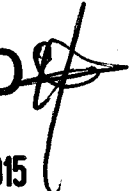


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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p>Lara Bairamian Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1338</p> <p>Bar # 253056</p>	<p>Case Number(s): 13-O-11690-PEM 13-O-15158 13-O-16158 14-O-02264 14-J-03439 14-O-04276 (inv.)</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED </p> <p>MAR 16 2015</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Kelly Scott Johnson 23 Corporate Plaza Drive, Ste 150 Newport Beach, CA 92660 (949) 729-8014</p> <p>Bar # 134520</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: KELLY SCOTT JOHNSON</p> <p>Bar # 134520</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 14, 1988**.
- (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 **21** 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".

BCJ
1-23-15



- (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: **three (3) 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 to Stipulation, at page 17.**
- (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.

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment to Stipulation, at page 17.**
- (8) **Restitution:** Respondent failed to make restitution. **See Attachment to Stipulation, at page 17.**
- (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:

No Prior Discipline - See Attachment to Stipulation, at page 17.

Pretrial Stipulation - See Attachment to Stipulation, at page 17.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **three (3) years**.

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 **three (3) 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 **two (2) years**.

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: **Respondent must pay sanctions ordered by the United States Bankruptcy Court, Central District of California, in the total amount of \$15,000, and furnish proof of payment to the State Bar Office of Probation.**

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:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - 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:**

(Do not write above this line.)

In the Matter of: KELLY SCOTT JOHNSON	Case Number(s): 13-O-11690, 13-O-15158, 13-O-16158, 14-O-02264, 14-J-03439, 14-O-04276
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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
Joseph and Melissa Coco	\$2,800	July 5, 2012

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **thirty (30) days after the effective date of the Supreme Court's Order in this matter.**

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

- 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:
- 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:

KELLY SCOTT JOHNSON

CASE NUMBERS:

13-O-11690, 13-O-15158, 13-O-16158, 14-O-02264,
14-J-03439, 14-O-04276

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. 13-O-11690 (Complainant: Stacey Ellis)

FACTS:

1. In December 2010, Stacey Ellis (“Ellis”) retained Respondent to represent her in an unlawful detainer action filed by her landlord John Roschuk (“Roschuk”).
2. On February 14, 2011, Respondent, on behalf of Ellis, filed a personal injury lawsuit against Roschuk for claimed injuries resulting from mold exposure (the “2011 civil action”).
3. Between December 6, 2010 and March 18, 2012, Respondent accepted \$31,500 from Ellis’ father as compensation for representing Ellis against Roschuk in the unlawful detainer action and personal injury lawsuit without obtaining Ellis’ informed written consent to receive such compensation.
4. On April 10, 2012, Ellis retained attorney Wayne William Suojanen (“Suojanen”) to associate into the 2011 civil action.
5. On May 9, 2012, after failing to timely designate experts, Respondent and Suojanen filed, on behalf of Ellis, an ex parte application to continue the May 14, 2012 trial in the 2011 civil action. The court continued the trial to September 17, 2012.
6. On August 10, 2012, Suojanen filed a duplicate personal injury lawsuit on behalf of Ellis against Roschuk with allegations similar to those alleged in the 2011 civil action (the “2012 civil action”).
7. Between August 14, 2012 and September 6, 2012, Respondent and Suojanen filed three (3) ex parte applications to continue trial, reopen discovery and designate experts in the 2011 civil action. All three (3) motions were denied by the court.
8. On September 7, 2012, Ellis voluntarily dismissed the 2011 civil action.
9. On September 14, 2012, a first amended complaint was filed in the 2012 civil action. Both Respondent and Suojanen were listed as counsel of record for Ellis.

10. On October 25, 2012, Roschuk's counsel sent Respondent and Suojanen a letter stating that a motion for sanctions would be filed if the complaint and first amended complaint in the 2012 civil action were not dismissed by November 15, 2012.

11. A dismissal of the 2012 civil action was not filed on or before November 15, 2012. On November 16, 2012, Roschuk's counsel filed a motion for sanctions against Respondent, Suojanen and Ellis ("motion for sanctions").

12. On February 21, 2013, the court granted the motion for sanctions and ordered Respondent, Suojanen and Ellis to pay sanctions in the amount of \$1,985 for filing the new complaint duplicating the claims voluntarily dismissed in the 2011 civil action. The sanctions were to be paid jointly and severally within 45 days of the February 21, 2013 order (the "February sanction order"). Respondent received the February sanction order.

