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**State Bar Court of California
Hearing Department
San Francisco
STAYED SUSPENSION**

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| <p>Counsel for the State Bar</p> <p>Carla L. Cheung Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2291</p> <p>Bar # 291562</p> | <p>Case Number(s): 16-O-10033-PEM</p> | <p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>AUG 01 2018 <i>WY</i></p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> |
| <p>Counsel For Respondent</p> <p>Merri A. Baldwin Rogers Joseph O'Donnell 311 California Street, 10th Fl San Francisco, CA 94104 (415) 956-2828</p> <p>Bar # 141957</p> | <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>In the Matter of: KAREN YOKO UCHIYAMA</p> <p>Bar # 154414</p> <p>A Member of the State Bar of California (Respondent)</p> | | |

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 16, 1991**.
- (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 **12** 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."



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- (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. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:
- If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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: **04-O-12334. See page 9; Exhibit 1.**
- (b) Date prior discipline effective: **January 10, 2006.**
- (c) Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 5-100(A) [threatening criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute].**
- (d) Degree of prior discipline: **Public Reproval.**
- (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.

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- (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.
- (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 Respondent's misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 9**
- (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:

See page 9

C. Mitigating Circumstances [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 Respondent's 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 Respondent's 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 Respondent.

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- (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 would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, 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 Respondent's control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's misconduct. **See page 9**
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Recommended Discipline:

Stayed Suspension:

Respondent is suspended from the practice of law for **one year**, the execution of that suspension is stayed, and Respondent is placed on probation for **two years** with the following conditions.

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

- (4) **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**
- a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
- b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition:

- (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.
- (12) **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE _____ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) **Other:** Respondent must also comply with the following additional conditions of probation:
- (14) **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts

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and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- (15) The following conditions are attached hereto and incorporated:
- Financial Conditions Medical Conditions
 - Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

E. Other Requirements Negotiated by the Parties (Not Probation Conditions):

- (1) **Multistate Professional Responsibility Examination Within One Year:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because
- (3) **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Karen Yoko Uchiyama

CASE NUMBER: 16-O-10033-PEM

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 16-O-10033-PEM

FACTS:

1. At all relevant times, respondent represented the plaintiff in *Zoriell, LLC v. Dale Richard Duncan et al.*, San Francisco County Superior Court, Case No. CUD15652719. On July 21, 2015, the defendants in *Zoriell* filed a motion to strike the plaintiff's complaint. Respondent filed plaintiff's response one day late.

2. On September 1, 2015, the Court entered an Order striking respondent's opposition to the motion as untimely and not compliant with the California Rules of Court because the opposition exceeded the page limit ("First Order"). In the First Order, the Court granted the defendants' motion to strike the complaint, and directed respondent's client to pay attorney fees and costs in the amount of \$14,787.50.

3. On October 20, 2015, respondent obtained a stay of the First Order, and sought relief for her client pursuant to Code of Civil Procedure, section 473(b), on the basis of excusable neglect.

4. On November 30, 2015, the Court granted respondent's motion for mandatory relief pursuant to Code of Civil Procedure, section 473(b), and issued an order directing the plaintiff to file a new opposition by December 1, 2015 ("Second Order"). The Second Order also directed respondent to (1) pay attorney's fees and costs in the amount of \$6,162.50 by December 4, 2015, and (2) pay \$1,000 to the State Bar Client Security Fund by December 4, 2015. The Second Order stated: "This Order shall be served on the California State Bar by the Clerk of the Court."

5. Respondent failed to pay the sanctions by December 4, 2015, in violation the Second Order.

6. On December 4, 2015, the Court referred the matter to the State Bar.

7. On April 12, 2016, the Court issued an Order to Show Cause ("OSC") directing respondent to prove she had complied with the Second Order. Respondent received the OSC, and immediately paid the sanctions to opposing counsel (with interest) and the Client Security Fund, and provided proof to the Court of the payment.

8. Respondent failed to report the sanctions to the State Bar herself.

CONCLUSIONS OF LAW:

9. By failing to obey the Second Order requiring respondent to pay \$6,162.50 to defense counsel and \$1,000 to the State Bar Client Security Fund by December 4, 2015, respondent willfully disobeyed or violated an order of the court requiring her to do or forbear an act in connection with or in the course of her profession, which one in good faith ought to do or forbear, in willful violation of Business and Professions Code, section 6103.

10. By failing to report the sanctions levied against respondent in the Second Order, respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time respondent had knowledge of the imposition of judicial sanctions against her, in willful violation of Business and Professions Code, section 6068(o)(3).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Standard 1.5(a)): In January 2006, respondent stipulated to a public reproof for a period of two years, after pleading nolo contendere to violating Rules of Professional Conduct, rule 5-100(A) [threatening criminal, administrative, or disciplinary charges to gain advantage in civil suit] by making a settlement offer that included an agreement to refrain from reporting the opposing party to the Social Security Administration for fraud. In aggravation, respondent's misconduct caused significant harm to the administration of justice. In mitigation, respondent had no prior record of discipline, respondent's misconduct did not harm the client or person who was the subject of the misconduct, and respondent displayed spontaneous candor and cooperation with the victims of her misconduct and to the State Bar during the investigation and disciplinary proceedings.

Multiple Acts of Wrongdoing (Standard 1.5(b)): In this matter, respondent failed to obey a court order and failed to report sanctions, constituting multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES

Extraordinary Good Character (Standard 1.6(f)): Respondent has provided 13 letters from members of the legal and general community, including clients and attorneys that respondent has worked with professionally. The letters writers express that they are familiar with respondent and aware of respondent's misconduct, but nevertheless attest to respondent's good moral character and legal ability.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

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, Standard 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 Standard 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. (Standard 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Standard 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. (Standards 1.7(b) and (c).)

