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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  <b>Charles T. Calix</b> Senior Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1255  Bar # 146853	Case Number(s): 14-O-01211 - YDR 14-O-02396 (INV) 15-O-10277 (INV)	For Court use only  <div style="text-align: center;"> <p><b>FILED</b></p> <p>DEC 14 2015 </p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>
In Pro Per Respondent  <b>Martin Edgar Keller</b> 323 W. Court Street, Suite 302 San Bernardino, CA 92401 (909) 889-2681  Bar # 104159	<p><b>PUBLIC MATTER</b></p>	
In the Matter of: <b>MARTIN EDGAR KELLER</b>  Bar # 104159  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <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 **November 22, 1982**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **14** pages, not including the order.
- (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) 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 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(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case **09-O-13285.**
  - (b)  Date prior discipline effective **September 30, 2011.**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Rule 3-110(A), Rules of Professional Conduct [failure to perform with competence], and Business and Professions Code section 6106 [moral turpitude - misrepresentation]. See Attachment at page 11.**
  - (d)  Degree of prior discipline **Respondent was suspended for two years, stayed, and placed on two years of probation with conditions, including but not limited to a 30-day actual suspension. See Attachment at page 11.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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

**Additional aggravating circumstances:**

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

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony

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would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Pretrial Stipulation: See Attachment at page 11**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **two years**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.

- (2)  **Probation:**

Respondent must be placed on probation for a period of **four 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 **six months**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

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- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason: .

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- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .
- (5)  **Other Conditions:**



telephone calls, Respondent abandoned Day's legal matter effective November 9, 2013. Day subsequently complained to the State Bar.

8. On March 17, 2014 and April 18, 2014, a State Bar Investigator sent letters to Respondent requesting that he respond to the allegations in this matter by April 1, 2014 and April 25, 2014, respectively. Respondent received the letters, but failed to provide any response.

9. On July 20, 2012, October 25, 2012, January 11, 2013, April 18, 2013, July 22, 2013, and October 17, 2013, Respondent submitted quarterly reports stating under penalty of perjury that he had complied with the State Bar Act and Rule of Professional Conduct for the quarter preceding the report. At the time that Respondent submitted those reports, those statements were false because he had failed to communicate and perform, and ultimately abandoned Day.

10. During the reporting period, Respondent submitted quarterly reports late for each of the reporting periods ending January 10, 2012, July 10, 2012, October 10, 2012, January 10, 2013, April 10, 2013, July 10, 2013, and September 30, 2013.

#### CONCLUSIONS OF LAW:

11. By failing to failing to take any action between April 2012 and November 9, 2013, to negotiate with the sole trustee, negotiate with Day's sisters, or file pleadings to obtain judicial determination to resolve the dispute concerning the distribution of the estate, Respondent intentionally, recklessly, or repeatedly failed to perform with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

12. By failing to respond promptly to at least 20 telephonic voice messages and five to ten emails requesting status reports made by Day between the end of April 2012 and October 2013, Respondent failed to respond to client inquiries in willful violation of Business and Professions Code section 6068(m).

13. By failing to take any action to resolve the dispute concerning the distribution of the estate, or to communicate to Day, opposing counsel, the sole trustee, and/or the Court that he was withdrawing from representing Day after November 9, 2013, Respondent constructively terminated his employment on November 9, 2013, without taking reasonably foreseeable steps to avoid reasonably foreseeable prejudice to the rights of the client in willful violation of Rules of Professional Conduct, rule 3-700(A)(2)

14. By failing to provide any response to the State Bar's letters dated March 17, 2014 and April 18, 2014, which he received, Respondent failed to cooperate and participate in a disciplinary investigation pending against him in willful violation of Business and Professions Code section 6068(i)

15. By stating under penalty of perjury in six quarterly reports submitted to the Office of Probation of the State Bar of California between on July 20, 2012, and on October 17, 2013, that he had complied with all provisions of the State Bar Act and Rules of Professional Conduct during the compliance period preceding each quarterly report, when he knew or was grossly negligent in not knowing the statements were false because he had failed to perform and communicate, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

16. By failing to submit seven quarterly reports by their due dates of January 10, 2012, July 10, 2012, October 10, 2012, January 10, 2013, April 10, 2013, July 10, 2013, and October 10, 2013, respondent failed to comply with conditions attached to his disciplinary probation in State Bar case no. 09-O-13295 in willful violation of Business and Professions Code section 6068(k).

