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State Bar Court of California  
Hearing Department  
Los Angeles  
DISBARMENT

<p>Counsel For The State Bar</p> <p>William Todd Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015 213-765-1491</p> <p>Bar # 259194</p>	<p>Case Number(s): 12-N-13353-DFM 12-O-15837 12-O-13476</p>	<p>For Court use only</p> <p><b>FILED</b> <i>Y/C</i> <b>SEP 27 2012</b></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p><b>PUBLIC MATTER</b></p>
<p>In Pro Per Respondent</p> <p>Kevin Patrick Kelley P.O. Box 1781 Santa Ana, California 92702 310-227-1260</p> <p>Bar # 140462</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p><b>DISBARMENT</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: KEVIN PATRICK KELLEY</p> <p>Bar # 140462</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 6, 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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (11) 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."

(Effective January 1, 2011)

*CM*



- (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:  

Please see "Attachment to Stipulation," Page 8.
- (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. Please see "Attachment to Stipulation," Page 9.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. Please see "Attachment to Stipulation," Page 9.

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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. Please see "Attachment to Stipulation," Page 9.
- (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:**

Please see "Attachment to Stipulation," Page 9.

**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 David Guillen in the amount of \$ 7,800.00 plus 10 percent interest per year from July 15, 2009. If the Client Security Fund has reimbursed David Guillen 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:**



## CONCLUSIONS OF LAW:

5. By not filing a satisfactory declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20 (c), Respondent failed to timely comply with the provisions of Supreme Court Order No. S197507 requiring compliance with rule 9.20, *California Rules of Court*. By the foregoing conduct, Respondent willfully violated rule 9.20, *California Rules of Court*.

### Case No. 12-O-15837 (State Bar Investigation)

## FACTS:

6. On January 10, 2012, the California Supreme Court filed Order No. S197507 ("Disciplinary Order") regarding discipline of Respondent. On January 10, 2012, the Clerk of the Supreme Court of the State of California properly served a copy of the Disciplinary Order by mail on Respondent. Respondent received the Disciplinary Order.

7. The Disciplinary Order placed Respondent on a three-year probation subject to certain conditions. On January 20, 2012, a probation deputy of the Office of Probation mailed a letter to Respondent at his member records address reminding him of the conditions of probation. Respondent received the letter from the probation deputy.

8. Thirty days after filing, on February 9, 2012, the Disciplinary Order became effective.

9. As a condition of probation, Respondent was required to provide to the Office of Probation proof of a minimum \$1070.00 quarterly restitution payment to either a set of individual payees (described within the stipulation as to facts and conclusions of law applicable in that matter) or to the State Bar Client Security Fund ("CSF"). Such proof was due on each January 10, April 10, July 10 and October 10 during the period of probation, with the first proof due by April 10, 2012. Despite this requirement, Respondent did not provide satisfactory proof of payment by April 10, 2012. Respondent also failed to provide satisfactory proof of payment due by July 10, 2012.

10. As a condition of probation, Respondent was required to contact and schedule a meeting with his assigned probation deputy by March 10, 2012. Respondent failed to do so.

11. As a condition of probation, Respondent was required to respond fully, promptly and truthfully to any inquiries of the Office of Probation. On March 14, 2012, a probation deputy from the Office of Probation attempted to contact Respondent via telephone. A voicemail message was left for Respondent, but Respondent did not respond to the message.

12. Respondent did not contact the Office of Probation until March 27, 2012.

## CONCLUSIONS OF LAW:

13. By the foregoing, Respondent failed to provide proof of minimum quarterly restitution payments by the required dates, failed to contact the Office of Probation by March 10, 2012 and failed to respond to an inquiry from the Office of Probation on March 14, 2012, and thus Respondent failed to comply with conditions attached to his disciplinary probation in willful violation of *Business and Professions Code* section 6068(k).

Case No. 12-O-13476 (David Guillen) (Unfiled Matter)

FACTS:

14. In July 2009, David Guillen ("Guillen") retained Respondent to complete a loan modification, and later a chapter 13 bankruptcy.

15. Between July 2009 and March 2010, Guillen paid Respondent \$7,800.00 in fees.

16. In February 2012, Respondent was suspended from the practice of law due to his misconduct in another matter, and Respondent had not completed any of the legal services for which he was hired by Guillen.

17. Respondent never completed a loan modification on Guillen's behalf.

18. Respondent never filed a chapter 13 bankruptcy petition on Guillen's behalf.

19. Respondent performed no other services of value on Guillen's behalf.

20. Respondent refused to offer any refund of unearned fees to Guillen.

CONCLUSIONS OF LAW:

21. By failing to complete a loan modification or bankruptcy petition in accordance with the purpose of his representation, Respondent failed to perform in willful violation of *Rules of Professional Conduct* rule 3-110 (A).

22. By failing to refund any of the \$7,800.00 in fees paid to Respondent by Guillen, Respondent failed to refund unearned fees in willful violation of *Rules of Professional Conduct* rule 3-700 (D)(2).

**ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.**

**Prior Discipline (Standard 1.2 b (i)):** Respondent's prior misconduct is an aggravating circumstance here. As set forth in his prior stipulations, Respondent has multiple instances of prior discipline, as follows:

- **Case no. 99-O-12183** resulted in a private reproof for this Respondent following his stipulation to a single violation of *Rules of Professional Conduct* rule 4-100 (A) (requiring client funds be maintained in a client trust account). In a stipulation filed October 5, 2000, Respondent admitted that he issued multiple checks from his client trust account unrelated to client matters, and that he deposited his own personal funds into his client trust account.
- **Case 01-O-02822** resulted in a one-year suspension, stayed, with a two-year probation and a thirty-day actual suspension following Respondent's stipulation to two violations of *Rules of Professional Conduct* rule 4-100 (A). In a stipulation filed March 20, 2003, Respondent admitted his failure to maintain client funds within his client trust account. He also admitted commingling funds in his client trust account.

- **Case nos. 11-O-13376, 11-O-13389, 11-O-14018 and 11-O-14054** resulted in a two-year suspension, stayed, with a three-year probation and a six-month actual suspension for fourteen (14) violations of *Rules of Professional Conduct* rule 1-300 (B) (unauthorized practice of law), 4-100(A) and 4-200 (A) (illegal fee). In a stipulation filed September 6, 2011, Respondent admitted acquiring clients living in four states in which he was neither licensed nor permitted by law to engage in law practice. He also admitted to collecting the related illegal fees. Respondent also admitted commingling funds in his client trust account by failing to remove his own attorney fees from the account at the earliest possible time after his interest became fixed.

**Harm (Standard 1.2 (b)(iv)):** Respondent's failure to promptly refund unearned fees to a Guillen after Respondent failed to perform caused significant harm Guillen as he received neither his funds nor his promised services. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117.

**Indifference (Standard 1.2 (b)(v)):** Respondent's rule 9.20 declaration was originally due on March 20, 2012, a date by which Respondent failed to file a conforming declaration. To date, six-months beyond the original due date, Respondent has failed to file a conforming 9.20 declaration. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.

**Multiple Acts of Misconduct (Standard 1.2 (b)(ii)):** Respondent's admissions demonstrate multiple acts of misconduct. See *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

#### **ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.**

**Mitigating Circumstances:** Respondent did agree to enter into a stipulation with the State Bar involving his misconduct, though it is also true that the facts here are easily provable (see *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50), and cooperation in State Bar proceedings is a duty of California attorneys (*Business and Professions Code* section 6068 (i)). Therefore, this mitigation is entitled to only limited weight.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from

that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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 shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Here, Respondent has three prior records of discipline, and is currently stipulating to violations of California *Rules of Court* rule 9.20, which governs the duties of disbarred, resigned or suspended attorneys, *Business and Professions Code* section 6068 (k), which requires attorneys to comply with the terms of any disciplinary probation applicable to them, *Rules of Professional Conduct* rule 3-110(A), which prohibits an intentional, reckless, or repeated failure to perform legal services with competence, and *Rules of Professional Conduct* rule 3-700(D)(2), which requires the prompt return of any unearned fee upon an attorney's termination of employment. Respondent's only mitigation is his cooperation in completing this stipulation, mitigation which is not entitled to the compelling weight necessary to prevent disbarment. Therefore, consistent with the applicable standard, disbarment is appropriate here to protect the public, the courts and the legal profession.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was September 20, 2012.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

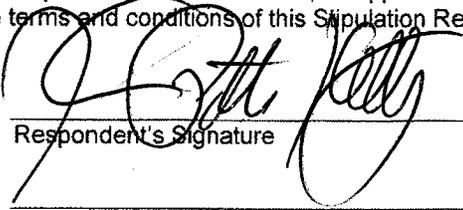
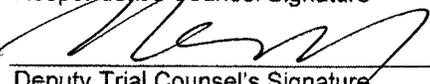
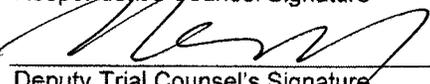
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 20, 2012, the prosecution costs in this matter are \$6,944.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: KEVIN PATRICK KELLEY	Case number(s): 12-N-13353-DFM 12-O-15837 12-O-13476
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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>9/24/12</u> Date	 Respondent's Signature	<u>KEVIN PATRICK KELLEY</u> Print Name
<u>9/24/12</u> Date	 Respondent's Counsel Signature	<u>WILLIAM TODD</u> Print Name
<u>9/24/12</u> Date	 Deputy Trial Counsel's Signature	<u>WILLIAM TODD</u> Print Name

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In the Matter of: KEVIN PATRICK KELLEY	Case Number(s): 12-N-13353-DFM 12-O-15837 12-O-13476
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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 KEVIN PATRICK 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.

09-26-2012  
Date

  
RICHARD A. PLATEL  
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 September 27, 2012, 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 Los Angeles, California, addressed as follows:

**KEVIN P. KELLEY  
PO BOX 1781  
SANTA ANA, CA 92702**

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

**WILLIAM TODD, Office of Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 27, 2012.



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Tammy Cleaver  
Case Administrator  
State Bar Court