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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  <b>Donald R. Steedman</b> <b>Supervising Senior Trial Counsel</b> <b>180 Howard Street, 7<sup>th</sup> Floor</b> <b>San Francisco, CA 94105</b>  <b>(415) 538-2000</b>  <b>Bar # 104927</b>	<b>Case Number(s):</b> <b>12-O-17631</b>	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <div style="text-align: right;">   <b>APR 25 2016</b> </div>  <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>Counsel For Respondent</b>  <b>Jerome Fishkin</b> <b>FishkinSlatter LLP</b> <b>1575 Treat Blvd., Suite 215</b> <b>Walnut Creek, CA 94598</b>  <b>(925) 944-5600</b>  <b>Bar # 47798</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>In the Matter of:</b> <b>Eileen C. Burke</b>  <b>Bar # 175700</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

**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 **January 24, 1995**.
- (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 **14** pages, not including the order.

(Effective July 1, 2015)



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- (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) 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):
  - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - 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.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
  - (a)  State Bar Court case # of prior case **10-O-07589**
  - (b)  Date prior discipline effective **11/11/11**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code, section 6103.**
  - (d)  Degree of prior discipline **Private Reprimand**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (7)  **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.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the

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product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (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 extraordinarily 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. **Respondent has provided the State Bar with copies of nine unsolicited letters from clients, praising respondent's work. Respondent has also provided detailed character reference letters from a retired police officer, a client, and two licensed attorneys; and a news article about respondent's career as a criminal defense attorney. In 2007, respondent received the Gideon Equal Justice Award from the San Francisco Public Defender's Office.**
- (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:**

**Cooperation with State Bar Investigation/Prefiling Stipulation. See attachment at page 13, infra.**

#### **D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.
- (2)  **Probation:**
- Respondent must be placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3)  **Actual Suspension:**
- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.

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- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, 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 period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (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 to the monitor 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 probation 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 probation conditions.
- (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.

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- No Ethics School recommended. Reason: .
- (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)  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:**

- (1)  **Multistate Professional Responsibility Examination:** 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 during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **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.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:**

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

IN THE MATTER OF: EILEEN C. BURKE

CASE NUMBER: 12-O-17631

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

**STATEMENT OF FACTS**

In 1998, Complainant James C. owned 11 pieces of commercial property, but was the defendant in four separate legal matters:

- A lawsuit brought by the City of San Francisco alleging substandard conditions at complainant's apartment building on South Van Ness Street in San Francisco. By the time respondent took over representation, the City had already obtained a judgment \$552,000; complainant had been twice held in contempt for non-payment; and the City had filed judgment liens against all of complainant's properties.
- A lawsuit brought by PG&E against complainant, his mother, and his brother for allegedly stealing electricity to operate a marijuana grow facility at complainant's warehouse located on Folsom Street in San Francisco.
- A lawsuit brought by Oakland tenants for constructive eviction through arson against complainant and his father.
- A criminal/felony complaint filed by the San Francisco District Attorney, accusing complainant and his wife of running a large marijuana grow operation and theft of utility services.

Complainant asked respondent to represent him in all of the matters,<sup>1</sup> but stated that he did not have the cash to pay for these services. Therefore, respondent and complainant agreed that respondent would receive an ownership interest in the Folsom Street warehouse property in exchange for legal services.

On October 14, 2008, respondent, complainant, and three of complainant's family members entered into two agreements, one entitled "Attorney-Client Fee Agreement" and the other entitled "Contract and Agreement." Both agreements set forth terms for respondent's acquisition of the Folsom Street property:

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<sup>1</sup>Respondent was also retained in a fifth matter, but decided not to pursue it because she concluded that doing so might subject complainant to additional criminal investigation.