Additionally, Standard 1.8(a) applies because respondent has a prior record of discipline. Standard 1.8(a) provides: “If a member 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.” Respondent’s prior discipline was recent and sufficiently serious, such that imposing greater discipline than a public reproof is not manifestly unjust.

Here, respondent violated a court order and failed to report sanctions to the State Bar. Standard 2.12(a) applies and provides: “Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the member’s practice of law, the attorney’s oath, or the duties required of an attorney under Business and Professions Code section 6068(a)(b)(d)(e)(f) or (h).”

In mitigation, respondent is entitled to credit for good character and entering into a pretrial stipulation. In aggravation, respondent committed multiple acts of misconduct and has a prior record of discipline. In light of the nature of respondent’s misconduct, which was limited in scope, and the balance of aggravation and mitigation, discipline at the low end of the Standards is appropriate.

Case law is instructive. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the court recommended a six-month stayed suspension for an attorney who failed to perform in criminal appellate and habeas corpus proceedings, failed to obey court orders and failed to report sanctions in a single client matter. In aggravation, the court found multiple acts of misconduct and harm. In mitigation, the court found no prior record of discipline in 17 years of practice, no further misconduct, good character and cooperation for entering into a fact stipulation. In this matter, respondent is entitled to similar mitigation as *Riordan*, but has greater aggravation by virtue of her prior record of discipline.

Accordingly, pursuant to the Standards and the case law, a one-year stayed suspension is warranted.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of June 28, 2018, the discipline costs in this matter are \$6,114. 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 MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT

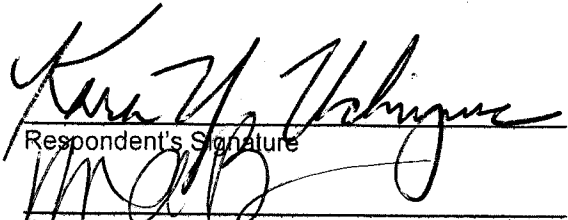
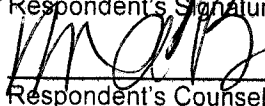
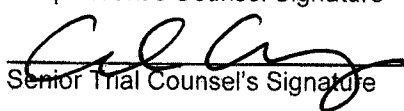
Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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| In the Matter of KAREN YOKO UCHIYAMA | Case number(s): 16-O-10033-PEM |
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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>7/16/2015</u> Date |  Respondent's Signature | <u>Karen Y. Uchiyama</u> Print Name |
| <u>7/20/2018</u> Date |  Respondent's Counsel Signature | <u>Merri A. Baldwin</u> Print Name |
| <u>7/23/18</u> Date |  Senior Trial Counsel's Signature | <u>Carla L. Cheung</u> Print Name |

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| In the Matter of: KAREN YOKO UCHIYAMA | Case Number(s): 16-O-10033-PEM |
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STAYED SUSPENSION ORDER

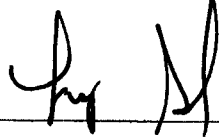
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date


Aug 1, 2018



Judge of the State Bar Court

LUCY ARMENDARIZ

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| State Bar Court of California | | |
|---|---|--|
| Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco | | |
| Counsel for the State Bar Robin B. Brune Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 (415) 538-2218 Bar # 149481 | Case number(s) 04-0-12334 | (for Court's use) PUBLIC MATTER FILED  DEC 20 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO |
| <input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent Brian Getz 44 Montgomery Street #3850 San Francisco, CA 94104 (415) 912-5886 Bar # 85593 | | |
| In the Matter of KAREN UCHIYAMA Bar # 154414 A Member of the State Bar of California (Respondent) | Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <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 December 16, 1991
(date)
- (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 and order consist of 15 pages.
- (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.

EXHIBIT

1

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- (a) costs added to membership fee for calendar year following effective date of discipline (public reproof)
- (b) case ineligible for costs (private reproof)
- (c) costs to be paid in equal amounts for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e) costs entirely waived

(9) The parties understand that:

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 _____

(b) Date prior discipline effective _____

(c) Rules of Professional Conduct/ State Bar Act violations: _____

(d) Degree of prior discipline _____

(Do not write above this line.)

- (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".

- (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 ~~the client or the public~~ 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.
- (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. See attachment
- (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 victim, 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.

(Do not write above this line.)

- (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. *See attachment*
- (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.
- (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.

(Do not write above this line.)

D. Discipline:

- (1) Private reproof (check applicable conditions, if any, below)
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of two (2) years
- (2) During the condition period attached to the reproof, 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 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 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.
- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

(Do not write above this line.)

- (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 conditions attached to the reprobation.
- (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 of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. Reason: _____
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.
- (10) 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 within one year of the effective date of the reprobation.
- No MPRE ordered. Reason: _____
- (11) 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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Karen Uchiyama
CASE NUMBER(S): 04-O-12334-JMR

FACTS AND CONCLUSIONS OF LAW.

On or about July 25, 2003, respondent filed an action for Complaint for Declaratory Relief and Breach of Contract on behalf of the Dubays against Calsius, case no. CGC-03-422814, in Superior Court for the City and County of San Francisco, related to the landlord tenant dispute.

Respondent subsequently filed and represented the Dubays in an unlawful detainer action, *Dubay vs. Calsius*, San Francisco Superior Court case no. CUD-03-607822, which was filed on or about September 30, 2003.

At all times relevant to these proceedings, Calsius received Supplemental Social Security Income as a disabled individual in the sum of \$778.00 per month.

During the course of the litigation between the two parties, and on or about September 15, 2003, respondent sent a letter which contained a settlement offer to Calsius and Ronald De Pontes, the defendants in the civil proceeding. The letter stated, in part:

You all agree to move out of 30 Ord Court on date certain (negotiable) and certain back rent will be waived. You will have ample opportunity to find other housing without an eviction pending or judgment for eviction against you. The Dubays will also give you all written neutral reference letters to assist you in finding other housing. All this will be done quietly, amicably and out of court. The Dubays will also dismiss the pending case against Luke Calsius for declaratory relief and not expose his fraud upon the S.S.I. program and his business operations at 30 Ord Court.