Case No. 14-O-02396 (Complainant: Sydia Turner)

17. In April or May 2009, Sydia Turner ("Turner") employed Respondent to assist her in obtaining a loan modification or other loan forbearance for her home located in San Bernardino, California. She did not sign a retainer agreement or pay any money to Respondent.

18. On March 29, 2010, Turner received a Notice of Default and Election to Sell Under Deed of Trust.

19. On July 12, 2010, Turner received a Notice of Trustee's sale that stated that The Wolf Firm had been appointed the Trustee to foreclose on her home. The date of sale was set for August 6, 2010. Turner called Respondent and Respondent stated he was still working on her loan modification, but would file a complaint to stop the sale.

20. On August 6, 2010, Respondent filed a lawsuit on behalf of Turner for, inter alia, breach of contract titled *Sydia Turner v. Suntrust Mortgage, Inc., The Wolf Firm*, San Bernardino Superior Court case no. CIV DS 1010760 ("*Turner v. Suntrust*").

21. Between August 2010 and December 2011, Turner called Respondent on approximately 12 occasions and left messages on his voice message system requesting that he contact her and provide her with a status report on the lawsuit and/or loan modification. Respondent received the messages, but did not respond to her calls or provide the requested status reports.

22. On November 5, 2010, the Superior Court set an Order to Show Cause re Dismissal ("OSC") in *Turner v. Suntrust* for February 4, 2011. Respondent received the notice of the OSC. Respondent took no action on behalf of Turner to obtain a loan modification, advance the litigation, or dismiss the litigation after November 5, 2010, and therefore, constructively abandoned Turner effective November 5, 2010.

23. In December 2010, Suntrust sold Turner's loan to Nationstar.

24. On February 4, 2011, Respondent failed to appear for the OSC and so the Superior Court dismissed *Turner v. Suntrust* without prejudice due to Respondent's failure to appear and lack of prosecution. Respondent received notice of the dismissal.

25. Effective September 30, 2011, Respondent was suspended for two years, stayed, with the conditions that he be placed on probation for two years, including a 30-day actual suspension.

26. In December 2011, Turner called Respondent and told him that she was going to stop making her mortgage payments and allow her home to be foreclosed upon. Her home was foreclosed in May 2012, and Taylor complaint to the State Bar.

27. On June 17, 2014 and July 14, 2014, a State Bar Investigator sent letters to Respondent's via mail and email requesting that he respond to the allegations in this matter by July 1, 2014 and July 28, 2014, respectively. Respondent received the letters, but failed to provide any response.

#### CONCLUSIONS OF LAW:

28. By failing to take any action to obtain a loan modification, advance the litigation, or dismiss the litigation after November 5, 2010, Respondent constructively terminated his employment on November 5, 2010 without taking reasonably foreseeable steps to avoid reasonably foreseeable prejudice to the rights of the client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2)

29. By failing to provide any response to the State Bar's letters dated June 17, 2014 and July 14, 2014, which he received, Respondent failed to cooperate and participate in a disciplinary investigation pending against him in willful violation of Business and Professions Code section 6068(i)

#### Case No. 15-O-10277 (Complainant: Ellen Weinfurtner obo Dona Hawkins)

30. On September 14, 2000, Marian M. Hawkins died. She was survived by her three children, Michael L. Hawkins, Dona Hawkins ("Hawkins"), and Karen Hawkins.

31. On January 11, 2001, Michael L. Hawkins caused a Petition for Letters of Administration and Authorization to Under the Independent Administration of Estates Act to be filed in the matter titled *Estate of Marian M. Hawkins* ("*Estate of Hawkins*").

32. In January 2001, Hawkins employed Respondent to assist her regarding the *Estate of Hawkins* and paid him \$10,000.

33. In September 2003, Respondent and Hawkins disagreed about the further handling of the *Estate*. After the disagreement, Respondent did not perform any further services on behalf of Hawkins, or substitute out of the *Estate of Hawkins*.

34. Between September 2003 and January 2012, Michael L. Hawkins died, and the property in his estate and the *Estate of Hawkins* passed to Hawkins, who exercised custody and control over it.