Attorney-Client Fee Agreement	Contract and Agreement
<p><b>“6. FEES TO ATTORNEY.</b> Clients recognize that they have been advised by Attorney that attorney fees are negotiable and not set by law. Clients acknowledge that the following fees are reasonable:</p> <p>“Clients will deed the property located at ... Folsom Street...as payment in full for all work on the above listed cases....Clients and Attorney value both the property and the legal services to be performed at \$550,000.</p> <p>...</p> <p><b>“11. INDEPENDENT REVIEW OF THIS AGREEMENT.</b> Clients do hereby acknowledge that Attorney advised Clients to take this agreement to an independent attorney of Client’s choice to obtain independent advice as to the provisions of this contract. It is hereby acknowledged that Clients has [sic] been given the opportunity to review this Agreement and obtain independent advice from an attorney of Clients’ choice and that Clients have either consulted with such independent attorney or have decided not to consult with an independent attorney.”</p>	<p>“A. The property located at...Folsom Street, San Francisco, is subject to seizure and forfeiture by the City and County of San Francisco. If the property is seized, James C..., William C... and Judy N... could and will forfeit and lose any and all interest they have in said property.</p> <p>“B. In order to save, preserve and utilize the interest they have in said property, James..., William C... and Judy N... have deeded the property located at ... Folsom Street to Eileen Burke in exchange for payment of a substantial judgment against James C... once the property sells, and for representation in five legal matters now filed or open....</p> <p>“C. In addition to providing legal representation in the above-referenced cases, Eileen Burke will sell the property and use proceeds from the sale of the property to pay up to \$550,000 of the Judgment levied against James C... by the City and County of San Francisco in San Francisco Superior Court Case no. CGC 06-457494...</p> <p>“D. The parties recognize and agree that Eileen Burke will be responsible for paying the property taxes, property transfer tax, income tax, insurance, maintenance, utilities and realtor fees on the property...from the date the property is deeded to her until resale of the property. Eileen Burke will incur income tax for receipt of the property and capital gains taxes if the building sells for more than the present value of \$550,000. The parties recognize that the costs of the property to Eileen Burke are substantial.</p> <p>E. The parties recognize and agree that any remaining proceeds from sale of the property over and above the amount necessary to pay \$550,000 of the Judgment, interest and attorney fees levied against James C... by the City and County of San Francisco in San Francisco Superior Court Case no. CGC 06-457494 will accrue to Eileen Burke to compensate her for legal fees in the five referenced cases, income taxes, insurance, utilities, realtor fees, capital gains taxes, transfer fees, maintenance,</p>

and other costs associated with the property.”

[Client names and addresses redacted.] The two agreements were inconsistent. According to the “Fee Agreement,” respondent received the Folsom Street warehouse in exchange for legal services. According to the “Contract and Agreement,” respondent was required to sell the Folsom property; use the proceeds to pay \$550,000 of complainant’s obligations to the City; and retain the remainder as her fees. The two agreements valued the property differently. According to the “Fee Agreement,” the parties agreed that the property was worth \$550,000. According to the “Contract and Agreement,” the parties agreed that the sale of the property would generate \$550,000 to pay off complainant’s judgment debt and would also generate additional funds to pay respondent’s attorney fees.

As part of the transaction, complainant and his family members deeded their interest in the Folsom Street property to respondent. However, the Folsom Street property was still subject to a judgment lien that the City had placed on the property. Complainant’s contractual rights under the “Contract and Agreement” were not made part of the public record and they were not secured, i.e., there was no bond or deed of trust to ensure that respondent would sell the property and would use \$550,000 of the proceeds to retire complainant’s judgment obligations.

After the agreements were signed, respondent jointly represented complainant and complainant’s family members in the Oakland constructive eviction case and the PG&E utility theft case. Respondent did not obtain conflict waivers for representation of multiple clients.

In December 2009, the City sued respondent and complainant, alleging that complainant had fraudulently conveyed the Folsom Street warehouse to respondent. Respondent represented both herself and complainant in defense of the lawsuit, without obtaining a conflict waiver or signing a new fee agreement. Respondent claims that complainant orally agreed to give up any further claims to the Folsom Street property in exchange for this additional representation. Complainant denies that any such amended agreement was made. This dispute was later resolved in litigation, as described below.