Respondent mailed her September 15, 2003 letter by placing it in the United States Mail, and Calsius received it.

On or about December 22, 2003, respondent sent a second letter which contained a settlement offer to Charles Schaible of Cooley Godward, who was then representing Calsius. Respondent's settlement offer included the following terms:

The Dubays wish to make this settlement offer to Luke Calsius in order to avoid stressful and expensive litigation for all parties and tenants: He will move out of 30 Ord Court (both units) on a date certain (negotiable) and certain back rent will be waived (negotiable). He will have ample opportunity to find other housing without an eviction pending or judgment for eviction against him. The Dubays will also give Mr. Calsius written neutral reference letter to assist him in finding other housing and \$5,000.00 in cash for his troubles and moving expenses. The Dubays will also dismiss the pending case against Luke Calsius for declaratory relief and not expose his fraud upon the S.S.I. program, and his business operations at 30 Ord Court.

Respondent placed her December 22, 2003 letter in the United States Mail, and Schaible received it.

On or about December 24, 2003, respondent sent a letter which contained a settlement offer to Schaible and Oplinger of Cooley Godward. Respondent's settlement offer contained the following terms:

Here is our counteroffer (in supplement of our last settlement offer): Luke Calsius and Ronald De Pontes will move out of 30 Ord Court for \$10,000.00 within 60 days; it will be increased to \$11,000.00 if they both move out in 30 days. The Dubays will do what they can to encourage the District Attorney's Office to dismiss its case for the People. Luke Calsius and Ronald De Pontes will stay 25 yards away from the property at 30 Ord Court after they vacate. All rent will be waived from June 2003 through their vacancy date. The Dubays will give neutral letters of reference to future potential landlords, and there will be a mutual general release between the parties. The Dubays will refrain from reporting Luke Calsius to the government for S.S.I. Fraud.

Respondent placed her December 24, 2003 letter in the United States Mail, and said letter was received by Schaible and Oplinger.

Calsius and his attorneys did not accept respondent's settlement offers and the matter proceeded to trial. After the court trial and a series of appeals, Calsius was evicted from the

premises on or about June 20, 2004. Neither respondent nor the Dubays ever reported Calsius to the government for S.S.I. fraud.

Conclusions of Law

By sending the letters dated September 15, 2003, and December 22 and 24, 2003, in which respondent offered, in settlement, that the Dubays would refrain from reporting Calsius to the government for SSI fraud and "not expose his fraud upon the S.S.I. program and his business operations at 30 Ord Court," respondent threatened to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil suit, in wilful violation of rule 5-100(A) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was November 28, 2005.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 28, 2005, the estimated prosecution costs in this matter are approximately \$2,296.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Durbin v. State Bar (1979) 23 Cal.3d 461

Libarian v. State Bar (1952) 38 Cal.2d 328

Crane v. State Bar (1981) 30 Cal.3d 117

In the Matter of Rodriguez (1993) 2 Cal. State Bar. Ct. Rptr. 480

AGGRAVATING CIRCUMSTANCES.

Respondent's conduct harmed the administration of justice.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Respondent's conduct in writing the letters became an issue at trial and at subsequent litigation between the parties.

MITIGATING CIRCUMSTANCES.

Respondent has been cooperative throughout these proceedings.

Respondent was admitted to practice in 1991 and has no prior discipline.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Respondent has been candid and cooperative in the State Bar investigation and proceedings in this matter.

ADDITIONAL MITIGATING CIRCUMSTANCES.

1. Background on the Lawsuit

Without agreeing as to the merits of each of the issues, or the veracity of the testimony involved, the parties have agreed to provide this Court with additional information regarding the scope and nature of the dispute between the parties in the underlying litigation.

Respondent, on behalf of her clients, had successfully defended against a prior action that Calsius brought before the Residential Rent Stabilization and Arbitration Board. The matter was heard on August 26, 2003 and the Board issued a Decision on or about September 12, 2003. The decision, regarding Calsius's obligation to pay a \$50 per month rent for a parking space (which was still, at \$50 per month, below the going market rate) was favorable to respondent's clients.

In connection with the lawsuit, respondent, on behalf of the Dubays, presented testimony of the following: 1) that Calsius, during the course of the litigation, had assaulted and battered Dubai, causing him significant injury; 2) that after assaulting and battering Dubai, Calsius behaved in a threatening manner towards Mrs. Dubai, when she tried to serve Ronald De Pontes with process; 3) that Calsius used at least one of his apartments for business, not residential purposes, in violation of the terms of the lease; 4) that the business, which was purported to be a coffee import business, was a cover-up for dealing cocaine shipped in coffee, and in 1998 or 1999 one of the tenants observed him dealing cocaine, and another tenant observed high traffic in and out of the apartment at late hours; 5) that Calsius improperly tried to take on the role of master tenant and pay rent in his own name on behalf of other tenants and apartments in the

building; 6) that Calsius acquired a dog without his landlord's permission and fabricated a doctor's written recommendation that he get a pet companion; and 7) that Calsius was properly served with all pleadings necessary for an eviction (Three Day Notice to Pay Rent or Quit; Three Day Notice to Quit).

In rebuttal of the testimony, Calsius 1) denied assaulting and battering Dubai; 2) denied behaving in a threatening manner towards Mrs. Dubai; 3) denied cocaine use and indicated that his medical conditions, including HIV disabling status and prior treatment for cancer, would prevent him from using illegal drugs, and several tenants testified to no observation of drug activity in the building; 4) testified that he used to have, but no longer had, a legitimate coffee business and that he relocated it off the premises when Dubai asked him to; 5) that he was not trying to be a master tenant but lived with friends in a substitute family structure for gay men, and the men consolidated their incomes, had one checking account, and he paid the rent on behalf of all of them and had in fact tendered rent for each month; 6) that Dubai did not object to the dog when he obtained it; and 7) Calsius had tendered rent, but the Dubays did not accept it in the manner tendered (as more fully detailed in item 5).