35. Between January 24, 2012 and November 12, 2012, Respondent paid at least \$14,500 to Hawkins.

36. In November 2014, Hawkins hired attorney Ellen Weinfurtner ("Weinfurtner") to assist her in closing the *Estate of Hawkins*.

37. In November 2014, Hawkins or Weinfurtner called Respondent's official membership records telephone number on approximately seven occasions and left voice messages on Respondent's voice message system requesting that he provide a status report on the *Estate of Hawkins* and release the client file. Respondent received the messages, but did not provide the status report or client file.

38. On November 26, 2014, Weinfurtner sent a letter to Respondent's official membership records address requesting that he sign and return the enclosed substitution of attorney with the client

file. Respondent received the letter, but did not provide the substitution of attorney or client file, and thereafter, Hawkins submitted a complaint to the State Bar.

39. On or about February 27, 2015, a State Bar Investigator sent a letter to Respondent's official membership address via mail and email to his official membership email address requesting that he respond to the allegations in this matter by March 13, 2015. Respondent received the letter, but failed to provide any response.

#### CONCLUSIONS OF LAW:

40. By failing to take any action to advance the litigation or substitute out of the litigation after September 2003, Respondent constructively terminated his representation of the client in September 2003 without taking reasonably foreseeable steps to avoid reasonably foreseeable prejudice to the rights of the client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2)

41. By failing to release the client file promptly after he received approximately seven messages and one letter requesting the client file in November 2014, Respondent failed to promptly release all of the client's papers and property following the client's request for the client's file, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

42. By failing to provide any response to the State Bar's letters dated June 17, 2014 and July 14, 2014, which he received, Respondent failed to cooperate and participate in a disciplinary investigation pending against him in willful violation of Business and Professions Code section 6068(i)

#### AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Effective September 30, 2011, Respondent was suspended for two years, stayed, placed on two years of probation with conditions, including a 30-day actual suspension in Supreme Court case no. S194331 (State Bar Court Case No. 09-O-13295). Respondent stipulated that he failed to file a complaint prior to the expiration of the statute of limitations and thereafter lied to the client on multiple occasions about the status of the client's matter between June 2003 and February 2009.

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent's failure to communicate with the client, failure to release the client file, abandonment of three clients, failure to cooperate in three State Bar investigation, misrepresentations to the Office of Probation, and probation violations constitute multiple acts of misconduct.

#### MITIGATING CIRCUMSTANCES.

**Prefiling/Pretrial Stipulation:** By entering into this stipulation prior to trial in Case No. 14-O-01211, and the filing of the Notice of Disciplinary Charges in Case Nos. 14-O-02396, and 15-O-10277, Respondent has acknowledged his wrongdoing and conserved the time and resources of the State Bar Court and State Bar. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

## **AUTHORITIES SUPPORTING DISCIPLINE.**

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

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In these three matters, Respondent committed a total of 11 acts of professional misconduct. Standard 1.7(a) requires that where an attorney “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” Standard 2.7 applies to Respondent’s act of moral turpitude, dishonesty, fraud, or concealment, and states that actual suspension or disbarment is appropriate.

Standard 1.8(a) states that if an attorney has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Standard 1.8(a) applies here.

Respondent was disciplined in Case No. 09-O-13295 effective September 30, 2011, and therefore, the prior discipline was not remote in time. Between April 2002 and approximately December 2003, Respondent failed to perform in the prior matter, made multiple misrepresentations to client to conceal the failure to perform, and therefore, the misconduct was lengthy and serious. Only three of the 11 acts of misconduct in these three proceedings occurred prior to the effective date of the discipline and therefore, Standard 1.8(a) applies and the imposition of discipline in this matter must be greater than the 30-day actual suspension previously imposed in the prior discipline.

In addition, the misconduct in the prior matter was of similar nature. In his prior discipline, Respondent stipulated to failing to perform with competence and making misrepresentations to his client. In the present matters, Respondent failed to perform with competence, failed to communicate, abandoned three

clients, failed to cooperate in three State Bar investigations, and failed to comply with the terms and conditions of a prior disciplinary probation. Moreover, his misrepresentations to the Office of Probation in Case No. 09-O-13295 demonstrates dishonesty to the State Bar after he had been placed on notice that dishonesty is serious misconduct. In *Olguin v. State Bar* (1980) 28 Cal.3d 195, 200, the Supreme Court held, in part, that an attorney's fraudulent and contrived misrepresentation to the State Bar may constitute perhaps a greater offense than the underlying misconduct, including but not limited to misappropriation citing *Worth v. State Bar* (1978) 22 Cal.3d 707, 711, and *Cain v. State Bar* (1979) 25 Cal.3d 956, 961. Respondent had an opportunity to conform his conduct to ethical requirements, but instead failed to submit truthful quarterly reports.

