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State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105-1639 (415) 538-2357 Bar # 243691	Case Number(s): 12-O-17394; 13-O-10066	For Court use only PUBLIC MATTER FILED AUG 12 2013  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Daniel Kieth Martin Law Office of Daniel K Martin 1179 N Ferger Ave Fresno, CA 93728 (559) 473-7681 Bar # 245013	Submitted to: Settlement Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW	
In the Matter of: DANIEL KIETH MARTIN Bar # 245013 A Member of the State Bar of California (Respondent)	ALTERNATIVE DISCIPLINE PROGRAM <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 1, 2006.
- (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 12 pages, excluding the order.

(Effective January 1, 2011)

Program



- (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
 - (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.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 10.
- (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 "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 9.

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(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:

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In the Matter of: DANIEL KIETH MARTIN	Case Number(s): 12-O-17394; 13-O-10066
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Sheree Violon	\$2,500	July 8, 2012
Richard Webb	\$1,000	August 15, 2012

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Sheree Violon	\$25.00	per month from the date the ADP Order is signed
Richard Webb	\$25.00	per month from the date the ADP Order is signed

- 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.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:

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- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DANIEL KIETH MARTIN

CASE NUMBERS: 12-O-17394; 13-O-10066

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-17394 (Complainant: Sheree Violon)

FACTS:

1. On June 24, 2012, Sheree Violon ("Violon") hired Respondent to defend her in a case arising out of her June 23, 2012 arrest for driving under the influence.
2. On July 8, 2012, Violon paid \$2,500.00 in advanced fees to Respondent.
3. On July 27, 2012, a misdemeanor complaint was filed in Fresno Superior Court, Case No. M12919638, charging Violon with violating Vehicle Code Sections 23152(b) and 23152(a) ("DUI matter").
4. On September 18, 2012, Respondent failed to appear at an arraignment in the DUI matter. Respondent's failure to appear at the arraignment resulted in a bench warrant being issued for Violon.
5. On October 3, 2012, Violon sent an email to Respondent terminating his employment and demanding a refund of all fees that she had paid. Respondent received the email shortly after it was sent.
6. On October 5, 2012, Violon hired a new attorney to represent her in the DUI matter.
7. On October 6, 2012, Violon's new attorney filed a Substitution of Attorney in the DUI matter.
8. On October 7, 2012, Respondent sent an email to Violon. In Respondent's email, Respondent apologized for his conduct, stated that he had been in drug rehabilitation, and that he would look into the status of her case to determine whether or not a refund was warranted. Respondent did not communicate with Violon thereafter.
9. Respondent performed no services of value on behalf of Violon in the DUI matter. Respondent did not earn any portion of the fees paid by Violon.
10. To date, Respondent has not refunded any portion of the \$2,500.00 in unearned fees to Violon.

11. On October 31, 2012, Violon filed a complaint against Respondent with the State Bar ("Violon Complaint").

12. On December 5, 2012, and February 20, 2013, a State Bar investigator sent letters to Respondent requesting a written response to the allegations in the Violon Complaint. Respondent received both of these letters shortly after they were mailed, but failed to respond to them and failed to otherwise cooperate with, and failed to participate in, the State Bar investigation.

CONCLUSIONS OF LAW:

13. By failing to appear at the September 18, 2012 arraignment in the DUI matter, which resulted in a bench warrant being issued against Violon, and by failing to take any action in the DUI matter that benefited Violon, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

14. By failing to refund Violon the \$2,500.00 in unearned fees, Respondent failed upon termination of employment to refund promptly any part of a fee paid in advance that has not been earned, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

15. By failing to respond to the State Bar letters of December 5, 2012 and February 20, 2013, about the Violon Complaint, and failing to otherwise cooperate with the State Bar's investigation of the instant matter, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in wilful violation of Business and Professions Code, section 6068(i).

Case No. 13-O-10066 (Complainant: Richard Webb)

FACTS:

16. On August 15, 2012, Richard Webb ("Webb") hired Respondent to defend his grandson, Ronald Webb in a criminal matter in Madera County Superior Court, Case No. SCR012934 ("the criminal matter").

17. On August 15, 2012, Webb paid \$1,000.00 in advanced fees to Respondent, on behalf of Ronald Webb.

18. Respondent did not obtain written consent from Ronald Webb to accept the \$1000.00 in advanced fees from Webb.

19. On August 20, 2012, Respondent appeared on behalf of Ronald Webb at a trial confirmation hearing in the criminal matter. The court continued the hearing to August 27, 2012 because Respondent appeared late for the hearing.