Calsius further argued that Dubai sought to evict him due to discrimination against his HIV status and the fact that he was gay.

2. Respondent Felt Very Protective of Her Client.

Respondent became emotionally embroiled in the lawsuit because she believed that Calsius had assaulted and battered her elderly client, Dubai, and she was concerned for the safety and well being of her client, who was in his eighties and weighed 140 pounds. In addition, Dubai suffered from leukemia.

Whether or not an assault and battery occurred became an issue in the litigation between the parties.

On or about September 8, 2003, Dubai made a report to the police that he was assaulted and battered by Calsius. Inspector Lau of the San Francisco Police Department issued a Chronology of Investigation Report dated September 9, 2003 in which he reported that the left side of Dubai's face "was red, mottled, with red dots, and appeared swollen." The officer also saw a contusion and bruising in Dubai's right temple area, and a bleeding injury to Dubai's right arm. Dubai sought treatment at Kaiser for injuries he claims were sustained during the assault and battery. The medical notes included that Dubai's chief complaint was that he was assaulted by a tenant and "struck in head." The notes also reflected that Dubai had some swelling in the face. He was treated for lacerations, his skin wounds were cleaned and dressed, and he was given information on wound care and head injury.

The court ultimately found, as to the events of September 8, 2003, as follows¹:

Luke [Calsius] put the items he was carrying down on the floor, and punched Harold [Dubay] in the left side of the face. The blow knocked Harold down. As Harold fell, he ripped skin off his right forearm on a stucco wall, creating a spectacular but not life threatening wound. A dazed Harold made his way to a telephone and called Joyce. ... The court is not persuaded that the encounter happened exactly as Harold described it, but the court finds by a preponderance of the evidence that Luke did punch Harold hard and knocked Harold down, causing a big bruise on Harold's face, the above mentioned damage to Harold's arm (which appeared to have healed as of the time of trial), and neurological damage which still manifests itself in double vision. The court further finds that no excuse or justification exists for Luke's battery on Harold.

On or about September 12, 2003, and again on October 22, 2003, Dubay sought and obtained protective orders against Calsius.

The District Attorney of San Francisco brought charges, in September 2003, against Calsius based upon Dubay's report to the police. On June 30, 2004, Calsius was charged by way of Criminal Information (Ct. No. 2125933) with serious and violent felony charges of assault, battery, and great bodily harm to an elder person, in violation of sections 368(b)(1), 243(d), and 245(a)(1) of the California Penal Code.

The District Attorney also alleged various enhancements in connection with sections 12022.7(a), 1192.7(c), 12022.7(a), and 12022.7(c) of the California Penal Code, referring to Dubay's age of eighty years, inflicting great bodily injury, and alleging as serious felony.

The criminal proceedings were never resolved because Calsius subsequently committed suicide in August of 2004.

3. Respondent's Statement Regarding Her Conduct.

If respondent were called to testify, she would testify that she thought her conduct in writing the settlement offer letters was an acceptable "offer to refrain" that would benefit both parties, and she was unaware of the disciplinary implications; yet she acknowledges that she committed the acts in question. Respondent would also testify that at the time the letters were written she thought she could, in good faith, legitimately use the language included in those letters.

¹ Statement of Decision, dated January 29, 2004, in the matter of *Dubay v. Calsius*, San Francisco County Superior Court case no. CUD-03-607814, Judge Wallace P. Douglass presiding.

(Do not write above this line.)

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|---|--------------------------------------|
| In the Matter of KAREN UCHIYAMA | Case Number(s): 04-0-12334 |
|---|--------------------------------------|

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)

RULE 133, Rules of Procedure of the State Bar of California STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

(a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:

(5) a statement that Respondent either

- (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
- (ii) pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:
 - (a) an acknowledgment that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and
 - (b) if requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter. (emphasis supplied)

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

December 16, 2005
Date

Karen Y. Uchiyama
Signature




Karen Y. Uchiyama
Print name

(Do not write above this line.)

| | |
|---|--|
| In the Matter of KAREN UCHIYAMA | Case number(s): 04-0-12334 |
|---|--|

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>December 16, 2005</u> Date |  Respondent's signature | <u>KAREN UCHIYAMA</u> Print name |
| <u>December 16, 2005</u> Date |  Respondent's Counsel's signature | <u>BRIAN GETZ</u> Print name |
| <u>December 16, 2005</u> Date |  Deputy Trial Counsel's signature | <u>ROBIN E. BRUNE</u> Print name |

(Do not write above this line.)

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|------------------------------------|-------------------------------|
| In the Matter of KAREN UCHIYAMA | Case number(s): 04-O-12334 |
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All Hearing dates are vacated.

1. On page 3, section (C)(1), an "x" is inserted in front of the box indicating that respondent has no record of prior discipline.
2. On page 4, section (C)(7), an "x" is inserted in front of the box indicating that respondent acted in good faith.
3. On page 7, the second paragraph, the date must read September 30, 2003 instead of 3003.

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 135(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Dec. 20, 2005
Date

Pat McElroy
PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 December 20, 2005, 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:

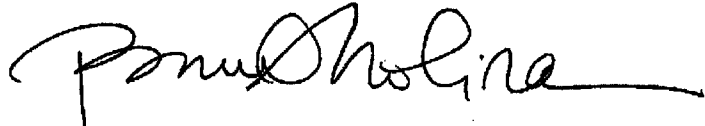
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**BRIAN H. GETZ
LAW OFFICE BRIAN H GETZ
44 MONTGOMERY ST STE 3850
SAN FRANCISCO CA 94104-4823**

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 20, 2005.



