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**State Bar Court of California**  
**Hearing Department**  
**Los Angeles**  
**REPROVAL**

**NOT FOR PUBLICATION**

<p>Counsel For The State Bar</p> <p>Maria L. Ghobadi          Deputy Trial Counsel          1149 South Hill Street          Los Angeles, California 90015</p> <p>Bar # 242945</p>	<p>Case Number(s):          12-O-14360-RAP</p>	<p>For Court use only</p> <p align="center"><b>FILED</b></p> <p align="center"><b>OCT 18 2013</b></p> <p align="center">STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Noel W. Spaid          Law Offices of Noel W. Spaid          2758 Caminito Cedros          Del Mar, CA 92014          (858) 350-8718</p> <p>Bar # 87357</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND          DISPOSITION AND ORDER APPROVING</p> <p><b>PRIVATE REPROVAL</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of:  <b>KIM M SCHALL</b></p> <p>Bar # 64563</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 30, 1975.
- (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 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."

(Effective January 1, 2011)

CBP  
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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 are added to membership fee for calendar year following effective date of discipline (public reproof).
  - Case ineligible for costs (private reproof).
  - 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.
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**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
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline

(Do not write above this line.)

- (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. See Attachment to Stipulation Additional Facts Re Mitigating Circumstances page 6.
- (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:**

See Attachment to Stipulation, No Prior Discipline and Pretrial Stipulation page 7.

**D. Discipline:**

- (1)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  **Public reproof (Check applicable conditions, if any, below)**

**E. Conditions Attached to Reproval:**

- (1)  Respondent must comply with the conditions attached to the reproval for a period of one year.
- (2)  During the condition period attached to the reproval, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  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.
- (4)  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.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproval. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (6)  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 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 monitor.
- (7)  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 conditions attached to the reproof.
- (8)  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.
- No Ethics School recommended. Reason: Please see section "F" below.
- (9)  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.
- (10)  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.
- No MPRE recommended. Reason:
- (11)  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:**

As a condition of reproof and in lieu of attending State Bar Ethics School which would require Respondent to return to California from her current home in Florida, Respondent shall complete six hours of continuing legal education in legal ethics within one year of the effective date of this stipulation and provide proof, in writing, to the Office of Probation within 30 days thereafter. This requirement is separate from any MCLE requirement, and Respondent will not receive any MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar).

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

IN THE MATTER OF:                      KIM M. SCHALL  
CASE NUMBER:                              12-O-14360

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that she is culpable of violations of the specified Rule of Professional Conduct.

Case No. 12-O-14360 (Complainant: Michelle M. Finrow)

**FACTS:**

1. On July 16, 2007, Michelle Finrow ("Finrow") hired Respondent to represent her in a martial dissolution matter and paid \$5,000 in advanced attorney's fees.
2. In January 2008, Finrow terminated Respondent's services. At that time, Respondent provided Finrow with a final accounting that reflected a balance of \$770.00 in unearned advanced attorney's fees.
3. On April 3, 2009, Finrow mailed a letter to Respondent requesting that Respondent provide her with a refund of the \$770 in unearned, advanced attorney's fees. On April 9, 2009, Respondent replied to Finrow's letter and refused to refund Finrow.
4. On July 15, 2012, Finrow submitted a complaint against Respondent to the State Bar.
5. On September 14, 2012, the State Bar filed and served on Respondent a notice of disciplinary charges. Due to Respondent's failure to respond, the State Bar Court entered a default order on November 29, 2012. On July 22, 2013, the State Bar Court noted that while Respondent's knowledge of the disciplinary case and failure to protect her interests were troubling, it set aside its previous default order on Respondent's motion.
6. On September 11, 2013, after disciplinary proceedings had commenced against her, Respondent refunded the \$770 in unearned advance fees to Finrow.

**CONCLUSIONS OF LAW:**

7. By not promptly providing Finrow with a refund of the unearned, advanced fees, Respondent intentionally, recklessly, or repeatedly failed to promptly refund any part of a fee paid in advance that was not earned in violation of Rules of Professional Conduct, rule 3-700(D)(2).

**ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.**

**Lack of Cooperation (Std. 1.2(b)(vi):** Respondent failed to initially participate in the disciplinary proceedings, which resulted in an order of entry of default. (See *In the Matter of Hunter*

(Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 [Attorney's lack of meaningful participation in the disciplinary process was an aggravating factor].)

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

**No Prior Discipline:** At the time that Respondent committed the misconduct described in this stipulation, she had practiced law for 35 years without any discipline and is entitled to mitigation. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [Attorney who practiced for 17 years with no prior discipline was given mitigation notwithstanding that the misconduct was serious].)