13. Respondent failed to report the February 21, 2013 imposition of sanctions to the State Bar within 30 days of his knowledge of the imposition of the sanctions.

14. Respondent failed to pay the sanctions within 45 days of February 21, 2013, as ordered by the court.

15. Between January 31, 2013 and March 25, 2013, Ellis and Suojanen, on behalf of Ellis, made requests for the client file, but Respondent failed to release the client file. In September 2013, Respondent returned the file to Ellis.

CONCLUSIONS OF LAW:

16. By accepting \$31,500 from William Ellis as compensation for representing Ellis, without obtaining Ellis' informed written consent to receive such compensation, Respondent accepted compensation for representing a client from one other than the client, in wilful violation of the Rules of Professional Conduct, rule 3-310(F).

17. By failing to report the \$1,985 sanction to the State Bar, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent in wilful violation of Business and Professions Code section 6068(o)(3).

18. By failing to comply with the February 21, 2013 sanction order, Respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in wilful violation of Business and Professions Code section 6103.

19. By failing to return Ellis' client file upon her request until September 2013, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

FACTS:

20. On July 5, 2012, Joseph and Melissa Coco (the "Cocos") retained Respondent to prevent the foreclosure of their second home by filing for Chapter 13 bankruptcy.

21. On July 5, 2012, the Cocos paid Respondent \$4,500 in advanced attorney's fees.

22. On September 19, 2012, on behalf of the Cocos, Respondent filed with the United States Bankruptcy Court, Central District of California, a Chapter 13 bankruptcy petition. The petition failed to include a proof of service with the plan notice, a rights and responsibilities agreement, and a fee application. Respondent also used a form plan that was not approved in the Central District.

23. On November 13, 2012, the bankruptcy court dismissed the Cocos' Chapter 13 bankruptcy petition for failure to file schedules, statements and/or plan.

24. On November 17, 2012, the Cocos asked Respondent to re-file the Chapter 13 bankruptcy petition and, on November 21, 2012, gave Respondent a check for \$281 to cover the filing fees for the second bankruptcy petition. Respondent never deposited the \$281 in filing fees in his client trust account.

25. On December 4, 2012, the Cocos asked Respondent to hold off on filing the second bankruptcy petition and, thereafter, in December 2012, the Cocos terminated Respondent.

26. On June 4, 2013, the Cocos' successor counsel sent Respondent a letter requesting a refund of the advanced attorney's fees and filing fees.

27. On February 12, 2014, after the initiation of the State Bar's disciplinary matter, Respondent sent the Cocos a check refunding the \$281 in filing fees. To date, Respondent has not refunded any portion of the attorney's fees. Nor has Respondent provided the Cocos with an accounting of the \$4,500 advanced fees paid.

28. On September 15, 2014, Respondent entered into an agreement with the Cocos in which it was determined that the amount of attorney's fees owed to the Cocos totaled \$4,200. Respondent agreed to make installment payments in the form of cashier's checks. The installment payments were to be postmarked as follows: \$1,400 by October 15, 2014; \$1,400 by November 15, 2014; and \$1,400 by December 15, 2014.

29. On October 20, 2014, Respondent made a \$1,400 payment to the Cocos.

30. Since October 20, 2014, Respondent has not made any further payments to the Cocos, and still owes the Cocos \$2,800.

CONCLUSIONS OF LAW:

31. By failing to perform any services of value on behalf of the Cocos, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

32. By failing to refund any portion of the unearned advanced attorney's fees paid by the Cocos until after September 15, 2014, Respondent failed 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).

33. By failing to return the unused filing costs advanced by the Cocos until February 12, 2014, Respondent failed to pay promptly to his client any funds in Respondent's possession which the client is entitled to receive, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

34. By failing to provide the Cocos with an accounting of the \$4,500 in fees that the Cocos advanced to Respondent, Respondent failed to render appropriate accounts to a client regarding all client funds coming into Respondent's possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

35. By failing to deposit the \$281 filing fees the Cocos had sent Respondent on November 21, 2012 in a client trust account, Respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client Funds Account" or words of similar import, in wilful violation of Rules of Professional Conduct, rule 4-100(A).