Bernadette C. O. Molina
Case Administrator
State Bar Court

1 Brian H Getz (CSBN 85593)
2 44 Montgomery Street, Suite 3850
3 San Francisco, California 94104
4 Telephone: (415) 912-5886

5 Attorney for Respondent
6 KAREN UCHIYAMA

FILED *Ru*

AUG 17 2005

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

7 **THE STATE BAR COURT OF CALIFORNIA**
8 **HEARING DEPARTMENT - SAN FRANCISCO**

9 In the Matter of

Case No. 04-O-12334

10 KAREN UCHIYAMA
11 No. 154414,

**RESPONSE TO NOTICE OF
DISCIPLINARY CHARGES**

12 A Member of the State Bar.
13 _____

14 Respondent Karen Uchiyama hereby responds to the Notice of Disciplinary Charges, filed
15 on or about July 28, 2005, and admits, denies and avers as follows:

16 **JURISDICTION**

17 1. Respondent admits the allegations contained in this paragraph.

18 **COUNT ONE**

19 Case No. 04-O-12334
20 Rules of Professional Conduct, Rule 5-100(A)
[Threatening Charges to Gain Advantage in Civil Suit]

21 2. Respondent denies the allegation contained in this paragraph.

22 3. Respondent admits the allegations contained in this paragraph.

23 4. Respondent admits that she was retained to legally evict Mr. Luke Calsius from
24 the premises known as 30 Ord Court, but denies the remaining allegations of this paragraph.

25 5. Respondent admits that she provided legal advice and legal strategy to the Dubays
26 on how to proceed against Mr. Calsius, but denies the remaining allegations of this paragraph.

27 6. Respondent admits that she sent a letter as stated, but denies that the letter
28 contained any threat.

1 7. Based on information and belief as to receipt by Mr. Calcius, Respondent admits
2 the allegations contained in this paragraph.

3 8. Respondent denies the allegations contained in this paragraph.

4 9. Respondent has no information or belief sufficient to permit her to answer the
5 allegations contained in this paragraph, and on such basis denies the allegations.

6 10. Respondent has no information or belief sufficient to permit her to answer the
7 allegations contained in this paragraph, and on such basis denies the allegations.

8 11. Respondent believes the allegations contained in this paragraph to be true.

9 12. Respondent denies the allegations contained in this paragraph.

10 13. Respondent admits that she sent a letter as stated, but denies that the letter
11 contained any threat.

12 14. Respondent admits the allegations contained in this paragraph.

13 15. Respondent denies the allegations contained in this paragraph.

14 16. Respondent has no information or belief sufficient to permit her to answer the
15 allegations contained in this paragraph, and on such basis denies the allegations.

16 17. Respondent has no information or belief sufficient to permit her to answer the
17 allegations contained in this paragraph, and on such basis denies the allegations.

18 18. Respondent believes the allegations contained in this paragraph to be true.

19 19. Respondent denies the allegations contained in this paragraph.

20 20. Respondent admits that she sent a letter as stated, but denies that the letter
21 contained any threat.

22 21. Respondent admits the allegations contained in this paragraph.

23 22. Respondent denies the allegations contained in this paragraph.

24 23. Respondent has no information or belief sufficient to permit her to answer the
25 allegations contained in this paragraph, and on such basis denies the allegations.

26 24. Respondent has no information or belief sufficient to permit her to answer the
27 allegations contained in this paragraph, and on such basis denies the allegations.

28 25. Based on information and belief, Respondent believes the allegations contained

1 in this paragraph to be true.

2 26. Respondent denies the allegations contained in this paragraph.

3 27. Respondent admits that the trial in *Dubay v. Calsius* was held during the
4 approximate time period alleged, and that on January 16, 2004, a post-trial meeting occurred
5 between Respondent, her counsel, and the Honorable Judge Wallace Douglas. Respondent
6 further admits that at the trial, the settlement letters written by Respondent were introduced into
7 evidence by Mr. Calsius' attorneys in support of his defense. Respondent denies the remaining
8 allegations contained in this paragraph.

9 28. Based on information and belief, Respondent believes the allegations contained
10 in this paragraph to be true, but avers that the allegations contained in this paragraph do not state
11 the entire content of Judge Douglass' letter, nor do they reflect the purpose and tone of Judge
12 Douglass' letter.

13 29. Respondent admits the allegations contained in this paragraph, and avers that her
14 declaration was drafted and submitted to the court prior to the meeting with Judge Douglass on
15 January 16, 2004. Respondent further avers that the declaration was drafted and signed on
16 advice of counsel, and in good faith in response to the concerns of and statements made by Judge
17 Douglass.

18 30. Respondent denies the allegations contained in this paragraph.

19 31. Respondent denies the allegations contained in this paragraph.

20 Dated: August 16, 2005

Respectfully Submitted,

21
22 
23 BRIAN H GETZ
24 Attorney for Respondent
25 KAREN UCHIYAMA
26
27
28

1 CERTIFICATE OF SERVICE

2 I, the undersigned, declare that I am a citizen of the United States, over the age of
3 eighteen years, and not a party to the within action. My business address is Law Offices of
4 Brian H Getz, 44 Montgomery Street, Suite 3850, San Francisco, California 94104.

5 On this date, a true copy of the foregoing RESPONSE TO NOTICE OF DISCIPLINARY
6 CHARGES was hand delivered to:

7 Robin Brune
8 Office of the Chief Trial Counsel
9 State Bar of California
10 180 Howard Street
11 San Francisco, California 94105

12 I declare under penalty of perjury the foregoing is true and correct. Executed on
13 August 17, 2005, at San Francisco, California.