**Pretrial Stipulation:** Respondent is entitled to some mitigation for entering into this pretrial stipulation with the State Bar of California Office of the Chief Trial Counsel. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [Mitigating credit was given for entering into a stipulation as to facts and culpability].) But, the mitigating credit for this factor is tempered by Respondent's initial failure to participate in the disciplinary proceedings, which resulted in an order of entry of default. (See *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96, 105 [Despite the fact that Respondent executed a stipulation his lack of candor and cooperation during the disciplinary proceedings were aggravating factors].)

### **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.)

The sanction applicable to Respondent's misconduct is found in standard 2.10, which provides that culpability of a member of a willful violation of any Rule of Professional Conduct not specified in the standards, shall result in reproof or suspension according to the gravity of the offense or harm to the victim.

Here, Respondent failed to refund a single client \$770 in unearned, advanced fees. While Respondent initially did not participate in the disciplinary process that resulted in the entry of a default, she has practiced law for 35 years prior to committing the misconduct herein and has since recognized and taken responsibility for her actions. Respondent's many years of discipline-free practice combined with her acknowledgement that she committed the conduct herein, suggests that she is unlikely to repeat this

misconduct. Moreover, although Respondent is not entitled to mitigation for having provided Finrow with a refund of the unearned, advanced fees after the commencement of these disciplinary proceedings (*Doyle v. State Bar* (1982) 32 Cal. 3d 12, 24), the fact that Respondent has provided Finrow with a refund is relevant to an assessment of the gravity of the misconduct and it negates any need for an order of restitution as a part of the discipline herein. In light of the gravity of Respondent's misconduct and the aggravating and mitigating circumstances, a private reproof achieves the purposes of attorney discipline as defined by the Supreme Court and standard 1.3 and is consistent with standard 2.10.

#### **EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School that is ordered as a condition of her reproof. (Rules Proc. of State Bar, rule 3201.)

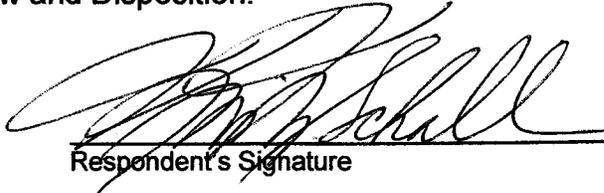
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In the Matter of <b>KIM M. SCHALL</b>	Case number(s): <b>12-O-14360</b>
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**SIGNATURE OF THE PARTIES**

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.

10/03/13  
Date

  
Respondent's Signature

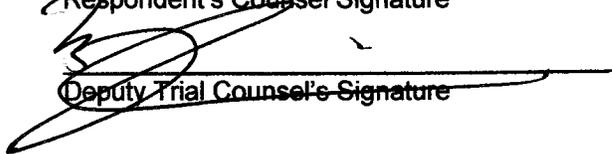
Kim M. Schall  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent's Counsel Signature

Noel W. Spaid  
Print Name

10/10/2013  
Date

  
Deputy Trial Counsel's Signature

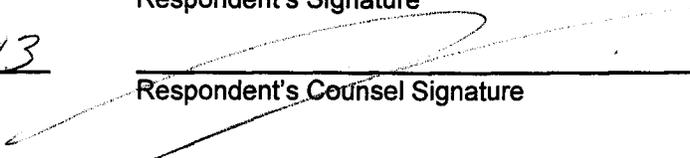
Maria L. Ghobadi  
Print Name

(Do not write above this line.)

In the Matter of <b>KIM M. SCHALL</b>	Case number(s): <b>12-O-14360</b>
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Date	Respondent's Signature	Kim M. Schall Print Name
10-3-13 Date		Noel W. Spaid Print Name
Date	Deputy Trial Counsel's Signature	Maria L. Ghobadi Print Name

(Do not write above this line.)

In the Matter of: KIM M. SCHALL	Case Number(s): 12-O-14360
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### REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reapproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- 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. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reapproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

10-15-2013  
Date

  
RICHARD A. PLATEL  
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 October 18, 2013, 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:

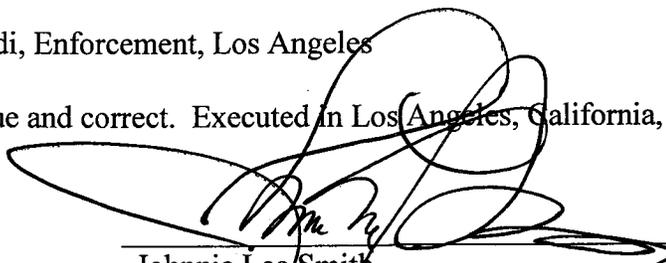
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

NOEL WESTERFELD SPAID  
2758 CAMINITO CEDROS  
DEL MAR, CA 92014

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

Maria L. Ghobadi, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 18, 2013.



Johnnie Lee Smith  
Case Administrator  
State Bar Court