

State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION				
Counsel For The State Bar Heather E. Abelson Deputy Trial Counse! 180 Howard Street San Francisco, CA 94105 (415) 538-2357	Case Number(s): 16-0-11084	JBLIC MATTER		
Bar <b># 243691</b>		FILED		
In Pro Per Respondent Elizabeth Ann Mello PO Box 13205 Coyote, CA 95013 (408) 694-3346		APR 1 2 2016 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO		
Bar # <b>244401</b> In the Matter of:	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING			
ELIZABETH ANN MELLO Bar # 244401	ACTUAL SUSPENSION			
A Member of the State Bar of California (Respondent)				

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

#### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted November 22, 2006.
- (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 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective July 1, 2015)



Actual Suspension

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
    Costs are entirely waived.

# B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1)  $\boxtimes$  **Prior** record of discipline
  - (a) X State Bar Court case # of prior case 13-O-10786. See "Facts Supporting Aggravating Circumstances" in the atachment hereto at page 8.
  - (b) Date prior discipline effective July 26, 2014. See "Facts Supporting Aggravating Circumstances" in the atachment hereto at page 8.
  - (c) Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code, section 6106. See "Facts Supporting Aggravating Circumstances" in the atachment hereto at page 8.
  - (d) Z Degree of prior discipline 30-days actual suspension, 1-year stayed suspension, 1-year probation. See "Facts Supporting Aggravating Circumstances" in the atachment hereto at page 8.
  - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) Intentional/Bad Faith/Dishonesty: Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) Misrepresentation: Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) Concealment: Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) Overreaching: Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) Uncharged Violations: Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

(7)	<b>Trust Violation:</b> 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
(10)	consequences of his or her misconduct. Candor/Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
(11)	Multiple Acts: Respondent's current misconduct evidences multiple acts of wrongdoing.
(12)	Pattern: Respondent's current misconduct demonstrates a pattern of misconduct.
(13)	Restitution: Respondent failed to make restitution.
(14)	Vulnerable Victim: The victim(s) of Respondent's misconduct was/were highly vulnerable.
(15)	No aggravating circumstances are involved.

Additional aggravating circumstances:

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

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

product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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

Additional mitigating circumstances:

Prefiling Stipulation - See "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 8.

#### **D. Discipline:**

- (1) X Stayed Suspension:
  - (a) Respondent must be suspended from the practice of law for a period of 2-years.
    - i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
    - ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
    - iii. and until Respondent does the following:
  - (b) The above-referenced suspension is stayed.
- (2)  $\boxtimes$  Probation:

Respondent must be placed on probation for a period of **2-years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3)  $\boxtimes$  Actual Suspension:
  - (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **60-days**.
    - i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

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

#### E. Additional Conditions of Probation:

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

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason:

(9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

(10) The following conditions are attached hereto and incorporated:

Substance Abuse Conditions	Law Office Management Conditions
Medical Conditions	Financial Conditions

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

(1) X Multistate Professional Responsibility Examination: Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

- (2) Rule 9.20, California Rules of Court: Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) Conditional Rule 9.20, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) Credit for Interim Suspension [conviction referral cases only]: Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) I Other Conditions: The parties have agreed that conditions E(8) and F(1) are conditional. Two conditions of probation in case no. 13-O-10786 were that respondent take and successfully complete Ethics School, and take and successfully pass the MPRE. Respondent failed to timely complete either. However, respondent is registered to attend Ethics School on April 21, 2016, and is registered to take the MPRE on August 13, 2016. If respondent successfully completes Ethics School and successfully passes the MPRE prior to the effective date of discipline in this matter, respondent will not have to complete these requirements again pursuant to this stipulation.

#### ATTACHMENT TO

#### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ELIZABETH ANN MELLO

CASE NUMBER: 16-O-11084

#### 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-11084 (State Bar Investigation)

FACTS:

1. On February 4, 2014, respondent executed a Stipulation re Facts, Conclusions of Law and Disposition in case no. 13-O-10786. Respondent stipulated to 30-days actual suspension, 1-year stayed suspension and 1-year probation for violating Business and Professions Code section 6106 by falsely stating that she had completed the requisite MCLE courses for the compliance period of February 1, 2009 through January 31, 2012.

2. On March 5, 2014, the Hearing Department issued an order approving the Stipulation.

3. On June 26, 2014, the Supreme Court issued Order No. S218154 adopting the Hearing Department's recommendations. The Supreme Court's Order became effective on July 26, 2014.