Between 2008 and 2012, respondent successfully resolved complainant’s above-mentioned legal issues. Respondent obtained dismissals in the PG&E, criminal, and fraudulent conveyance cases. The Oakland tenant case was settled for nuisance value (\$7,000). Respondent negotiated a reduction of the City’s \$550,000 judgment. A court-appointed receiver collected most of the judgment by liquidating some of complainant’s properties—but not the Folsom Street property. At the time the cases were settled, there was an unpaid balance of \$70,000 owing to the City of San Francisco. Respondent loaned complainant the \$70,000, but did not obtain the required conflict waiver.

On October 24, 2012, complainant asked respondent to pay him \$480,000.00. The “Contract and Agreement” provided that respondent would sell the Folsom Street property and use \$550,000 from the proceeds to satisfy the judgment complainant owed to the City. Since the judgment had been satisfied using complainant’s other properties, complainant contended that he was entitled to a refund of \$480,000 from the sale of the Folsom Street property (\$550,000 less the \$70,000 loan = \$480,000). Respondent refused to make any refund, contending that she had earned full title to the Folsom Street property by providing a defense to the fraudulent conveyance lawsuit and performing the other legal services. Instead, respondent demanded repayment of the \$70,000 loan. Complainant then filed a lawsuit against respondent. In 2015, the respondent and complainant entered into a settlement whereby: the Folsom Street property was sold; respondent received \$650,000 out of the proceeds; and complainant received the remainder of the sales proceeds of the Folsom Street property. Until this time, respondent received no fees for the representation. The parties subsequently finalized this settlement.

## CONCLUSIONS OF LAW

An attorney who obtains an interest in his client's real property must comply with Rule of Professional Conduct 3-300, even when the transfer is made pursuant to the initial fee agreement. (See *Hawk v. State Bar* (1988) 45 Cal.3d 589 [attorney secured payment of fee by acquiring note secured by deed of trust in client's real property].) "When an attorney-client transaction is involved, the attorney bears the burden of showing that the dealings between the parties were fair and reasonable and were fully known and understood by the client." (*Hunniecutt v. State Bar* (1988) 44 Cal.3d 362, 372-73.)

### **1. The 1998 Transaction.**

**Written Disclosure.** Although she obtained complainant's written consent to the transaction, respondent wilfully violated Rule of Professional Conduct 3-300(A) by failing to provide written disclosure "in a manner which should reasonably have been understood." Instead, respondent had complainant sign two conflicting agreements. Also, the "Contract and Agreement" required respondent to sell the property, but did not set a deadline for the sale. In these circumstances, the contract did not fully disclose all of the operative terms.

**Fair and Reasonable.** Respondent wilfully violated Rule of Professional Conduct 3-300(A) because the transaction was not fair to complainant. Complainant deeded the Folsom Street property to respondent, but—pursuant to the "Contract and Agreement"—retained the right to receive \$550,000 from the sales price to pay the judgment creditor. However, respondent did not provide security to complainant, i.e., there was no bond or deed of trust to ensure that respondent would sell the property and would use \$550,000 of the proceeds to retire complainant's judgment obligations. The property was deeded to respondent without limitation and thus was subject to any creditor claims that might have been asserted against her. (See *Hunniecutt v. State Bar, supra*, 44 Cal.3d 362, 373 [absence of security, when security would ordinarily be considered essential to the client, is an indication of unfairness].)

**2. The 1999 Contract Revision.** Respondent claims that, in 1999, complainant orally agreed to relinquish all remaining claims to the property in exchange for respondent providing representation in the fraudulent conveyance case. Respondent thereby wilfully violated Rule of Professional Conduct 3-300 by failing to disclose transaction in writing (Rule 3-300(A)), failing to advise the client to seek independent counsel (Rule 3-300(B)), and failing to obtain the client's written consent (Rule 3-300(C)).

