**
- Respondent was required to take and pass the MPRE in conjunction with case no. 07-O-11100, and failed to do so within the prescribed time period. She has registered to take the MPRE in August 2011, she is required to take and pass the MPRE as part of this stipulation, within the prescribed time period. She need only pass the MPRE once in order to comply with the MPRE requirement. If respondent needs additional time to take and pass the MPRE, beyond the one year prescribed in this stipulation, she must file a motion for that purpose.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Kay Del Carmen Holley, Bar No. 87549

CASE NUMBER(S): 11-H-11479

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-H-11479 (State Bar Investigation)

Statement of Facts: Case No. 11-H-11479 Count One

1. Kay Del Carmen Holley ("respondent") was admitted to the practice of law in the State of California on October 23, 1979, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2. Respondent wilfully violated Rules of Professional Conduct, rule 1-110(A), by failing to comply with conditions attached to a reproof administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 956 (now Rule 9.19), California Rules of Court, as follows:

3. On January 12, 2010, respondent signed a stipulation in case number 07-O-11100 in which she agreed to receive a public reproof and promised to comply with conditions attached to the reproof for a period of one year. The conditions attached to the reproof were specified in the stipulation that respondent signed.

4. On February 9, 2010, acting under the authority of Business and Professions Code section 6077, the State Bar Court of California issued an order imposing a reproof upon respondent in case number 07-O-11100. Pursuant to California Rule of Court 9.19, the State Bar Court order required respondent to comply with the stipulated conditions attached to the reproof. The Court found that "...the stipulation protects the public and that the interests of respondent will be served by any conditions attached to the reproof..."

5. On February 9, 2010, the stipulation and order were filed with the State Bar Court Clerk's office.

6. Soon after February 9, 2010, respondent received notice of the reproof order and reproof conditions.

7. Shortly after February 9, 2010, respondent had actual knowledge of the reproof conditions and reproof order.

8. The reproof order and reproof conditions became effective on or about March 1, 2010 and have remained in full force at all times thereafter.

9. MPRE CONDITION.

(a) One of the reproof conditions provided as follows:

“Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproof.”

(b) Respondent violated this condition of her reproof by failing to take the examination prior to the expiration of the one-year deadline, by failing to pass the examination prior to the expiration of the one year deadline, and by failing to provide proof of passage prior to the expiration of the one-year deadline.

10. ETHICS SCHOOL CONDITION.

(a) One of the reproof conditions provided as follows:

“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.”

(b) Respondent violated this condition of her reproof by failing to attend Ethics School prior to the expiration of the one-year deadline.

Conclusions of Law: Case No. 11-H-11479 Count One

11. By failing to comply with conditions attached to a reproof, specifically by failing to take Ethics School and to take and pass the MPRE, with the prescribed time period attached to the reproof, respondent wilfully violated rule 1-110(A) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 15, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.9 states “culpability of a member of a wilful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

Respondents who violate reproof conditions customarily receive sixty or ninety days of actual suspension, plus one or two years of stayed suspension (*In the Matter of Meyer* (Review Dept., 1997) 3 Cal. State Bar Court. Rptr. 697 (90-day actual suspension; two years stayed); *Conroy v. State Bar* (1990) 51 Cal.3d 799 (60-day actual suspension; one year stayed); *In the Matter of Stansbury* (2000) 4 Cal. State Bar Ct. Rptr. 103 (90-day suspension “and until” restitution paid). Respondent’s case can be distinguished from *Conroy*, *Stansbury*, and *Meyer*, since each of those respondents defaulted or did not appear for their State Bar Court trials. Also *Meyer* had a record of prior discipline that included two private reproofs.

The only reported case in which suspension was not imposed for a reproof violation was *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813 (public reproof).

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 15, 2011, the prosecution costs in this matter are \$2,797.00. 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.

(Do not write above this line.)

In the Matter of: Kay Del Carmen Holley, Bar No. 87549	Case number(s): 11-H-11479
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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>April 29, 2011</u> Date	<u>Kay del Carmen Holley</u> Respondent's Signature	<u>Kay Del Carmen Holley</u> Print Name
<u>4/29/2011</u> Date	<u>Ephraim Margolin</u> Respondent's Counsel Signature	<u>Ephraim Margolin</u> Print Name
<u>5/3/2011</u> Date	<u>[Signature]</u> Deputy Trial Counsel's Signature	<u>Maria J. Oropeza</u> Print Name

(Do not write above this line.)

In the Matter of: Kay Del Carmen Holley, Bar No. 87549	Case Number(s): 11-H-11479
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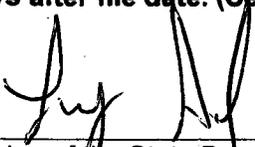
STAYED SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date May 17, 2011


Judge of the State Bar Court

LUCY ARMENDARIZ

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 May 18, 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:

EPHRAIM MARGOLIN
LAW OFFICE OF EPHRAIM MARGOLIN
240 STOCKTON STREET, 4TH FL.
SAN FRANCISCO, CA 94108 - 5318

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

MARIA J. OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 18, 2011.



Bernadette C.O. Molina
Case Administrator
State Bar Court