Case No. 14-O-02264 (Complainant: Joe Kurn)

FACTS:

36. On August 22, 2008, Joe Kurn ("Kurn") retained Respondent to provide him with legal services in connection with a business dispute arising from Kurn's investment in an apartment building in Los Angeles, California ("Los Angeles apartments").

37. On August 20, 2009, Respondent, on behalf of Kurn, filed a lawsuit in Los Angeles Superior Court against five (5) defendants that participated in the purchase of the Los Angeles apartments (the "lawsuit").

38. In November 2009, after paying Respondent his hourly attorney's fees, Kurn expressed concerns about his financial ability to continue paying Respondent under the hourly fee structure. In response, Respondent offered to accept car payments for the purchase of a new vehicle that would be driven by Respondent's wife in lieu of attorney's fees. Kurn accepted Respondent's offer.

39. From December 7, 2009 through April 22, 2013, Kurn made 41 monthly payments of \$737.24 towards the purchase of a 2009 GMC Acadia ("Acadia"). Although Kurn was named as the sole owner of the Acadia, Respondent and Respondent's wife had exclusive possession of the vehicle.

40. At no time did Kurn consent in writing to the terms of the transaction. Respondent did not fully disclose in writing to Kurn the terms of the business transaction in a manner which should reasonably have been understood by Kurn. Further, Respondent did not advise Kurn in writing that he may seek the advice of an independent lawyer of Kurn's choice and did not give Kurn a reasonable opportunity to seek that advice.

41. On December 14, 2012, after obtaining Kurn's consent, Respondent voluntarily dismissed the lawsuit.

42. On May 10, 2013, Kurn and Respondent signed a bill of sale for the Acadia transferring the ownership of the vehicle from Kurn to Respondent's wife.

CONCLUSIONS OF LAW:

43. By failing to fully disclose and transmit in writing to Kurn, prior to entering into the agreement to purchase the Acadia, the nature and extent of the risks that Kurn faced in connection with this agreement; and by failing to advise Kurn in writing that he may seek the advice of an independent lawyer of his choice prior to agreeing to make payments towards the purchase of the Acadia in lieu of attorney's fees, Respondent knowingly entered into a business transaction with a client without complying with the requirements that the transaction or acquisition and its terms were fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice, in wilful violation of Rules of Professional Conduct, rule 3-300.

Case No. 14-J-03439 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

44. On July 14, 1988, Respondent was admitted to practice in the United States District Court, Central District of California.

45. On July 17, 2013, a Statement of Cause and Referral of Attorney to the United States Bankruptcy Court Disciplinary Panel was filed against Respondent by a United States Bankruptcy Judge.

46. On May 13, 2014, the disciplinary panel of the United States Bankruptcy Court, Central District of California, found that Respondent had violated rules 3-110(A), 3-210 and 3-300 of the Rules of Professional Conduct and section 6068(d) of the Business and Professions Code, and ordered Respondent suspended from practicing law before all divisions of the United States Bankruptcy Court, Central District of California, for not less than two years. Thereafter, that order became final.

47. Respondent's culpability as determined by the Disciplinary Panel of the United States Bankruptcy Court, Central District of California, indicates that Respondent's misconduct is equivalent to violations of rules 3-110(A), 3-210 and 3-300 of the Rules of Professional Conduct and section 6068(d) of the Business and Professions Code.

48. The disciplinary proceeding in the United States Bankruptcy Court, Central District of California, provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

49. On May 25, 2012, Jeffrey R. Wood ("Wood") sold his residence to Mark Fenstermaker ("Fenstermaker"). Wood received \$113,836 in proceeds from the sale of his residence.

50. On August 7, 2012, on behalf of his client Wood, Respondent filed with the United States Bankruptcy Court, Central District of California, a Chapter 7 bankruptcy petition. As of August 7, 2012, \$96,682 remained from the proceeds of the sale of Wood's residence.

51. On July 2, 2012, prior to filing Wood's Chapter 7 bankruptcy petition, Respondent requested and accepted a \$12,500 loan from Wood. At no time did Wood consent in writing to the terms of the loan. Respondent did not fully disclose in writing to Wood the terms of the business transaction in a manner which should reasonably have been understood by Wood. Further, Respondent did not advise Wood in writing that he may seek the advice of an independent lawyer of Wood's choice and did not give Wood a reasonable opportunity to seek that advice.

