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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			ORIGINAL
Counsel For The State Bar Sue K. Hong Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 Tel.: (213) 765-1161 Bar # 285852	Case Number(s): 13-O-12167-RAP	For Court use only FILED OCT 03 2013 STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
In Pro Per Respondent Richard Kiernan Griffith 733 Bishop Street, Ste. 2320 Honolulu, HI 96813 Tel.: (808) 536-2500 Bar # 41807	PUBLIC MATTER		
In the Matter of: RICHARD KIERNAN GRIFFITH Bar # 41807 A Member of the State Bar of California (Respondent)	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted February 23, 1968.
- (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 15 pages, not including the order.

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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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
 - (a) ☒ State Bar Court case # of prior case 11-J-16750
 - (b) ☒ Date prior discipline effective August 9, 2012.
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☒ Degree of prior discipline 1 year of stayed suspension, 1 year of probation, 30 days of actual suspension
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See attachment at page 12.
- (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 at page 12.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

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(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See attachment at page 12.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of 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 1.4(c)(ii) 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 2 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.

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 1.4(c)(ii), 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 1.4(c)(ii), 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: Because Respondent resides and practices in the state of Hawaii, in lieu of Ethics School, Respondent agrees to complete six (6) hours of Minimum Continuing Legal Education ("MCLE") in legal ethics to be completed within one (1) year of the effective date of discipline herein. The MCLE hours specified in this stipulation are in addition to any MCLE hours required by statute .
- (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 checked="" 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:**

See attached Financial Conditions at page 8.

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In the Matter of: RICHARD KIERNAN GRIFFITH	Case Number(s): 13-O-12167
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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

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

b. Installment Restitution Payments

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

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

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

b. Respondent has kept and maintained the following:

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

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

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

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: RICHARD KIERNAN GRIFFITH

CASE NUMBER: 13-O-12167

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-12167

FACTS:

1. On January 6, 2012, Respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California, in Case No. 11-J-16750.
2. On January 24, 2012, the Hearing Department of the State Bar Court filed an Order Approving the Stipulation and recommending to the California Supreme Court the discipline set forth in the Stipulation.
3. On January 24, 2012, the Hearing Department's January 24, 2012, Order Approving the Stipulation was properly served by mail upon the Respondent. Respondent received the Order.
4. On July 10, 2012, the California Supreme Court filed an Order in Case No. S201033 (State Bar Case No. 11-J-16750) imposing the recommended discipline and ordering that Respondent be suspended from the practice of law for one (1) year, that execution of the suspension be stayed, and that Respondent be placed on probation for one (1) year subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its January 24, 2012, Order regarding the Stipulation, including the condition that the Respondent be actually suspended for the first thirty (30) days of probation ("Disciplinary Order").
5. Pursuant to the Disciplinary Order, Respondent was ordered to comply with the following terms and conditions of probation, among others:
 - a. to comply with the State Bar Act and the Rules of Professional Conduct during the period of probation;
 - b. to submit to the Office of Probation written quarterly reports each January 10, April 10, July 10, and October 10 of each year or part thereof during which the probation is in effect, certifying under penalty of perjury whether he has complied with all provisions of the State Bar Act and the Rules of Professional Conduct and all terms of probation during the preceding calendar quarter or part thereof covered by the report, and to file a final report no earlier than twenty (20) days prior to the expiration of the probation period and no later than the last day of said

period, including whether there are any proceedings pending against him or her in the State Bar Court;

- c. to contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation within thirty (30) days from the effective date of discipline.
- d. to complete six (6) hours of Minimum Continuing Legal Education ("MCLE") in legal ethics to be completed within one (1) year of the effective date of discipline.
- e. to provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), to the Office of Probation during the actual suspension or within one year, whichever period is longer.
- f. to attend and satisfactorily complete the State Bar of California Ethics School's Client Trust Accounting School and provide satisfactory proof of his completion of that school to the State Bar's Office of Probation in Los Angeles within one year after the effective date of discipline.
- g. to make restitution to Timothy J. McLaughlin in the amount of \$2.00 plus 10 percent interest per year from July 12, 2005 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Timothy J. McLaughlin, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles within the period of his probation.

6. On July 10, 2012, the Clerk of the California Supreme Court properly served upon Respondent a copy of the Disciplinary Order. Respondent received the Disciplinary Order.

