


ORIGINAL

| State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION | | |
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| Counsel For The State Bar Charles T. Calix Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1000 Bar # 146853 | Case Number(s): 13-O-11671-PEM | For Court use only PUBLIC MATTER FILED  JUL 15 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO |
| Counsel For Respondent David Cameron Carr 525 B. Street, Suite 1500 San Diego, CA 92101 (619) 696-0526 Bar # 124510 | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED | |
| In the Matter of: KIRSTEN ANDELMAN Bar # 236347 A Member of the State Bar of California (Respondent) | | |

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.

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A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 1, 2005**.
- (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 **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (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: **two billing cycles following the effective date of the Supreme Court order.** (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(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, 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. **See Attachment at page 8.**
- (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.

(Do not write above this line.)

- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment at page 8.**
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 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 with a good faith belief that was honestly held and 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 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.
- (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:

Pretrial Stipulation: See Attachment at page 8.

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 present fitness to practice and present learning and ability in the 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 **one year**, 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 **30 days**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the 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 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.
- ☐ 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: _____

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- (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: KIRSTEN ANDELMAN

CASE NUMBER: 13-O-11671-PEM

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 13-O-11671-PEM (State Bar Investigation)

FACTS:

1. Kirsten Andelman ("Respondent") represented the petitioner in a dissolution of marriage proceeding filed in the Superior Court for the County of San Diego.
2. On March 13, 2012, the Superior Court ordered Respondent to prepare and file an Order After Hearing ("written proposed order") within forty-five (45) days. Respondent received notice of the order. The Court also set a hearing on October 5, 2012.
3. Respondent failed to prepare and file the written proposed order.
4. On October 2, 2012, the hearing set for October 5, 2012 was continued to November 5, 2012. Respondent did not receive notice of the continued hearing.
5. On November 5, 2012, Respondent did not appear before the Superior Court. The Court issued a Request for Order ("RFO") re Sanctions and ordered Respondent to appear on November 15, 2012. On November 7, 2012, the Court clerk gave notice of the RFO to Respondent. Respondent received notice of the RFO.
6. On November 15, 2012, Respondent appeared telephonically before the Superior Court. The Court relieved her as counsel of record. Respondent requested a continuance of the RFO. The Court continued the RFO to January 18, 2013, and ordered Respondent to appear. Respondent received notice of the continued RFO.
7. On January 18, 2013, Respondent failed to appear at the hearing on the RFO re Sanctions. The Superior Court continued the RFO to January 25, 2013.
8. On January 25, 2013, Respondent telephonically attempted to appear for the hearing on the RFO re sanctions, but the Superior Court was not in session and the hearing was continued to February 27, 2013. On February 27, 2013, the hearing on the RFO was continued to March 8, 2013.

9. On March 8, 2013, Respondent appeared in-person for the hearing on the RFO re Sanctions. The Superior Court found that Respondent repeatedly violated court orders, because she failed to prepare and file the written proposed order and sanctioned Respondent by requiring that she perform 30 hours of non-legal community service.

CONCLUSIONS OF LAW:

10. By failing to prepare and file a written proposed order as ordered by the Court on March 13, 2012; and by failing to appear at the January 18, 2013 hearing on the RFO re Sanctions as ordered by the Court on November 15, 2012, Respondent repeatedly violated Court orders in wilful violation of Business and Professions Code section 6103.

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent's failures to comply with Court orders harmed the parties, Court and administration of justice because it caused a significant delay in the proceedings and consumed additional judicial resources.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's failure to comply with two Court orders constitutes multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Pretrial Stipulation: By entering into this stipulation prior to trial, Respondent has acknowledged her wrongdoing and conserved the time and resources of the State Bar Court and State Bar. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

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 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.) 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. (Std. 1.7(b) and (c).)

In this matter, Respondent admits to committing two acts of professional misconduct. 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."

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.8, which applies to Respondent's violations of Business and Professions Code section 6103. Standard 2.8(a) provides that actual suspension or disbarment is appropriate for disobedience or violation of a court order related to the member's practice of law.

Here, Respondent failed to comply with two court orders between March 13, 2012 and March 8, 2013. Respondent's misconduct relates to her practice of law. In aggravation, Respondent committed multiple acts of misconduct, and her misconduct harmed the parties and administration of justice. The timely and efficient administration of justice requires that attorneys timely obey court orders or request relief from those orders. Without timely obedience or a request for relief, the time and resources of the parties and the Court are wasted and proceedings are unnecessarily delayed. In addition, public trust in the administration of justice and the public's perception of the integrity and honor of the bar are compromised. In mitigation, Respondent entered into this stipulation, thereby acknowledging her wrongdoing and conserving the time and resources of the State Bar Court and State Bar. In addition to acknowledging her wrongdoing, entering into this Stipulation also demonstrates Respondent's willingness to conform to ethical responsibilities in the future. Balancing all of the appropriate factors, a 30 day actual suspension, and one year stayed suspension and one year probation is consistent with the Standards and will serve the purposes of attorney discipline.

A 30 day actual suspension is also supported by case law. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rpt. 41, Riordan failed to perform legal services with competence, failed to comply with two Supreme Court orders, and failed to timely report judicial sanctions. In aggravation, Riordan's misconduct harmed the administration of justice. (*Id.* at p. 48.) Riordan received significant mitigation for 17 years of practice with no discipline, no further misconduct, good character and entering into a stipulation of facts to facilitate the trial. (*Id.* at pp. 49-50.) Riordan received a six month stayed suspension and one year probation. Respondent's misconduct is similar to Riordan's misconduct, but Respondent has significantly less mitigation than the attorney in *Riordan*. For example, Respondent had been admitted to the practice of law less than eight years when her misconduct began. Therefore, a short period of actual suspension is appropriate and warranted.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 12, 2014, the prosecution costs in this matter are \$3,497. 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.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

| <u>Case No.</u> | <u>Count</u> | <u>Alleged Violation</u> |
|-----------------|--------------|--------------------------|
| 13-O-11671 | 2 | 6068(i) |

EXCLUSION FROM MCLE CREDIT


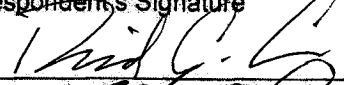
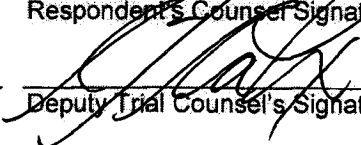
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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| In the Matter of: KRISTEN ANDELMAN | Case number(s): 13-O-11671 |
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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.

| | | |
|----------|---|--------------------|
| 6-6-2014 |  | Kristen Andelman |
| Date | Respondent's Signature | Print Name |
| 6/6/14 |  | David Cameron Carr |
| Date | Respondent's Counsel Signature | Print Name |
| 6/19/14 |  | Charles T. Calix |
| Date | Deputy Trial Counsel's Signature | Print Name |

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 July 15, 2014, 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:

DAVID C. CARR
LAW OFFICE OF DAVID CAMERON
CARR PLC
525 B ST STE 1500
SAN DIEGO, CA 92101

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

CHARLES T. CALIX, Enforcement, Los Angeles
TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 15, 2014.



Lauretta Cramer
Case Administrator
State Bar Court