52. On October 10, 2012, Respondent requested and accepted a \$5,000 loan from Wood. At no time did Wood consent in writing to the terms of the loan. Respondent did not fully disclose in writing to Wood the terms of the business transaction in a manner which should reasonably have been understood by Wood. Further, Respondent did not advise Wood in writing that he may seek the advice of an independent lawyer of Wood's choice and did not give Wood a reasonable opportunity to seek that advice.

53. In November 2012, Respondent requested and accepted another \$5,000 loan from Wood. At no time did Wood consent in writing to the terms of the loan. Respondent did not fully disclose in writing to Wood the terms of the business transaction in a manner which should reasonably have been understood by Wood. Further, Respondent did not advise Wood in writing that he may seek the advice of an independent lawyer of Wood's choice and did not give Wood a reasonable opportunity to seek that advice.

54. Pursuant to California Code of Civil Procedure section 704.720(b), proceeds from the sale of a homestead are "exempt for a period of six months after the time the proceeds are actually received by the judgment debtor." Since Wood did not purchase another property using the proceeds from the sale of his residence by November 25, 2012, the remaining \$96,682 belonged to the bankruptcy estate (the "Estate").

55. On November 29, 2012, the U.S. Trustee filed a turnover motion requesting an order from the bankruptcy court for Wood to turn over the accounts holding \$96,682 as property of the Estate ("turnover motion").

56. On December 24, 2012, Respondent, on behalf of Wood, filed an opposition to the turnover motion.

57. On January 16, 2013, the bankruptcy court granted the turnover motion and ordered the turnover of \$96,682 ("turnover order").

58. Respondent failed to file an appeal of the turnover order within 14 days of the order. Instead, on February 20, 2012, Respondent filed a motion to extend time to file the appeal of the turnover order ("motion to extend"). Respondent told Wood that he did not have to comply with the turnover order because a motion to extend had been filed.

59. On March 6, 2012, the U.S. Trustee filed a motion for an order to show cause re civil contempt against Wood for failing to comply with the turnover order. Thereafter, on March 19, 2012,

the bankruptcy court ordered Wood to appear on May 7, 2013 and show cause why he should not be held in civil contempt for violating the turnover order ("OSC re contempt").

60. On April 2, 2013, Respondent's motion to extend time to appeal was denied.

61. Respondent advised Wood that he did not have to appear at the OSC re contempt. On May 7, 2013, Respondent appeared on behalf of Wood. The bankruptcy court found Wood in contempt of court.

62. On May 28, 2013, the bankruptcy court held a contempt hearing against Wood. For the first time, the bankruptcy court learned from Wood that Respondent advised him that he did not have to comply with the turnover order because a motion to extend had been filed, that he did not have to appear at the OSC re contempt, and that Respondent accepted a loan from him totaling \$22,500.

63. On June 6, 2013, the bankruptcy court ordered Respondent to appear in court on June 25, 2013 and show cause why he should not be sanctioned, held in civil contempt, and/or referred to the disciplinary procedures of the bankruptcy court for allegedly: (1) advising Wood that he could deplete assets of the Estate; (2) advising Wood that he did not have to comply with the turnover order; (3) advising Wood that he did not need to attend the OSC re contempt; and (4) failing to advise the Court that Wood loaned him \$22,500 of Estate property.

64. On June 25, 2013, the bankruptcy court found Respondent in contempt.

65. On July 3, 2013, the bankruptcy court filed its findings of fact and conclusions of law supporting the June 25, 2013 contempt order. The court also ordered that Respondent pay sanctions in the sum of \$15,000 to the U.S. Trustee, within 14 days of entry of the July 3, 2013 order and that Respondent be referred to the disciplinary procedures of the United States Bankruptcy Court, Central District of California (the "July sanction order"). Respondent received the July sanction order.

66. On July 17, 2013, the bankruptcy judge referred Respondent to the Disciplinary Panel of the United States Bankruptcy Court, Central District of California.

67. On July 24, 2013, the bankruptcy court ordered Wood to pay sanctions in the sum of \$7,500 to the U.S. Trustee for Wood's violation of the turnover order.

68. On April 28, 2014, the disciplinary panel of the United States Bankruptcy Court, Central District of California, comprised of three bankruptcy court judges, conducted a disciplinary hearing against Respondent. Respondent testified at the hearing on his own behalf.

69. On May 13, 2014, the disciplinary panel of the United States Bankruptcy Court, Central District of California, found that Respondent had violated rules 3-110(A), 3-210 and 3-300 of the Rules of Professional Conduct and section 6068(d) of the Business and Professions Code, and ordered Respondent suspended from practicing law before all divisions of the United States Bankruptcy Court, Central District of California, for not less than two years.