7. The Disciplinary Order became effective on or about August 9, 2012, thirty (30) days after filing.

8. On July 20, 2012, a Probation Deputy of the Office of Probation ("Probation") of the State Bar of California sent a letter to Respondent. In the letter the Probation Deputy reminded Respondent of the terms and conditions of his probation imposed pursuant to the Disciplinary Order. In the July 20, 2012, letter, the Probation Deputy specifically reminded Respondent regarding his obligations to submit quarterly probation reports, with the first due on October 10, 2012. Enclosed with the July 20, 2012, letter were, among other things, copies of the Disciplinary Order, the relevant portion of the Stipulation setting forth the conditions of the Respondent's probation, a Quarterly Report Instruction sheet, and a Quarterly Report form specially tailored for Respondent to use in submitting his quarterly reports. Respondent received the July 20, 2012, letter.

9. Respondent failed to submit four quarterly reports with the Office of Probation which were due January 10, 2013, April 10, 2013, July 10, 2013, and August 9, 2013.

10. Respondent failed to timely contact probation by September 8, 2012. Respondent contacted probation on September 17, 2012.

11. Respondent failed to complete the required six hours of MCLE.

12. Respondent failed to provide proof of passage of the MPRE to the Office of Probation.

13. Respondent did not attend and satisfactorily complete the State Bar of California Ethics School's Client Trust Accounting School and did not provide satisfactory proof of his completion of that school to the State Bar's Office of Probation in Los Angeles.

14. Respondent failed to timely pay restitution to Timothy McLaughlin by the due date of August 9, 2013. Respondent made the restitution payment to Timothy McLaughlin on September 10, 2013.

CONCLUSIONS OF LAW:

15. By failing to submit four quarterly reports, timely contact the probation officer, complete six hours of MCLE, provide proof of passage of the MPRE, attend and satisfactorily complete the State Bar of California Ethics School's Client Trust Accounting School and provide satisfactory proof of his completion of that school to the State Bar's Office of Probation in Los Angeles, and timely pay restitution to Timothy McLaughlin, Respondent failed to comply with all conditions attached to his disciplinary in willful violation of Business and Professions Code section 6068(k).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)): In State Bar case no. Case no. 11-J-16750, Respondent was disciplined to actual suspension for 30 days, stayed suspension for one year, one year of probation and restitution after stipulating to two counts of 6106, one count of 6068(i), and one count of 3-700(D)(2) in the McLaughlin matter; and one count of 6106 in the Interest on Lawyers Trust Accounts ("IOLTA") matter.

In the McLaughlin matter, Respondent issued a check of \$1,000 to Timothy McLaughlin against insufficient funds. Respondent placed a stop payment on the check, which caused McLaughlin's account to be debited \$2.00 when he tried to negotiate the check. During the investigative process, Respondent did not timely provide written responses to the Office of Disciplinary Counsel of the State of Hawaii and failed to issue McLaughlin a refund for the \$1,000 for a period of approximately 20 months after McLaughlin terminated his services and asked for a refund.

In the IOLTA matter, Respondent repeatedly issued checks against insufficient funds from June 3, 2005 through April 6, 2006, resulting in several overdrafts, negative balances, and the recurring charge of overdraft handling fees. For example, on June 3, 2005, Respondent issued a check in the amount of \$30.00 from his trust account which resulted in an overdraft and negative balance of -\$16.52. On June 6, 2005, a special handling fee of \$20.00 was charged to Respondent's trust account for the overdraft, resulting in an overdraft and negative balance of -\$36.52. On June 10, 2005, Respondent deposited \$50.00 into his trust account, making the balance \$13.48.

Multiple Acts (Std. 1.2(b)(ii)): Respondent's present misconduct involves the failure to submit four quarterly reports, timely contact the probation officer, complete the six hours of MCLE, provide proof of passage of the MPRE, attend and satisfactorily complete the State Bar of California Ethics School's Client Trust Accounting School and provide satisfactory proof of his completion of that school to the State Bar's Office of Probation in Los Angeles, and timely pay restitution to Timothy McLaughlin. Respondent engaged in multiple acts of misconduct by violating these conditions of his probation.

Indifference (Std. 1.2(b)(v)): Although Respondent has made restitution, Respondent has not complied with all the probation conditions despite reminders from the Office of Probation and filing of disciplinary charges. Respondent's continued non-compliance indicates an on-going indifference and lack of remorse. (*In the Matter of Meyer* (1997) 3 Cal. State Bar Ct. Rptr. 697, 702 [failure to belatedly file his probation report once he was aware of these proceedings establishes indifference towards rectification of or atonement for the consequences of his or her misconduct].)

