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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>DISBARMENT</b>		
<b>Counsel For The State Bar</b>  Kevin B. Taylor Supervising Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015  Bar # 151715	<b>Case Number(s):</b> 11-O-11366-PEM	<b>For Court use only</b>  <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div>  <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em;">NOV 10 2011 <i>JA</i></div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
<b>Counsel For Respondent</b>  David Cameron Carr 530 B Street, Ste. 1410 San Diego, CA 92101  Bar # 124510	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT  <b>DISBARMENT</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> Luann Marie Kelley  Bar # 131841  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 December 14, 1987.
- (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 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."



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- (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 to be awarded to the State Bar.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**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**
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If respondent has two or more incidents of prior discipline, use space provided below:
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Respondent's misconduct deprived the Wilk Family Trust of \$80,000.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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.

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**Additional mitigating circumstances:**

Respondent has no record of prior discipline since being admitted to the practice of law in California on December 14, 1987.

Respondent has provided the State Bar with declarations attesting to her good character and extensive pro bono work.

Respondent has also provided the State Bar with declarations from her medical providers which show that during at least a significant portion of the time she engaged in the above-described misconduct she suffered from depression related to family stressors, including the long illness and passing of her mother. The declarations also indicate that Respondent suffered from undiagnosed medical problems during the relevant time period, including congestive heart failure, sleep apnea and attention deficit disorder. The declarations further indicate that Respondent's emotional and medical problems impaired her judgment, memory and focus. At least one medical provider opined that the problems played a role in Respondent's misconduct. Respondent has made progress in addressing these problems.

Finally, Respondent came to recognize the wrongfulness of her misconduct, explained her desire to rectify the misconduct and cooperated with the State Bar in entering into this stipulation.

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**D. Discipline: Disbarment.**

**E. Additional Requirements:**

- (1) **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.
- (2)  **Restitution:** Respondent must make restitution to the Wilk Family Trust in the amount of \$ \$80,000 plus 10 percent interest per year from October 1, 2008. If the Client Security Fund has reimbursed the Wilk Family Trust for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than N/A days from the effective date of the Supreme Court order in this case.
- (3)  **Other:**

(Do not write above this line.)

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### Nolo Contendere Plea Stipulations to Facts, Conclusions of Law, and Disposition

The terms of pleading nolo contendere are set forth in the Business and Professions Code and the Rules of Procedures of the State Bar. The applicable provisions are set forth below:

#### Business and Professions Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere will be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court will find the member culpable. The legal effect of such a plea will be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based.

#### Rules of Procedure of the State Bar, rule 5.56. Stipulations to Facts, Conclusions of Law, and Disposition

“(A) Contents. A proposed stipulation to facts, conclusions of law, and disposition must comprise:

[ ] . . . [ ]

(5) a statement that the member either:

- (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
- (b) pleads nolo contendere to those facts and misconduct;

[ ] . . . [ ]

“(B) Plea of Nolo Contendere. If the member pleads nolo contendere, the stipulation must also show that the member understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.”

I, the Respondent in this matter, have read the applicable provisions of Business and Professions Code section 6085.5 and rule 5.56 of the Rules of Procedure of the State Bar. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea will be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

10/24/11  
Date

*Luann Marie Kelley*  
Respondent's Signature

Luann Marie Kelley  
Print Name

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: Luann Marie Kelley, State Bar No. 131841

STATE BAR COURT CASE NUMBER: 11-O-11366-PEM

**FACTS AND CONCLUSIONS OF LAW**

Respondent pleads nolo contendere to the following facts and violations of the specified statutes and/or Rules of Professional Conduct. Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of her culpability in violating the statutes and/or Rules of Professional Conduct specified herein.

**Facts**

1. In March 2003, Louise Wilk (Wilk) assumed the duties of trustee for the Wilk Family Trust.
2. In January 2008, Wilk employed Respondent to assist her with an accounting for the trust and the transfer of trust assets to a successor trustee.
3. In July 2008, Wilk transferred \$80,000 of trust assets to Respondent. Respondent deposited the \$80,000 into her client trust account (CTA) that same month.
4. Respondent was required to hold the \$80,000 in her CTA until authorized to disburse the funds by Wilk or the probate court. Respondent contends that she was authorized by Wilk to take her fees from this fund; the successor trustee of the Wilk Family Trust contends that she was not authorized.
5. On October 3, 2008, the balance in Respondent's CTA dropped to \$3,950.75. On July 14, 2010, the balance in Respondent's CTA dropped to zero.
6. Respondent never disbursed any portion of the \$80,000 on behalf of Wilk or the trust.
7. Respondent disbursed the \$80,000 for the benefit of another client and herself, thereby misappropriating \$80,000 from Wilk and the trust.
8. Respondent believes that she is entitled to \$27,123 of the \$80,000 for attorney fees and costs she incurred representing Wilk and the trust. However, Respondent has not obtained an order from the probate court confirming her payment of fees and costs. Furthermore,

representatives of the trust contend that she is not entitled to the funds. Additionally, Respondent collected a separate payment of \$5,000 from Wilk as advanced attorney fees.

