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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ALTERNATIVE DISCIPLINE PROGRAM</b>		
<p>Counsel For The State Bar</p> <p>Anand Kumar Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1714</p> <p>Bar # 261592</p>	<p>Case Number(s): 12-H-11014-RAH</p>	<p>For Court use only</p> <p style="font-size: 2em; font-weight: bold; text-align: center;">PUBLIC MATTER</p> <p style="font-size: 1.5em; font-weight: bold; text-align: center;">FILED</p> <p style="font-size: 1.2em; font-weight: bold; text-align: center;">FEB 07 2013</p> <p style="font-size: 0.8em; text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Ellen A. Pansky 1010 Sycamore Ave., Suite 308 South Pasadena, CA 91030 (213) 626-7300</p> <p>Bar # 77688</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p>	
<p>In the Matter of: Michael Lewis Duncan</p> <p>Bar # 93385</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><b>ALTERNATIVE DISCIPLINE PROGRAM</b></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 November 7, 1980.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 5.386(D)(2) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 9 pages, excluding 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) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**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-13767 and 09-13344
  - (b)  Date prior discipline effective August 24, 2010.
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code, sections 6068(o)(3) and 6103; rule 3-110(A), Rules of Professional Conduct,
  - (d)  Degree of prior discipline Private reproof without public disclosure.
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
    - 1. On May 14, 1991 Stipulation as to Facts and Discipline with the State Bar in case nos. 87-O-15403, 88-O-11258, 88-O-14204, and 89-O-17049. On October 16, 1991, the Supreme Court issued an Order (S022265) imposing on Respondent a one-year stayed suspension and a one-year probation with conditions. The Order became effective November 15, 1991. The Order was based on the following statutory and rule violations: 1) in case no. 87-O-15403, Respondent willfully violated the predecessor to rule 3-110(A), Rules of Professional Conduct and Business and Professions Code, section 6106 [misrepresenting status of case to client]; 2) in case no. 88-O-11258, Respondent willfully violated the predecessor to rules 3-110(A) and 3-700(A)(2), Rules of Professional Conduct; 3) in case no. 88-O-14204, Respondent willfully violated the predecessor to rules 3-110(A) and 3-700(A)(2), Rules of Professional Conduct, and section 6068(m) of the Business and Professions Code; and 4) in case no. 89-O-17049, Respondent willfully violated the predecessor to rules 3-110(A) and 3-700(A)(2), Rules of Professional Conduct, and sections 6106 [misrepresenting status of case to client] and 6068(m) of the Business and Professions Code.  
  
Subsequently, in case no. 92-P-13323, Respondent entered into a stipulation with the State Bar for violating the terms of his probation in case nos. 87-O-15403, which resulted in a modification of his probation including an additional six-month stayed suspension and six-months of probation with conditions.
    - 2. On March 25, 1982, Respondent was privately reproofed in case number 81-O-185 LA (effective approximately April 15, 1982). The Court's decision was based on the following findings of fact. From September 14, 1979 through November 6, 1980—the date Respondent

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was sworn in as a member of the State Bar of California—Respondent held himself out as attorney to the public, including to at least eight clients. In one of the client matters, Respondent collected an illegal fee of \$1,000.00 from a client on April 28, 1980, who subsequently discharged Respondent and demanded a refund of the illegal fee on May 5, 1980, which Respondent failed to refund to her until June 2, 1981. The Court also found that Respondent had held himself out as a practicing attorney to an attorney with whom he entered into office space arrangement despite knowing that he had not yet been admitted to practice law in California. The Court concluded Respondent had violated sections 6103, 6106, 6125, 6126 and 6127 of the Business and Professions Code

- (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. See attachment, page 7.
- (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 attachment, page 8.
- (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.