14 

15 _____
16 Brian Getz
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PUBLIC MATTER

FILED

JUL 28 2005

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

1 THE STATE BAR OF CALIFORNIA
2 OFFICE OF THE CHIEF TRIAL COUNSEL
3 SCOTT J. DREXEL, No. 65670
4 CHIEF TRIAL COUNSEL
5 LAWRENCE J. DAL CERRO, No. 104342
6 ASSISTANT CHIEF TRIAL COUNSEL
7 MARIA J. OROPEZA, No. 182660
8 DEPUTY TRIAL COUNSEL
9 180 Howard Street
10 San Francisco, California 94105
11 Telephone: (415) 538-2569

8 THE STATE BAR COURT
9 HEARING DEPARTMENT - SAN FRANCISCO

11 In the Matter of) Case No.: 04-O-12334
12 KAREN UCHIYAMA)
13 No. 154414,) NOTICE OF DISCIPLINARY CHARGES
14 A Member of the State Bar.)

15 **NOTICE - FAILURE TO RESPOND!**

16 IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE
17 TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR
18 IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR
19 DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN
20 INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE
21 PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE
ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF
THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO
PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR
DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO
ADDITIONAL DISCIPLINE.

22 STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN
23 RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

24 IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY
25 THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF
26 ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE
27 PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED
28 BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION
WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE
BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE
ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE
ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON
PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH

1 **CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS**
2 **APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE**
3 **BAR COURT PROCEEDINGS.**

4 **NOTICE - INACTIVE ENROLLMENT!**

5 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
6 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
7 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
8 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
9 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
10 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
11 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
12 **RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF**
13 **PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

14 **NOTICE - COST ASSESSMENT!**

15 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE,**
16 **YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY**
17 **THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF**
18 **THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE**
19 **SECTION 6086.10. SEE RULE 280, RULES OF PROCEDURE OF THE**
20 **STATE BAR OF CALIFORNIA.**

21 The State Bar of California alleges:

22 **JURISDICTION**

23 1. Karen Uchiyama ("Respondent") was admitted to the practice of law in the State
24 of California on December 16, 1991, was a member at all times pertinent to these charges, and is
25 currently a member of the State Bar of California.

26 **COUNT ONE**

27 Case No. 04-O-12334
28 Rules of Professional Conduct, rule 5-100(A)
 [Threatening Charges to Gain Advantage in Civil Suit]

29 2. Respondent wilfully violated Rules of Professional Conduct, rule 5-100(A), by
30 threatening to present criminal, administrative, or disciplinary charges to obtain an advantage in
31 a civil dispute, as follows:

32 3. At all times relevant to this Notice of Disciplinary Charges respondent
33 represented Harold and Joyce Dubay in a matter entitled *Dubay vs. Calsius*, San Francisco
34 Superior Court Case No. CUD-03-607814, unlawful detainer action.

1 4. The Dubays retained respondent to do whatever it took to remove Mr. Luke
2 Calsius from the premises known as 30 Ord Court.

3 5. Respondent provided all legal advice and legal strategy to the Dubays on how to
4 proceed against Mr. Calsius in the matter entitled *Dubay vs. Calsius*,

5 6. On or about September 15, 2003, respondent sent a letter which contained a
6 settlement offer to Luke Calsius and Ronald De Pontes, the defendants in the civil proceeding.
7 Respondent's settlement offer included the following terms, conditions and the threat against
8 Mr. Calsius:

9 "You all agree to move out of 30 Ord Court on date certain (negotiable) and certain back
10 rent will be waived. You will have ample opportunity to find other housing without an
11 eviction pending or judgment for eviction against you. The Dubays will also give you all
12 written neutral reference letters to assist you in finding other housing. All this will be
13 done quietly, amicably and out of court. **The Dubays will also dismiss the pending
14 case against Luke Calsius for declaratory relief and not expose his fraud upon the
15 S.S.I. program and his business operations at 30 Ord Court.**" (Emphasis added)

16 7. Respondent mailed her September 15, 2003, by placing it in the United States
17 Mail and said letter was received by Mr. Calsius.

18 8. Explicit in Respondent's September 15, 2003, settlement offer was a threat that
19 her clients would refrain from exposing Calsius' alleged fraud to government officials in
20 exchange for Calsius relinquishing his interest in the rental units he was renting from the
21 Dubays.

22 9. The District Attorney in the County and City of San Francisco would have
23 jurisdiction over the alleged welfare fraud charges (Penal Code 118, and 118(a) Welfare and
24 Institutions Code sections 10980) that respondent was agreeing not to expose. In addition, the
25 District Attorney's Office could have also pursued Calsius for operating a business in the County
26 and City without a license.

27 10. The City Attorney's Office in the County and City of San Francisco would have
28 jurisdiction over restitution claims for the sum of funds given to Mr. Calsius if he was not
entitled to those funds, pursuant to the SSI grant. In addition, the City Attorney's Office would
also have the ability to pursue Mr. Calsius for operating a business without obtaining the
necessary permits.

1 11. The Department of Health and Human Services (D.H.H.S.) would have
2 jurisdiction over Mr. Calsius grant, and would be able to reassess his qualifications to have a
3 grant, reduce it, and or remove him from the program.

4 12. Respondent made the threat of exposing Mr. Calsius to criminal, civil and
5 administrative investigations in order to obtain an advantage in the civil dispute entitled *Dubay*
6 *vs. Calsius*.

7 13. On or about December 22, 2003, respondent a sent letter which contained a
8 settlement offer to Charles Schaible of Cooley Godward, who was representing Luke Calsius.
9 Respondent's settlement offer was prefaced with "I urge you to set aside your "big firm"
10 arrogance, recognize Cooley Godward's lack of experience in this area of law and do what is
11 right for your client's best interest." Respondent's settlement offer included the following terms,
12 conditions and the threat against Mr. Calsius:

13 The Dubays wish to make this settlement offer to Luke Calsius in order to avoid stressful
14 and expensive litigation for all parties and tenants: He will move out of 30 Ord Court
15 (both units) on a date certain (negotiable) and certain back rent will be waived
16 (negotiable). He will have ample opportunity to find other housing without an eviction
17 pending or judgment for eviction against him. The Dubays will also give Mr. Calsius
written neutral reference letter to assist him in finding other housing and \$5,000.00 in
18 cash for his troubles and moving expenses. The Dubays will also dismiss the pending
19 case against Luke Calsius for declaratory relief and not expose his fraud upon the
20 S.S.I. program, and his business operations at 30 Ord Court." (Emphasis added)

21 14. Respondent placed her December 22, 2003 letter in the United States Mail and
22 said letter was received by Mr. Schaible.