9. On May 6, 2010, the probate court, after an evidentiary hearing, ordered Respondent to return the \$80,000 to the trust, along with an additional \$115,752.98 in damages, by May 13, 2010. Respondent contends that the issue of her claim to attorney fees and costs remains open with the probate court.
10. Respondent has not returned any portion of the \$80,000 to Wilk or the trust. Respondent has not paid Wilk or the trust any portion of the \$115,752.98 ordered by the court.

#### Legal Conclusions

11. By the foregoing conduct, Respondent failed to maintain client funds in an account labeled "Trust Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.
12. By the foregoing conduct, Respondent misappropriated client funds, thereby committing an act involving moral turpitude in willful violation of section 6106 of the Business and Professions Code.

#### **WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties waive any variance between the First Amended Notice of Disciplinary Charges filed on August 12, 2011, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of a further amended Notice of Disciplinary Charges. Finally, the parties waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

#### **DISCUSSION RE DISCIPLINE**

Respondent engaged in significant acts of misconduct and caused harm to her client. Respondent therefore stipulates that disbarment is the appropriate discipline in this matter.

The Standards For Attorney Sanctions For Professional Misconduct support disbarment in this matter.

Standard 1.3 provides that the primary purpose of discipline is the protection of the public, the courts and the legal profession.

Standard 2.2 provides that culpability of a member for the willful misappropriation of clients funds shall result in disbarment. Only if the amount of funds misappropriated is insignificantly small or the most compelling mitigation clearly predominates, shall disbarment not be imposed.



In this matter, the amount misappropriated is not insignificantly small. Additionally, while Respondent presented evidence in mitigation, it does not clearly predominate and, therefore, does not support discipline less than disbarment.

### **PENDING PROCEEDINGS**

The disclosure date referred to, on page two, paragraph A.(7), was October 19, 2011.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of, October 19, 2011, the prosecution costs in this matter are approximately \$3,269. 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.

### **CLIENT SECURITY FUND WAIVER**



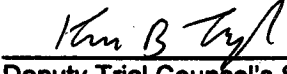
Respondent waives any objection to payment by the State Bar Client Security Fund upon the claim for the principal amount of restitution set forth herein with the following reservation. If, before the discipline in this matter becomes final, Respondent obtains a court order confirming payment of attorney fees and costs as an offset against her obligation to return the \$80,000 restitution discussed above, she may present a certified copy of that order to the State Bar Client Security Fund in support of a request that the principal payment in this matter be reduced by the amount approved by the court.

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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>10/24/11</u> Date	<u></u> Respondent's Signature	<u>Luann Marie Kelley</u> Print Name
<u>10/24/11</u> Date	<u></u> Respondent's Counsel Signature	<u>David Cameron Carr</u> Print Name
<u>11/3/11</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Kevin B. Taylor</u> Print Name

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### DISBARMENT ORDER

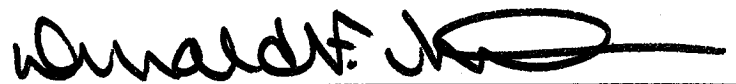
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.)**

Respondent Luann Marie Kelley is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

11/9/11  
Date



Judge of the State Bar Court **DONALD F. MILES**

## 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 November 10, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

DAVID C. CARR  
LAW OFFICE OF DAVID CAMERON CARR  
530 B ST STE 1410  
SAN DIEGO, CA 92101

- 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:

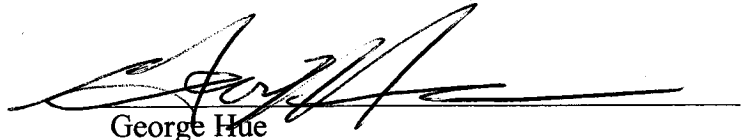
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

Kevin Taylor, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 10, 2011.



George Hue  
Case Administrator  
State Bar Court