**Additional mitigating circumstances:**

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

IN THE MATTER OF:                      Michael Lewis Duncan

CASE NUMBER:                            12-H-11014-RAH

**FACTS AND CONCLUSIONS OF LAW.**

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

**FACTS:**

1. On July 23, 2010, Respondent entered into a Stipulation as to Facts and Conclusions of Law with the State Bar for a private reproof without public disclosure in case numbers 07-O-13767 and 09-O-13344.
2. On August 2, 2010, the Hearing Department of the State Bar Court issued its Order approving and imposing the private reproof with conditions ("Order"). The private reproof imposed by the Order became effective on August 24, 2010.
3. Pursuant to the Order, Respondent was ordered to comply with the following terms and reproof conditions, among others, for one year:
  - a. to comply with the State Bar Act and the Rules of Professional Conduct during the period of probation;
  - b. to contact his assigned probation deputy to schedule a meeting to discuss the terms and conditions of his probation within thirty (30) days from the effective date of discipline (i.e., September 23, 2010);
  - c. to submit to the State Bar's Office of Probation ("Office of Probation") written quarterly reports each January 10, April 10, July 10 and October 10 of the condition period attached to the reproof, certifying under penalty of perjury whether he has complied with all provisions of the State Bar Act and the Rules of Professional Conduct and all conditions of reproof during the preceding calendar quarter or part thereof covered by the report and to file a final report no earlier than twenty days prior to the expiration of the reproof condition period and no later than the last day of said period;

- d. to report any disciplinary proceedings pending against him in State Bar Court during the preceding calendar quarter with each quarterly report filed with the Office of Probation; and
  - e. to attend, complete, and provide satisfactory proof to the Office of Probation of attendance and completion of State Bar Ethics School within one year of the effective date of the Disciplinary Order (i.e., on or before August 24, 2011).
4. On August 3, 2010, the Hearing Department's Order approving the Stipulation was properly served by mail upon Respondent. Respondent received the Order.
  5. On August 19, 2010, a Probation Deputy from the Office of Probation of the State Bar of California sent a letter to Respondent in which he reminded Respondent of the terms and conditions of his probation imposed pursuant to the Order. In the August 19, 2010 letter, the Probation Deputy specifically reminded Respondent regarding his obligations to contact the Probation Deputy to schedule a meeting to discuss the terms and conditions of his probation before September 23, 2010, submit quarterly probation reports, with the first due on October 10, 2010, and submit proof to the Office of Probation of attendance and completion of State Bar Ethics School before August 24, 2011.
  6. Enclosed with the August 19, 2010 letter to Respondent were, among other things, copies of the relevant portion of the Stipulation setting forth the conditions of Respondent's private reproof, a Quarterly Report Instructions sheet, a Quarterly Report form specially tailored for Respondent to use in submitting his quarterly reports, a State Bar Ethics School Application Enrollment Form and a 2010 State Bar Ethics School Schedule. Respondent received the August 19, 2010 letter.
  7. Respondent failed to contact the Office of Probation to schedule a meeting with his assigned Probation Deputy to discuss the terms and conditions of his probation before September 23, 2010.
  8. On September 24, 2010, the Probation Deputy sent a letter to Respondent reminding him that he had not been in contact with the Office of Probation to schedule a meeting to discuss the terms and conditions of his probation. Enclosed with the September 24, 2010 letter to Respondent were copies of the August 19, 2010 letter and all of its attachments. Respondent received the September 24, 2010 letter.
  9. On September 30, 2010, Respondent's assigned Probation Deputy contacted Respondent and had a telephonic meeting with him, in which he confirmed that Respondent received the Probation Deputy's August 19, 2010 and September 24, 2010 letters respectively and discussed with Respondent the conditions of his reproof, the reporting schedule and requirements, and the deadlines for when the compliance documents must be received by the Office of Probation. The Probation Deputy also verified Respondent's current mailing address and telephone number.

10. Respondent failed to timely submit to the Office of Probation his quarterly reports that were due on January 10, 2011 and April 10, 2011 respectively. Instead, Respondent submitted the quarterly reports on May 23, 2011.
11. Respondent failed to timely submit with the Office of Probation his final quarterly report due by August 24, 2011. Instead, Respondent submitted the quarterly report on May 26, 2012.
12. Respondent failed to submit proof to the Office of Probation of attendance and completion of State Bar Ethics School before August 24, 2011. However, on August 23, 2012, Respondent belatedly came into compliance by attending, completing and providing satisfactory proof to the Office of Probation of attendance and completion of State Bar Ethics School.