20. On August 27, 2012, Respondent appeared on behalf of Ronald Webb at a trial confirmation hearing in the criminal matter. The court continued the hearing to September 26, 2012 at the request of Respondent.

21. Thereafter, Respondent performed no services of value on behalf of Ronald Webb in the criminal matter. Respondent did not earn the \$1,000.00 in advanced fees paid by Webb.

22. On September 13, 2012, a felony complaint against Respondent was filed in Fresno County Superior Court, Case No. F12907190, alleging that Respondent violated Health and Safety Code Section 11377(a) [possession of a controlled substance] and Health and Safety Code Section 11364.1(a) [possession of smoking device].

23. On September 26, 2012, the court in the Ronald Webb criminal matter relieved Respondent as attorney of record based on the pending criminal charges against Respondent. At that point, Respondent's representation of Ronald Webb ended.

24. On November 8, 2012, Webb sent an email to Respondent demanding a refund of all advanced fees. Respondent received the email shortly after it was sent.

25. On November 8, 2012, Respondent sent an email to Webb acknowledging that Webb was entitled to a refund, and that Respondent would make payments toward the refund.

26. On November 8, 2012, Respondent sent a second email to Webb stating that he would send some money to Webb the following day.

27. On November 16, 2012, Webb sent an email to Respondent stating that he was checking his mailbox daily for the refund. Respondent received the email shortly after it was sent.

28. On December 1, 2012, Webb sent an email to Respondent stating that he would have hoped that payment would have been sent already. Respondent received the email shortly after it was sent. Respondent did not further contact Webb.

29. To date, Respondent has not refunded any portion of the \$1,000.00 in unearned fees to Webb. Respondent provided no services of any value to Ronald Webb.

CONCLUSIONS OF LAW:

30. By failing to refund Webb any portion of the \$1,000.00 in unearned fees, Respondent failed upon termination of his employment to refund promptly any part of a fee paid in advance that has not been earned, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

31. By failing to obtain an informed written consent from Ronald Webb to accept the \$1000.00 in advanced fees from Webb, Respondent accepted compensation for representing a client from one other than the client without the client's informed written consent, in wilful violation of Rules of Professional Conduct, rule 3-310(F).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent violated Rules of Professional Conduct, rules 3-110(A), 3-700(D)(2) [two counts], 3-310(F), and Business and Professions Code, section 6068(i). Respondent's multiple acts of misconduct constitute an aggravating circumstance pursuant to Standard 1.2(b)(ii).

Indifference (Std. 1.2(b)(v)): Respondent's refusal to refund any portion of the \$2,500.00 advanced fee to Violon, and the \$1,000.00 in advanced fees to Webb, demonstrates indifference toward

rectification of, or atonement for, the consequences of his misconduct. Respondent's indifference constitutes an aggravating factor pursuant to Standard 1.2(b)(v).

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as August 6, 2013, the prosecution costs in this matter are \$4,415.96. 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: DANIEL KIETH MARTIN	Case number(s): 12-O-17394; 13-O-10066
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SIGNATURE OF THE PARTIES

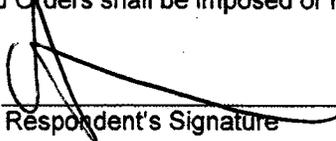
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

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.

8/12/13
Date


Respondent's Signature

Daniel Kieth Martin
Print Name

Date

Respondent's Counsel Signature

Print Name

8/12/13
Date


Deputy Trial Counsel's Signature

Heather E. Abelson
Print Name

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In the Matter of:
DANIEL KIETH MARTIN

Case Number(s):
12-O-17394; 13-O-10066

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

August 12


PAT E. McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 August 12, 2013, I deposited a true copy of the following document(s):

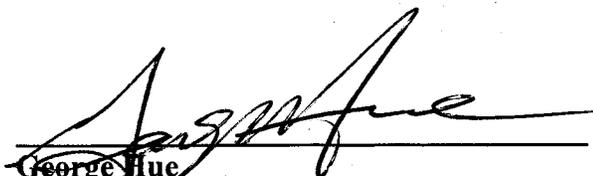
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639.

DANIEL K. MARTIN, ESQ.
HEATHER E. ABELSON, ESQ.

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 12, 2013**


George Hue
Case Administrator
State Bar Court