### **3. 1998-2012: Representation of Multiple Clients (Oakland Tenant Case and PG&E Case)**

Beginning in 1998, respondent represented both complainant and complainant's family members in two lawsuits: PG&E's lawsuit for electricity theft and the Oakland tenant's habitability lawsuit. Both complaints alleged that the defendants had committed tortious and potentially criminal conduct, so any of the defendants might have had an incentive to place the blame on any of the others. Therefore, there was a potential conflict of interest. Respondent wilfully violated Rule of Professional Conduct 3-310(C)(1) by failing to obtain a written conflict waiver from each of his clients.

#### 4. 1999-2012 Representation of Potentially Conflicting Interests (Fraudulent Conveyance Case)

Respondent wilfully violated Rule of Professional Conduct 3-310(C)(1) when she simultaneously represented herself, complainant, and complainant's family members in the fraudulent conveyance case without obtaining a conflict waiver.

#### 5. 2012 Adverse Interest.

Respondent wilfully violated Rule of Professional Conduct 3-300 when she loaned complainant \$70,000 without disclosing the terms of the transaction in writing (Rule 3-300(A)), without advising the client to seek independent counsel (Rule 3-300(B)) and without obtaining her client's written consent to the transaction (Rule 3-300(C)).

#### AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, Tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.4, governing rule 3-300 violations, provides that actual suspension or disbarment is the presumed sanction for "entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client..." if "the transaction or acquisition and its terms are unfair or unreasonable to the client..."

Standard 2.5, governing violations of rule 3-310(C), provides that:

Actual suspension is the presumed sanction when a member accepts or continues simultaneous representation of clients with actual adverse interests, where the member: (1) fails to obtain informed written consent of each client, and (2) causes significant harm to any of the clients.

Here, the conflicts of interest were potential, but not actual. Further, it does not appear that respondent's representation of multiple parties, *in se*, resulted in harm. (See *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Court Rptr. 1, 7.) Therefore, the presumed sanction under Standard 2.5 is less than actual suspension.

Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed." Therefore, actual suspension is the presumptive disposition under Standard 2.4.

The Supreme Court has stated that violations of the adverse interest rule have "resulted in a wide range of discipline, ranging from private reproof in *Ames v. State Bar* (1973) 8 Cal.3d 910, 106 Cal.Rptr. 489, 506 P.2d 625, to two years' actual suspension imposed in *Krieger v. State Bar* (1954) 43 Cal.2d 604, 275 P.2d 459." (*Hunnicutt v. State Bar, supra*, 44 Cal.3d at p. 373.)

The reproof cases are distinguishable because they involved attorneys who purchased interests in their clients' property in order to help their clients avoid foreclosure. (*Connor v. State Bar* (1990) 50 Cal.3d 1047; *Ames v. State Bar, supra*, 8 Cal.3d at p. 910.) They also involved attorneys with no prior record of discipline. (*Connor v. State Bar, supra*, 50 Cal.3d at p. 1051; *Ames v. State Bar, supra*, 8 Cal.3d at p. 913.)

But this case may be distinguishable from the cases in which long actual suspensions were imposed. Those cases involved attorneys who made false and misleading statements in order to borrow money from their clients:

- *Beery v. State Bar* (1987) 43 Cal.3d 802 [two-year actual suspension imposed upon an attorney who solicited a loan from his client for a business venture by means of misleading statements. Beery had not paid the money back.];
- *Krieger v. State Bar, supra*, 43 Cal.2d 604 [two-year actual suspension imposed on an attorney who made misleading statements to convince a client make a large investment in a company. The attorney concealed his personal interest in the company. When the company was sold, respondent recovered his own the investment, but it is not clear whether the client was ever repaid.];
- *Worth v. State Bar* (1976) 17 Cal.3d 337 [one-year suspension imposed on an attorney who obtained \$25,000 from the 77-year-old mother of his law partner by representing that she would be a limited partner in a real estate venture. The attorney failed to explain that he owned only one of the three parcels needed for the venture and thereafter he failed to complete a certificate of limited partnership.];
- *Sodikoff v. State Bar* (1975) 14 Cal.3d 422 [six-month suspension imposed on an attorney who, while representing the administrator of a decedent's estate, attempted to purchase real property

from a beneficiary without disclosing that the buyer was the attorney's corporate alter ego and that the property had been appraised for substantially more than the attorney proposed to pay];

- *Clancy v. State Bar* (1969) 71 Cal.2d 140 [six-month suspension imposed on an attorney who “fraudulently” borrowed \$1,000 from his widowed client without disclosing his poor financial condition].