#### CONCLUSION OF LAW:

13. By failing to timely submit quarterly reports, failing to timely submit a final report, failing to contact his probation deputy to discuss the conditions attached to the reproof, and failing to timely attend and complete State Bar Ethics School, Respondent failed to comply with conditions attached to public or private reprovals or other discipline administered by the State Bar in willful violation of rule 1-110, Rules of Professional Conduct.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(6), was October 1, 2012.

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline:** Pursuant to *Standard 1.2(b)(i)*, Respondent's prior record of discipline and the nature and extent of that record is an aggravating circumstance as described on pages 2 and 3 of this stipulation.

**Indifference:** Under *Standard 1.2(b)(v)*, Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. On April 21, 2011, Respondent was referred to the State Bar for violating his reproof conditions. On May 23, 2011, Respondent had an in-person meeting with his assigned probation deputy and a State Bar attorney to discuss violations of his reproof conditions. On that day, Respondent signed and submitted his delinquent quarterly reports. However, as described above, Respondent failed to correct his non-compliant behavior after meeting with his probation deputy and the State Bar attorney. Specifically, Respondent failed to submit his final quarterly report (due on or before August 24, 2011) for the 2010 private reproof until May 29, 2012, five days after the State Bar sent Respondent a letter informing him of the State Bar's intention to file disciplinary charges against him in this matter. Likewise Respondent failed to attend and complete Ethics School until August 23, 2012. As such, Respondent's behavior in failing to timely comply with his reproof conditions after both having already been referred to the State Bar once for prosecution of his reproof condition violations in April 2011 and having met with his probation deputy and a State Bar attorney to discuss violations of his reproof conditions in May 2011 demonstrates indifference toward rectification of or atonement for the consequences of his misconduct.

**Multiple/Pattern of Misconduct:** Pursuant to *Standard 1.2(b)(ii)*, Respondent's current misconduct evidences multiple acts of wrongdoing. Respondent has violated the terms of his private reproof in at least five ways during five separate periods of time, including within 30 days after the effective date of the discipline [failure to contact assigned probation deputy], in January 2011 [failure to timely submit quarterly report], in April 2011 [failure to timely submit quarterly report], between August 2011 and May 2012 [failure to timely submit final report], and a failure to timely attend Ethics School and submit proof of attendance to the Office of Probation.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 24, 2012, the prosecution costs in this matter are approximately \$5,026.00. 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.

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In the Matter of: Michael Lewis Duncan	Case number(s): 12-H-11014-RAH
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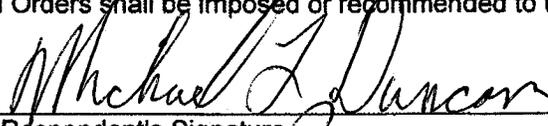
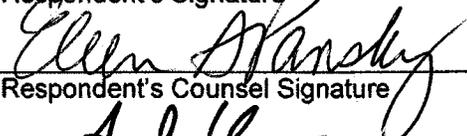
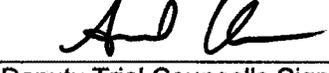
### SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>10-25-12</u> Date	<u></u> Respondent's Signature	<u>Michael Lewis Duncan</u> Print Name
<u>10/29/12</u> Date	<u></u> Respondent's Counsel Signature	<u>Ellen A. Pansky</u> Print Name
<u>10.30.2012</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Anand Kumar</u> Print Name

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In the Matter of:  
Michael Lewis Duncan

Case Number(s):  
12-H-11014-RAH

### ALTERNATIVE DISCIPLINE PROGRAM ORDER

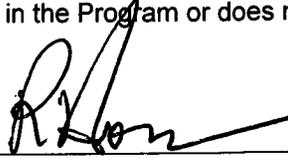
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date

1/31/13

  
RICHARD A. HONN  
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 Los Angeles, on February 7, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW  
ALTERNATIVE DISCIPLINE PROGRAM

in a sealed envelope for collection and mailing on that date as follows:

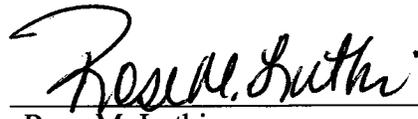
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY  
PANSKY MARKLE HAM LLP  
1010 SYCAMORE AVE UNIT 308  
SOUTH PASADENA, CA 91030

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

ANAND KUMAR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 7, 2013.



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Rose M. Luthi  
Case Administrator  
State Bar Court