CONCLUSIONS OF LAW:

70. As a matter of law, Respondent's culpability of professional misconduct determined in the proceeding in United States Bankruptcy Court, Central District of California, warrants the imposition of discipline under the laws and rules binding upon Respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

Case No. 13-O-15158 (Complainant: Mark Fenstermaker and Jeffrey R. Wood)

FACTS:

71. The facts in paragraphs 48 through 66 are incorporated by reference.

72. Respondent failed to report the July 3, 2013 imposition of sanctions to the State Bar within 30 days of his knowledge of the imposition of the sanctions.

73. Respondent failed to pay the sanctions within 14 days of July 3, 2013, as ordered by the bankruptcy court.

CONCLUSIONS OF LAW:

74. By failing to report the \$15,000 sanction to the State Bar, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent in wilful violation of Business and Professions Code section 6068(o)(3).

75. By failing to comply with the July 3, 2013 sanction order, Respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in wilful violation of Business and Professions Code section 6103.

Case No. 14-O-04276 (Complainant: Kirk McIntosh)

FACTS:

76. On July 17, 2014, the State Bar opened a disciplinary investigation identified as case number 14-O-04276 concerning a complaint against Respondent submitted by Kirk McIntosh ("McIntosh").

77. On August 28, 2014, a State Bar Investigator sent a letter to Respondent at his membership records address requesting Respondent to respond in writing to the allegations in McIntosh's complaint. Respondent received the letter but failed to respond.

78. On October 7, 2014, after not having received a written response from Respondent, the State Bar Investigator sent Respondent another letter requesting that he provide a written response to the allegations in McIntosh's complaint. Respondent received the letter but failed to respond.

79. Despite receiving these letters from the State Bar Investigator, at no time did Respondent provide a written response to the State Bar regarding McIntosh's complaint.

CONCLUSIONS OF LAW:

80. By failing to provide a written response to the allegations regarding Respondent's conduct in McIntosh's matter, Respondent failed to cooperate in disciplinary investigations pending against him, in willful violation of Business and Professions Code, section 6068(i).

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent's course of conduct resulted in the threat of contempt against Wood and sanctions against Wood, which caused significant harm to Wood.

Multiple Acts of Misconduct (Std. 1.5(b)): The misconduct in these client matters constitutes multiple acts. This is an aggravating factor.

Failure to Make Restitution (Std. 1.5(i)): Respondent failed to refund any portion of the unearned fees to the Cocos until after September 15, 2014. Thereafter, Respondent agreed to refund \$4,200 paid in equal amounts of \$1,400. Respondent failed to make the last two payments and, thus, Respondent's failure to make restitution is an aggravating circumstance.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although Respondent's misconduct is serious, he is entitled to mitigation for having practiced law for over twenty-two years without discipline prior to the commencement of the current misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby avoiding the necessity of a trial and saving the State Bar Court time and resources. (*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. (Stds. 1.7(b) and (c).)

In this matter, Respondent committed at least 14 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." Further, since Respondent was found culpable of professional misconduct in the United States Bankruptcy Court, Central District of California, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, Respondent's misconduct in the other jurisdiction demonstrates violations of rules 3-110(A), 3-210 and 3-300 of the Rules of Professional Conduct and section 6068(d) of the Business and Professions Code.

The most severe sanction applicable to Respondent's misconduct is found in both Standard 2.8(a), which applies to Respondent's violations of Business and Professions Code section 6068(d) and Standard 2.14, which applies to Respondent's violation of Business and Professions Code section 6103.

Standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068(a)-(h). Standard 2.14 provides that disbarment or actual suspension is appropriate for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in these Standards.

Respondent's misconduct is serious. Respondent committed a range of misconduct in five different client matters. In addition, the misconduct in the Wood matter led to a disciplinary matter in the bankruptcy court wherein the bankruptcy court found Respondent culpable of additional misconduct. Here, the misconduct includes Respondent's failure to obey two court orders requiring him to pay sanctions. Respondent then compounded his misconduct by failing to report both sanctions to the State Bar. Respondent entered into business transactions in two client matters without fully disclosing and transmitting the terms of the transaction in writing. Further, when Respondent accepted three loans from Wood, he failed to notify the bankruptcy court of the loans, even though the funds used belonged to the Estate. Respondent also committed trust violations when he failed to deposit filing fees from the Cocos into his client trust account. Respondent's misconduct is extensive and mandates substantial discipline.