23 15. Explicit in Respondent's December 22, 2003 settlement offer was a threat that her
24 clients would refrain from exposing Calsius' alleged fraud to government officials for SSI fraud
25 and his failure to have a business license in exchange for Calisuis relinquishing his interest in the
26 rental units he was renting from the Dubays.

27 16. The District Attorney in the County and City of San Francisco would have
28 jurisdiction over the alleged welfare fraud charges (Penal Code 118, and 118(a) Welfare and
Institutions Code sections 10980) that respondent was agreeing not to expose. In addition, the
District Attorney's Office could have also pursued Calsius for operating a business in the County
and City without a license.

1 17. The City Attorney's Office in the County and City of San Francisco would have
2 jurisdiction over restitution claims for the sum of funds given to Mr. Calsius if he was not
3 entitled to those funds, pursuant to the SSI grant. In addition, the City Attorney's Office would
4 also have the ability to pursue Mr. Calsius for operating a business without obtaining the
5 necessary permits.

6 18. The Department of Health and Human Services (D.H.H.S.) would have
7 jurisdiction over Mr. Calsius grant, and would be able to reassess his qualifications to have a
8 grant, reduce it, and or remove him from the program.

9 19. Respondent made the threat of exposing Mr. Calsius to criminal, civil and
10 administrative investigations in order to obtain an advantage in the civil dispute entitled *Dubay*
11 *vs. Calsius*.

12 20. On or about December 24, 2003, respondent a sent letter which contained a
13 settlement offer to Charles Schaible and Mr. Oplinger of Cooley Godward. Respondent's
14 settlement offer contained the following terms, conditions and threat:

15 "Here is our counteroffer (in supplement of our last settlement offer): Luke Calsius and
16 Ronald De Pontes will move out of 30 Ord Court for \$10,000.00 within 60 days; it will
17 be increased to \$11,000.00 if they both move out in 30 days. The Dubays will do what
18 they canto encourage the District Attorney's Office to dismiss its case for the People.
19 Luke Calsius and Ronald De Pontes will stay 25 yard away from the property at 30 Ord
20 Court after they vacate. All rent will be waived from June 2003 through their vacancy
21 date. The Dubays will give neutral letters of reference to future potential landlords, and
22 there will be a mutual general release between the parties. **The Dubays will refrain**
23 **from reporting Luke Calsius to the government fro SSI Fraud."** (Emphasis added)

24 21. Respondent placed her December 24, 2003 letter in the United States Mail and
25 said letter was received by Mr. Schaible and Oplinger. Respondent also transmitted her letter via
26 facsimile.

27 22. Explicit in Respondent's December 24, 2003 settlement offer was a threat that her
28 clients would refrain from exposing Calsius' alleged fraud to government officials in exchange
for Calisuis relinquishing his interest in the rental units he was renting from the Dubays.

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1 23. The District Attorney in the County and City of San Francisco would have
2 jurisdiction over the alleged welfare fraud charges (Penal Code 118, and 118(a) Welfare and
3 Institutions Code sections 10980) that respondent was agreeing not to expose.

4 24. The City Attorney's Office in the County and City of San Francisco would have
5 jurisdiction over restitution claims for the sum of funds given to Mr. Calsius if he was not
6 entitled to those funds, pursuant to the SSI grant.

7 25. The Department of Health and Human Services (D.H.H.S.) would have
8 jurisdiction over Mr. Calsius grant, and would be able to reassess his qualifications to have a
9 grant, reduce it, and or remove him from the program.

10 26. Respondent made the threat of exposing Mr. Calsius to criminal, civil and
11 administrative investigations in order to obtain an advantage in the civil dispute entitled *Dubay*
12 *vs. Calsius*.

13 27. A hearing in *Dubay vs. Calsius* was held from December 29, 2003 through
14 January 16, 2004 before the Honorable Judge Wallace Douglass. At the hearing respondent's
15 settlement offers were introduced as evidence to prove that respondent's clients retained
16 respondent to get Mr. Calsius out of the building with whatever means, inclusive of threats,
17 which could constitute violations of penal code 518, 519, 520 and 523.

18 28. On or about January 16, 2004, Judge Douglass wrote to the State Bar and
19 informed the State Bar of respondent's conduct. Judge Douglass stated that he directed her
20 attention to Rule 5-100(A) and to penal code section 523, which addresses written attempts to
21 extort.

22 29. On or about January 16, 2004, respondent filed a declaration with the court. Prior
23 to drafting her declaration respondent did not read rule 5-100(A). Respondent's declaration
24 gives a summary of her career experience, states that she is not aware of what constitutes a crime
25 and has never practiced criminal law. With respect to the violation of Rule 5-100(A)
26 Respondent's declaration states the following:

27 Paragraph 8. "On September 15, 2003, I wrote to Defendant Luke Calsius (who was
28 representing himself or September 15) on behalf of my client landlord offering to refrain
from filing an unlawful detainer action after the Three Day Notices had expired, and I

1 was on the brink of having to file a complaint. We offered to refrain from exposing his
2 fraud upon the SSI Program and his business operations at 30 Ord Court. (At that time,
3 witness Christopher Hack had not come forward with any information about Defendant's
4 drug trafficking as part of his "business operations." My client and I did not know about
5 it. We believed that defendant was operating a cash coffee business out of my client's
6 apartment without a license)."