In aggravation, Respondent committed multiple acts of misconduct, and he has a recent 30-day actual suspension and two year probation. There is no mitigation beyond the pretrial/prefiling stipulation. Progressive discipline and protection of the public mandate a six month actual suspension.

A six month actual suspension is also supported by case law. In *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 154-155, Downey signed and filed a verified complaint for unlawful detainer stating that his clients were absent from the county when he had no information to support that claim. In mitigation, Downey cooperated with the State Bar and demonstrated limited good character. (*Id.* at p. 156.) In aggravation, Downey received a previous four month actual suspension for failure to perform resulting in numerous matters being dismissed and misrepresenting the hours he worked resulting in excess fees of \$86,000 being billed to clients. Downey's present misconduct was also followed by dishonesty and concealment. (*Id.* at p. 156.) The Review Department found that then Standard 1.7(a) applied and imposed progressive discipline of a five month actual suspension. Respondent's misconduct is more egregious than Downey's.

A six month actual suspension, two year stayed suspension, and four year probation is appropriate under the Standards and will serve the purpose of attorney discipline as set forth in Standard 1.1. Passage of Ethics School and the MPRE will be required as Respondent has continued to commit misconduct after taking and passing Ethics School and the MPRE with regards to Case No. 09-O-13295.

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

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of November 25, 2015, the prosecution costs in this matter are approximately \$5,407. 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**

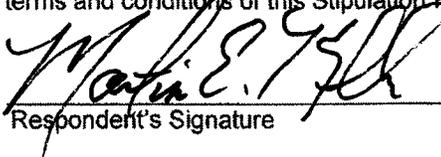
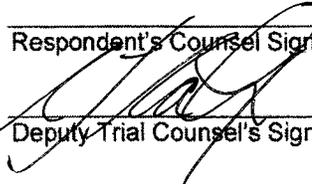
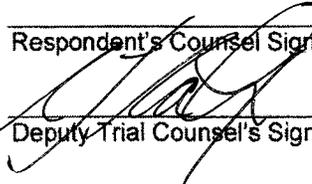
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: Martin Edgar Keller	Case number(s): 14-O-01211, 14-O-02396, and 15-O-10277
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**SIGNATURE OF THE PARTIES**

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

<u>11/30/15</u> Date	 Respondent's Signature	<u>Martin E. Keller</u> Print Name
<u>12/1/15</u> Date	 Respondent's Counsel Signature	<u>Charles T. Calix</u> Print Name
<u>12/1/15</u> Date	 Deputy Trial Counsel's Signature	<u>Charles T. Calix</u> Print Name

(Do not write above this line.)

In the Matter of: Martin Edgar Keller	Case Number(s): 14-O-01211, 14-O-02396, and 15-O-10277
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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.

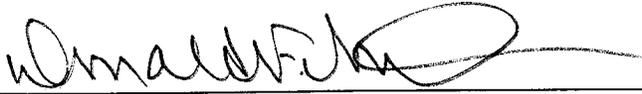
In paragraph E(1) on page 5 of the Stipulation, delete the "x" from the box preceding the words, "If Respondent is actually suspended for two years or more. . . ."

In the fourth paragraph on page 12, delete the numeral 2.7, and in its place insert 2.11.

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

12/11/15

  
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 Los Angeles, on December 14, 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:

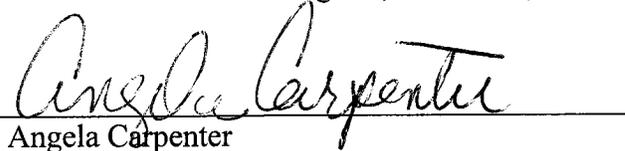
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MARTIN EDGAR KELLER  
MARTIN E KELLER  
323 W COURT ST STE 302  
SAN BERNARDINO, CA 92401

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 14, 2015.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court