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State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM

Counsel For The State Bar **Susan Chan** **Supervising Senior Trial Counsel** **180 Howard Street** **San Francisco, CA 94105** **(415) 538-2384** Bar # 233229	Case Number (s) **13-O-14406- LMA** **14-O-01475 (inv.)**	(for Court's use) **PUBLIC MATTER** **FILED** AUG 25 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent **Michael Train Caldwell** **1010 B Street, Suite 300** **San Rafael, CA 94901** **(415) 453-8339** Bar # 156325		
In the Matter Of: **KAREN LEE CALDWELL** Bar # 181749 A Member of the State Bar of California (Respondent)	Submitted to: **Program Judge** **STIPULATION RE FACTS AND CONCLUSIONS OF LAW** ☐ PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **December 16, 1991**.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 7 pages, excluding 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."

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(6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [see 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.

(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 at 6.**

(8) ☐ **Restitution:** Respondent failed to make restitution.

(9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

(1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.

(2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

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

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

Additional mitigating circumstances:

No Prior Discipline - see attachment, page 6.
Pretrial Stipulation - see attachment, page 6.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: KAREN LEE CALDWELL

CASE NUMBER: 13-O-14406; 14-O-01475 (inv.)

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 13-O-14406 (Complainant: Anne K. Gougoutas)

FACTS:

1. On April 2, 2009, Anne K. Gougoutas ("Gougoutas") employed respondent to perform legal services related to her dissolution of marriage ("dissolution matter").

2. On September 22, 2009, respondent filed on behalf of Gougoutas a Summons, Petition for Dissolution of Marriage, Child Custody and Visitation Application Attachment, and a Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act form.

3. On November 3, 2009, respondent filed a Proof of Service of Summons and Notice and Acknowledgment of Receipt.

4. Subsequent to November 3, 2009, respondent performed no other services of value to Gougoutas in the dissolution matter.

5. On July 29, 2012, Gougoutas sent an email to respondent requesting a status update in the dissolution matter. Respondent received the email.

6. On August 6, 2012, respondent's assistant sent an email to Gougoutas stating that respondent was out of the office and would communicate with Gougoutas "as soon as possible."

7. From August 6, 2012 through December 21, 2012, respondent did not communicate with Gougoutas.

8. On December 21, 2012, Gougoutas mailed a letter to respondent requesting that she complete work on the dissolution matter and requesting a status update in the matter. Respondent received the letter, but never responded.

9. On June 12, 2013, the State Bar opened an investigation based upon a complaint filed by Gougoutas. On June 27, 2013 and August 15, 2013, a State Bar investigator mailed letters to respondent requesting that respondent provide a written response to the Gougoutas complaint. Respondent received, but did not respond to the letters or otherwise cooperate in the investigation.

CONCLUSIONS OF LAW:

10. By failing to perform any work on Gougoutas' dissolution matter after November 3, 2009, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

11. By failing to promptly respond to Gougoutas' status inquiries in the dissolution matter, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

12. By failing to provide a response to the State Bar's June 27, 2013 and August 15, 2013 letters and by failing to otherwise cooperate and participate in the State Bar's investigation of the Gougoutas complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in violation of Business and Profession Code section 6068(i).

Case No. 14-O-01475 (Complainant: Rose Johnson)

FACTS:

13. In February 2012, Rose Johnson ("Johnson") employed respondent to establish Johnson's claim as a beneficiary to her deceased father's estate ("estate matter").

14. On August 29, 2012, respondent filed on behalf of Johnson, a Notice of Petition to Administer Estate, Application for Waiver of Court Fees and Costs and Petition for Letters of Administration with Authorization to Administer Under the Independent Administration of Estates Act in the estate matter.

15. Subsequent to August 29, 2012, respondent performed no other legal services of value to Johnson in the estate matter. Respondent continued two scheduled hearing dates on October 19, 2012 and November 17, 2012.

16. On December 21, 2012, respondent's telephonic request to continue the probate hearing on the Petition for Letters of Administration was granted. The hearing was continued to February 8, 2013. Respondent did not inform Johnson of the continuance.

17. On February 8, 2013, respondent failed to appear at the probate hearing. The court denied Johnson's Petition for Letters of Administration and granted the proposed Administrator's Petition to administer the estate. Respondent did not inform Johnson that she failed to appear at the hearing nor did she inform Johnson that the court denied her petition.

18. Subsequent to February 8, 2013, Johnson contacted respondent by telephone and written requests for reasonable status inquires in the estate matter. Respondent received the messages but did not respond.

CONCLUSIONS OF LAW:

19. By failing to perform any work on Johnson's estate matter after August 29, 2012, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in

willful violation of Rules of Professional Conduct, rule 3-110(A).

20. By failing to promptly respond to Johnson's status inquiries in the estate matter, by failing to inform Johnson that she failed to appear at the February 8, 2013 hearing and by failing to inform Johnson that her petition was denied, respondent failed to respond promptly to reasonable status inquiries of a client and failed to inform a client of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

21. Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to respondent's client, Johnson, by constructively terminating respondent's employment on February 8, 2013, by failing to take any action on the client's behalf after respondent failed to appear at the probate hearing, and thereafter failing to inform the client that respondent was withdrawing from employment, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed six acts of misconduct in two client matters, demonstrating multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: At the time of the misconduct, respondent had practiced law for over 17 years without a prior record of discipline. Although respondent's misconduct is serious, her 17 years of discipline-free practice is a mitigating circumstance (*See In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [where mitigative credit given for discipline-free practice despite serious misconduct].)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matters, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.) However, such mitigation is tempered by respondent's failure to participate in the State Bar investigation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 11, 2014, the prosecution costs in this matter are $4,263. 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 <u>not</u> receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as condition of reproval or suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: KAREN LEE CALDWELL	Case number(s): 13-O-14406; 14-O-01475

SIGNATURE OF THE PARTIES

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

6/16/2014 Date	Respondent's Signature	Karen Lee Caldwell Print Name
6/19/2014 Date	Respondent's Counsel Signature	Michael Train Caldwell Print Name
6/20/2014 Date	Deputy Trial Counsel's Signature	Susan Chan Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
KAREN LEE CALDWELL	13-O-14406; 14-O-01475

ALTERNATIVE DISCIPLINE PROGRAM ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☒ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Aug 25, 2014
Date

LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 25, 2014, I deposited a true copy of the following document(s):

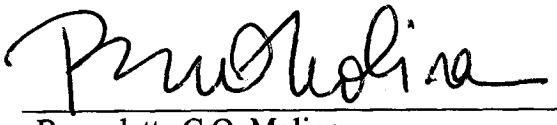
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

☒ By personally delivering a copy of said document(s) to:

KAREN
~~MICHAEL T.~~ CALDWELL
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

SUSAN CHAN
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 25, 2014.



Bernadette C.O. Molina
Case Administrator
State Bar Court