7 Paragraph 9: "On December 22 and 24, 2003, I wrote to Defendant's attorney and
8 copied the same settlement offer that I had made to Defendant on September 15, 2003
9 (per his request) and pointed out that we believed that Defendant was defrauding the
10 welfare system by having assets, cash in the bank, and admittedly doing income-
11 producing work "under the table" (unreported taxable income) for a friend."

12 Paragraph 10: "When I made these offers of settlement, I did not intend for Defendant
13 Calsius to be charged with a crime. I thought it was a civil fraud."

14 Paragraph 11: "I believed in good faith, that such a report to S.S.I. would cause his
15 benefits to be reassessed or decreased and his purported "disability" to be scrutinized. It
16 never occurred to me that S.S.I. had the ability to disclose information to other
17 governmental agencies."

18 Paragraph 12: "I believed that, if reported, the S.S.I. program would reassess Defendant
19 Calsius' purported disability and his monetary benefits, since the evidence shows that (1)
20 Defendant claims that he is unable to work, but admitted to a San Francisco Police
21 Officer that he works out at his gym five days a week and appears to be noticeably
22 muscular and physically fit; (2) Defendant admitted that his doctor is the friend who pays
23 him under the table; Defendant has access to his stationery and may have forged his
24 signature on documents that were presented at trial."

25 Paragraph 13: "My experience with governmental benefits is limited to Section 8 housing
26 rental supplements. In my experience, when Section 8 tenant is caught violating rules
27 affecting the amount of his rent supplement, there is never a criminal charge or
28 prosecution. The governmental agency merely investigates the number of people living
in the Section 8 rental unit and investigates the true income of the household. If a tenant
is caught defrauding the system he is either banned from the program or his rent
supplement is lowered accordingly."

Paragraph 14: "I never intended to threaten Defendant Luke Calsius with criminal
charges in connection with S.S.I. He was already being prosecuted for the assault and
battery upon Harold Dubai, and the District Attorney's Office already knew about his
questionable income."

Paragraph 15: "I did not realize that such civil fraud, if true was criminal in nature or
would result in criminal penalties. I only thought such charges would affect his ability to
receive money. I also made this settlement offer in response to Defendant Calsius and
his attorney's threat to file a frivolous lawsuit (Plaintiff's Exhibit 48) against my client
for housing discrimination in order to harass my client and increase his litigation
expenses if my client did not dismiss his unlawful detainer case against Mr. Calsius."

Respondent signed her declaration under the penalty of perjury

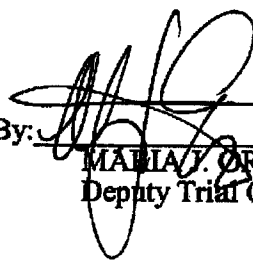
30. Respondent's statements in her declaration indicate that she was aware that
Calsius would be subject to administrative or disciplinary charges.

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31. By including a threat to expose Calsius to criminal, administrative or disciplinary charges in her settlement offers to Calsius and his attorneys of record in a civil dispute, respondent, wilfully violated rule 5-100(A) by threatening to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

Respectfully submitted,
THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

Dated: July 28, 2005

By: 
MARIA J. OROPEZA
Deputy Trial Counsel

1 **DECLARATION OF SERVICE BY CERTIFIED MAIL**
2 **RETURN RECEIPT REQUESTED - 7160 3901 9848 8169 9809**

3 **CASE NUMBER: 04-O-12334**

4 I, the undersigned, over the age of eighteen (18) years, whose business address and place of
5 employment is the State Bar of California, 180 Howard Street, Seventh Floor, San Francisco,
6 California 94105-1639, declare that I am not a party to the within action; that I am readily
7 familiar with the State Bar of California's practice for collection and processing of
8 correspondence for mailing with the United States Postal Service; that in the ordinary course of
9 the State Bar of California's practice, correspondence collected and processed by the State Bar
10 of California would be deposited with the United States Postal Service that same day; that I am
11 aware that on motion of party served, service is presumed invalid if postal cancellation date or
12 postage meter date is more than one day after date of deposit for mailing affidavit. That in
13 accordance with the practice of the State Bar of California for collection and processing of
14 mail, I deposited or placed for collection and mailing in the City and County of San Francisco,
15 on the date shown below, a true copy of the within

16 **NOTICE OF DISCIPLINARY CHARGES**

17 in a sealed envelope placed for collection and mailing as certified mail, return receipt
18 requested, Article No.: 7160 3901 9848 8169 9809, at San Francisco, on the date shown
19 below, addressed to:

20 **Brian H. Getz**
21 **Law Offices of Brian H. Getz**
22 **44 Montgomery St., Ste. 3850**
23 **San Francisco, California 94104-4823**

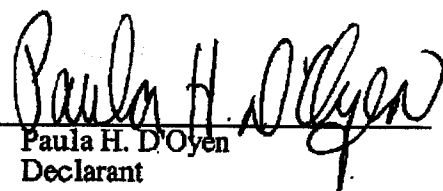
24 in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

25 N/A

26 I declare under penalty of perjury under the laws of the State of California that the foregoing is
27 true and correct. Executed at San Francisco, California, on the date shown below.

28 Dated: July 28, 2005

SIGNED:


Paula H. D'Oyen
Declarant



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST July 28, 2017

State Bar Court, State Bar of California,
Los Angeles

By *Cynthia Roth*
Clerk

CERTIFICATE OF SERVICE

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

I am a Court Specialist 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 1, 2018, I deposited a true copy of the following document(s):

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

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

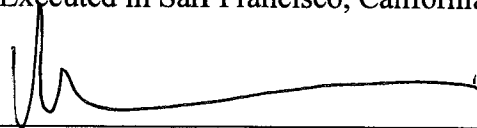
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MERRI A. BALDWIN
ROGERS JOSEPH O'DONNELL
311 CALIFORNIA ST 10TH FL
SAN FRANCISCO, CA 94104

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

Carla L. Cheung, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 1, 2018.



Vincent Au
Court Specialist
State Bar Court