In evaluating Respondent's misconduct and assessing the level of discipline, both Standards 2.8(a) and 2.14 provide a range of sanctions ranging from suspension to disbarment. In this matter, Respondent does not have a prior record of discipline and entered into this stipulation prior to trial, which mitigates his misconduct. Respondent's misconduct is aggravated by the presence of multiple acts of misconduct, harm to his client, and failure to make restitution. Having considered the evidence and the nature and

extent of the misconduct, a lengthy period of actual suspension that will continue until Respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.2(c)(1) is necessary to fulfill the goals of attorney discipline.

In light of Respondent's misconduct, the applicable standards and the aggravating and mitigating circumstances, a discipline consisting of three years stayed suspension, three years probation with conditions, including two years actual suspension and until Respondent pays restitution and proves his rehabilitation serves the purpose of State Bar discipline to protect the public, the courts and the legal profession, to maintain high professional standards by attorneys, and to preserve public confidence in the legal profession. (Std. 1.3.)

The stipulated level of discipline is in line with case law involving similar misconduct. In *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291, the Supreme Court suspended Aronin for three years, the execution of which was stayed, and placed Aronin on probation subject to certain terms and conditions, including a nine month actual suspension. Aronin was found culpable of misconduct in four matters. Aronin was found culpable of violating (1) former rule 8-101(A) by failing to deposit client funds into a client trust account and commingling those funds with his own monies (two matters); (2) former rule 6-101 and section 6103 by failing to timely pay a court reporter's fees and by falsely stating that he had in his possession a cancelled check for the payment of those fees; (3) former rule 8-101(B)(4) by failing to return unexpended costs to his client; (4) sections 6106, 6103 and 6068, subdivision (a) by signing his clients' names to a pleading; and (5) former rule 8-101(A)(2) for improperly recording a deed of trust on his client's property before he was entitled to do so. The Supreme Court found no aggravating circumstances. In mitigation, Aronin had 17 years of no prior misconduct and was under stress at the time of his misconduct due to his wife's gambling.

The misconduct in this matter is more egregious than *Aronin* and, unlike *Aronin*, involves multiple aggravating circumstances. Both *Aronin* and the present matter involve misleading conduct. However, Respondent engaged in more extensive misconduct than the attorney in *Aronin* when he accepted loans from Wood when he knew the funds were the property of the bankruptcy estate and that Wood, as a debtor, did not own those funds, should not be transferring them, and would have to return them. By requesting and accepting the loans, Respondent made it impossible for Wood to turn over the funds to the U.S. Trustee after the bankruptcy court issued its turnover order. Respondent advised Wood that he did not need to turn over the funds, further impeding the U.S. Trustee's ability to use funds belonging to the Estate to pay Wood's creditors. Respondent's course of conduct in front of the bankruptcy court resulted in a contempt finding and the imposition of sanctions in the amount of \$15,000 that remains unpaid. Based on the nature of Respondent's misconduct, a suspension of longer than nine months, but less than disbarment, is warranted.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of January 23, 2015, the prosecution costs in this matter are \$17,729. 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 State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: KELLY SCOTT JOHNSON	Case number(s): 13-O-11690, 13-O-15158, 13-O-16158, 14-O-02264, 14-J-03439, 14-O-04276
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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.

Jan 28, 2015 [Signature] Kelly Scott Johnson
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name

February 18, 2015 [Signature] Lara Bairamian
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: KELLY SCOTT JOHNSON	Case Number(s): 13-O-11690, 13-O-15158, 13-O-16158, 14-O-02264, 14-J-03439, 14-O-04276
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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 3-13-15 
GEORGE E. SCOTT, JUDGE PRO TEM
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 March 16, 2015, 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:

KELLY S. JOHNSON
LAW OFFICES OF KELLY S. JOHNSON
23 CORPORATE PLAZA DR STE 150
NEWPORT BEACH, CA 92660

by certified mail, No. _____, with return receipt requested, through the United States Postal Service at _____, California, addressed as follows:

by overnight mail at _____, California, addressed as follows:


by fax transmission, at fax number _____. No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Lara Bairamian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 16, 2015.


George Hue
Case Administrator
State Bar Court