Rather, this case resembles cases in which a medium-length period of actual suspension was imposed.

- In *Hunnicutt v. State Bar, supra*, 44 Cal.3d 362, the Supreme Court imposed a 90-day actual suspension upon an attorney who convinced a client to invest the proceeds of a personal injury judgment in a real estate venture. The transaction was unfair because it was not secured. The attorney also abandoned clients in two unrelated matters.
- In *In the Matter of Lane* (Review Dept.1994) 2 Cal. State Bar Ct.Rptr. 735, the attorney received a 60-day actual suspension for borrowing \$100,000 from a client without obtaining appropriate waivers. Part of the loan represented legal fees the client owed Lane. The client executed a promissory note for the loan and a confession of judgment on the note. The Review Department held that the transaction not fair and reasonable to the client because Lane used a confession of judgment to secure his fees. (*Id.* at p. 745.) Like respondent, Lane also committed numerous conflict violations by representing multiple clients. Lanes’ initial motives were to help the client. Unlike Lane, respondent has a prior record of discipline.

The parties agree that the recommended 90-day suspension is appropriate in light of the Standards and these precedents.

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

Respondent acknowledges that the Office of Chief Trial Counsel has informed her that as of March 23, 2016, the prosecution costs in this matter are \$3,066.00. 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.

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

Pursuant to rule 3201, respondent may not receive MCLE credit for completion of Ethics School. (Rules Proc. of State Bar, rule 3201.)

#### **PRE-FILING STIPULATION/COOPERATION WITH STATE BAR**

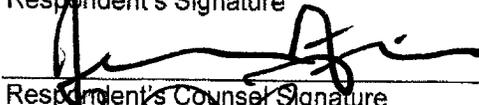
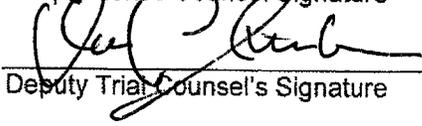
Respondent has fully cooperated in the State Bar’s investigation of this matter. Respondent has agreed to enter this pre-filing disciplinary stipulation, and she is therefore entitled to mitigating credit for saving the State Bar significant resources and time. Respondent has also acknowledged her misconduct by entering into this stipulation. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigation credit given for entering into a stipulation as to facts and culpability].)

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In the Matter of: <b>Eileen C. Burke</b>	Case number(s): <b>12-O-17631</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 Facts, Conclusions of Law, and Disposition.

<u>4/4/2016</u> Date	 Respondent's Signature	<u>Eileen C. Burke</u> Print Name
<u>4/15/16</u> Date	 Respondent's Counsel Signature	<u>Jerome Fishkin</u> Print Name
<u>4/20/2016</u> Date	 Deputy Trial Counsel's Signature	<u>Donald R. Steedman</u> Print Name

(Do not write above this line.)

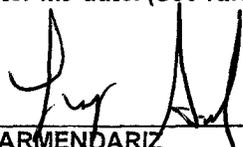
In the Matter of: Eileen C. Burke	Case Number(s): 12-O-17631
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### ACTUAL SUSPENSION ORDER

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.)**

Date April 25, 2016   
LUCY ARMENDARIZ  
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 San Francisco, on April 25, 2016, 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 San Francisco, California, addressed as follows:

JEROME FISHKIN  
FISHKIN & SLATTER LLP  
1575 TREAT BLVD STE 215  
WALNUT CREEK, CA 94598

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

DONALD STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 25, 2016.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court