

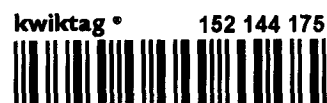
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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ALTERNATIVE DISCIPLINE PROGRAM</b>		
<p>Counsel For The State Bar</p> <p>Mia Ellis Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 213-765-1380</p> <p>Bar # 228235</p>	<p>Case Number (s) 12-O-13024-RAP</p>	<p>(for Court's use)</p> <p style="text-align: center; font-size: 1.2em;"><b>FILED</b></p> <p style="text-align: center;">APR 23 2013 <i>MA</i></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Jayesh Patel Pumilia Patel &amp; Adamec LLP 600 Wilshire Blvd., Suite 1450 Los Angeles, CA 90017 213-765-3086</p>	<p style="font-size: 1.5em;"><b>PUBLIC MATTER</b></p>	
<p>Bar # 132939</p> <p>In the Matter Of Kenneth John Kleinberg</p> <p>Bar # 110732</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: <b>Program Judge</b></p> <p><b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</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 December 12, 1983.
- (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 804.5(c) 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 6 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



*MA*

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- (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 04-O-11238
  - (b)  Date prior discipline effective December 6, 2008
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code Section 6068(a) and 6106
  - (d)  Degree of prior discipline 120 days actual suspension and restitution
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:

State Bar case numbers 09-N-12374, 09-O-12176, and 09-O-14165, Inactive enrollment effective August 15, 2011, violations include: Business and Professions Code section 6103 (three counts), 6106 (two counts), 6125/6126, 6068(a), and 6068(k) (nine counts). Respondent was ordered enrolled inactive on August 15, 2011, for a nine (9) month actual suspension, three years probation, and two years stayed suspension. Respondent was returned to active enrollment on September 4, 2012. Respondent was accepted into the Alternative Discipline Program and the decision is not final.

- (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.

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- (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.

**Additional mitigating circumstances:**

**ATTACHMENT TO**

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

IN THE MATTER OF:                       KENNETH KLEINBERG

CASE NUMBER(S):                       12-O-13024-RAP

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 12-O-13024 (Complainant: Sandra Koenig)

**FACTS:**

1. On July 1, 2009, Respondent was enrolled as not eligible to practice law because he failed to report compliance with his MCLE and submit any outstanding payment. He remained not eligible to practice law until September 10, 2009, when he was returned to active status.
2. On August 27, 2009, Respondent entered into an agreement with Ray P. Warren and Sandra Warren (the "Warrens"), wherein Respondent agreed to represent Sandra Warren in a lawsuit entitled *Smeltzer v. Sandra P. Koenig, Trustee of the Sandra P. Koenig Living Trust Dated June 5, 1990*, Orange County Superior Court Case No. 30-2009-00120409-CU-OR-CJC.
3. Respondent subsequently performed work on the case when he was eligible to practice law.

**CONCLUSIONS OF LAW:**

4. By entering into an agreement to represent the Warrens in a lawsuit, while enrolled as not eligible to practice law, Respondent held himself out as practicing law or entitled to practice law, and practiced, when he was not an active member of the State Bar, in willful violation of Business and Professions Code sections 6125 and 6126, and thereby willfully failed to support the laws of California.

**ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline:** Effective December 6, 2008, on June 1, 2008, in State Bar case number 04-O-11238, Respondent stipulated to violating four counts of Business and Professions Code section 6068(a): 1) failing to file Employee's W-2 form with Social Security 2) failing to pay federal and Social Security taxes, 3) failing to pay State income tax and 4) failing to withhold and pay Medicare tax, and 4) failing to withhold State unemployment insurance/State disability insurance from Employee's salary. Respondent also stipulated to violating and one count of Business and Professions Code section 6106: providing a false W-2 form to employee. The misconduct in the matter stems from Respondent violating federal and state laws from 1994 to 2004 by not paying sums he withheld from an employee's wages for her income tax, Social Security, Medicare, and unemployment and disability. Moreover, Respondent provided his employee with W-2 forms for ten years that falsely represented payments were

made on these obligations. Respondent stipulated to 120 days actual suspension, five years probation and two years stayed suspension, and restitution.

Inactive enrollment effective August 15, 2011 in State Bar case numbers 09-N-12374, 09-O-12176, and 09-O-14165. The violations include: Business and Professions Code section 6103 (three counts), 6106 (two counts), 6125/6126, 6068(a), and 6068(k)(nine counts). The misconduct in these matters occurred from 2007 to 2009. Further, the misconduct included representing a client when he was not eligible to practice law, violating court orders by not timely filing 9.20 declarations, filing a false declaration as he did not inform opposing counsel in one matter of his suspension, and violating terms of his probation in his prior record of discipline, including filing two quarterly reports or paying restitution. Respondent was ordered enrolled inactive on August 15, 2011, for a nine (9) month actual suspension, three years probation, and two years stayed suspension. Respondent was returned to active enrollment on September 12, 2012. Respondent was accepted into the Alternative Discipline Program and the decision is not final.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was January 17, 2013.

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In the Matter of: KENNETH KLEINBERG	Case number(s): 12-O-13024
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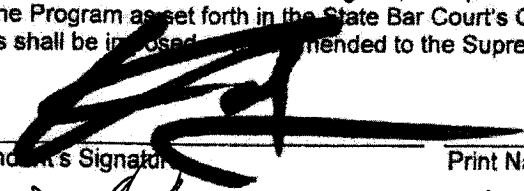
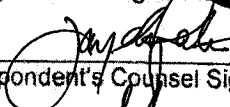
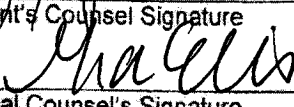
**SIGNATURE OF THE PARTIES**

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. Recommended to the Supreme Court.

<u>1-22-13</u> Date	 Respondent's Signature	<u>KENNETH KLEINBERG</u> Print Name
<u>1-22-13</u> Date	 Respondent's Counsel Signature	<u>JAYESH PATEL</u> Print Name
<u>1/23/13</u> Date	 Deputy Trial Counsel's Signature	<u>Maxwell</u> Print Name

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In the Matter of: Kenneth J. Kleinberg	Case Number(s): 12-O-13024-RAP
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### ALTERNATIVE DISCIPLINE PROGRAM ORDER

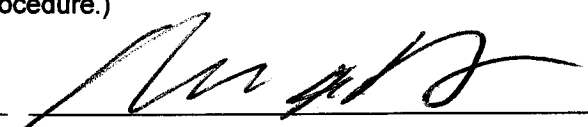
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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

04-23-2013



Judge of the State Bar Court

**RICHARD A. PLATEL**

**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 April 23, 2013, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

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

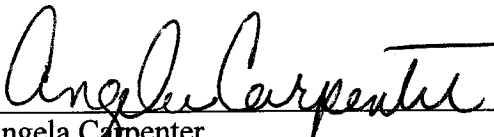
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAYESH PATEL  
PUMILIA PATEL & ADAMEC LLP  
600 WILSHIRE BLVD STE 1450  
LOS ANGELES, CA 90017

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

MIA ELLIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 23, 2013.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court