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation. Respondent is entitled to limited mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving the State Bar Court time and resources. In *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156, the court found that Respondent was entitled to mitigation for cooperating with the State Bar by entering into a fairly comprehensive pretrial stipulation of facts. Although the stipulated facts were not difficult to prove, and Respondent did not admit culpability, the stipulation was relevant and assisted the State Bar's prosecution of the case. The court accorded Respondent limited mitigation under standard 1.2(e)(v). (*Id.*; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-94.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re 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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 1.7(a) states that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Standard 2.6 states that a member's culpability of violating Business and Professions Code, section 6068 shall result in disbarment or suspension depending on the gravity of the offense or harm to the victim with due regard to the purposes of imposing discipline set forth in standard 1.3. Here, the gravity of the offense is substantial as Respondent has demonstrated his unwillingness or inability to follow a court order. However, pursuant to standard 1.3, public protection is one of the factors to be considered in determining the level of discipline and Respondent poses less of a threat to the public as he has never practiced in California, nor does he have plans to do so in the future.

Here, Standard 2.6 applies because Respondent's misconduct includes violations of Bus. & Prof. Code, Section 6068(k). Respondent failed to submit four quarterly reports, timely contact the probation officer, complete the six hours of MCLE, provide proof of passage of the MPRE, attend and satisfactorily complete the State Bar of California Ethics School's Client Trust Accounting School and provide satisfactory proof of his completion of that school to the State Bar's Office of Probation in Los Angeles, and timely pay restitution to Timothy McLaughlin.

In light of Respondent's residence in the state of Hawaii, having never practiced or resided in California, previous discipline, and mitigating and aggravating factors, considered against the applicable standards for attorney discipline, ninety (90) days of actual suspension, two (2) years of stayed suspension, and two (2) years of probation is sufficient to serve the purpose of disciplinary action and is wholly consistent with the Standards.

The level of discipline is consistent with case law. In *Conroy v. State Bar* (1990) 51 Cal. 3d 799, the Respondent was publicly reprovved and then failed to take and pass the MPRE within one year as required. Respondent defaulted in the matter before the Hearing Department, but participated in the Review Department and Supreme Court proceedings. The court found Respondent's subsequent passage of the MPRE was mitigating but was outweighed by aggravating factors. In aggravation the court considered Respondent's prior discipline, Respondent's default at the Hearing Department level and Respondent's lack of remorse for the present violation. The discipline imposed in light of the aggravation was one year suspension, stayed, two years of probation and sixty-day actual suspension.

In evaluating Respondent's misconduct and assessing the level of discipline, Standard 2.6 requires suspension. Based on his prior record of discipline, Standard 1.7(a) mandates progressive discipline. Similar to *Conroy*, Respondent did not comply with all the conditions attached to his probation and has a prior record of discipline. Although Respondent has not defaulted in this matter and has cooperated with the State Bar's proceeding, Respondent has additional aggravating factors in that he has multiple acts of misconduct and has not subsequently become compliant with all the terms of his probation. Therefore, Respondent presents a situation that warrants a slightly higher discipline than such imposed in *Conroy*.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 9, 2013, the prosecution costs in this matter are \$3,419. 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


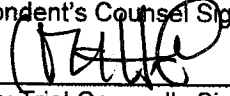
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of the State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of RICHARD KIERNAN GRIFFITH	Case number(s): 13-O-12167
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SIGNATURE OF THE PARTIES

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

<u>09-20-2013</u> Date	 Respondent's Signature	<u>RICHARD KIERNAN GRIFFITH</u> Print Name
<u>9/23/13</u> Date	 Respondent's Counsel Signature	<u>SUE K. HONG</u> Print Name
	<u>Deputy Trial Counsel's Signature</u>	<u>Print Name</u>

(Do not write above this line.)

In the Matter of: RICHARD KIERNAN GRIFFITH	Case Number(s): 13-O-12167
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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.)**

10-03-2013
Date


Judge of the State Bar Court

RICHARD A. PLATEL

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 3, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

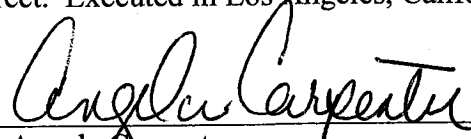
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD KIERNAN GRIFFITH
733 BISHOP ST STE 2320
HONOLULU, HI 96813

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

SUE HONG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 3, 2013.



Angela Carpenter
Case Administrator
State Bar Court