4. On July 18, 2014, the Office of Probation sent a letter to respondent detailing the conditions of her probation, including the requirement that respondent file timely quarterly reports and provide proof of successful completion of Ethics School by July 26, 2015. Respondent received this letter.

5. On April 13, 2015, respondent untimely filed her quarterly report which was due on April 10, 2015.

6. On July 2, 2015, respondent filed a Motion for Relief in State Bar Court requesting, among other things, an extension of time to attend and successfully complete Ethics School.

7. On July 8, 2015, the Office of Probation filed an opposition to respondent's Motion.

8. On July 20, 2015, respondent filed a reply in support of her Motion.

9. On July 30, 2015, the Hearing Department issued an order granting respondent's Motion. The Court gave respondent until December 31, 2015 to provide proof to Office of Probation of successful completion of Ethics School.

10. Respondent failed to provide proof of successful completion of Ethics School by December 31, 2015.

11. On February 9, 2016, the Office of Probation sent a letter to respondent stating that respondent was not in compliance with the terms of her probation because she had not provided proof of successful completion of Ethics School by December 31, 2015. Respondent received this letter.

12. To date, respondent has not taken and completed Ethics School, or provided proof to the Office of Probation of successful completion of Ethics School.

#### CONCLUSIONS OF LAW:

13. By failing to provide proof of successful completion of Ethics School by the deadline of December 31, 2015, and failing to file one quarterly report by its due date of April 10, 2015, respondent failed to comply with conditions attached to respondent's disciplinary probation in State Bar Case No. 13-O-10786, in willful violation of Business and Professions Code, section 6068(k).

#### FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a single prior record of discipline. In case no. 13-O-10786, respondent received 30-days actual suspension, 1-year stayed suspension and 1-year probation, for violating Business and Professions Code section 6106. Respondent falsely declared that she had completed all MCLE requirements for the compliance period of February 1, 2009 through January 31, 2012. Respondent's prior discipline became effective on July 26, 2014. Respondent's prior record of discipline constitutes and aggravating circumstance pursuant to Standard 1.5(a).

#### FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

**Prefiling Stipulation:** Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

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

Although not binding, the Standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (In re Silverton (2005) 36 Cal.4th 81, 92, quoting In re Brown (1995) 12 Cal.4th 205, 220 and In re Young (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (In re Naney (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from

that set forth in the applicable Standards should clearly explain the reasons for the deviation. (Blair v. State Bar (1989) 49 Cal.3d 762, 776, fn. 5.)

Here, Standard 1.8(a) applies because respondent has a single prior imposition of discipline. Standard 1.8(a) provides that "[i]f a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline has so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

Pursuant to Standard 1.8(a), 60-days actual suspension is warranted in this matter. A level of discipline greater than 30-days actual suspension is warranted because respondent's prior discipline is not remote in time, and involved serious misconduct (i.e. moral turpitude). An actual suspension longer than 60-days is not warranted because respondent substantially complied with the terms of her probation. Specifically, respondent timely contacted the probation deputy, timely participated in the required meeting, and timely filed all but one quarterly report. And, the one quarterly report that respondent did not timely file, was filed only a few days late. Respondent's misconduct is also not subject to any aggravating circumstances beyond her prior record of discipline. Based on these facts, 60-days actual suspension is appropriate.

In the Matter of Esau (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131, also supports 60-days actual suspension in this matter. In Esau, the Review Department disbarred respondent for a single violation of Business and Professions Code, section 6103. Id. at 140. The Review Department stated that this "matter illustrates the serious consequences of an attorney's extended inattention to State Bar disciplinary proceedings and his repeated disregard of Supreme Court orders." Id. at 133. Respondent's prior disciplinary actions included a private reproval with conditions, and four subsequent disciplinary proceedings involving violations of those conditions, including repeatedly failing to submit quarterly reports. Id. at 134. The Review Department noted that respondent's first disciplinary proceeding did not result in "serious discipline" and that his failure to comply with his probation conditions did not result in client harm. Id. at 140. Notwithstanding these facts, the Review Department recommended disbarment because "[a]ttorneys who engage in this extended practice of inattention to official actions, as respondent did, should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them." Id.

Here, respondent's conduct is similar to, yet significantly less egregious than, respondent Esau's misconduct. Although charged as a violation of section 6068(k), as opposed to a violation of section 6103, respondent's current misconduct demonstrates an inability or unwillingness to comply with a Supreme Court order, as respondent Esau's misconduct did. However, respondent does not have the same history of failing to comply with Supreme Court and State Bar Court orders as respondent Esau did. Indeed, respondent substantially complied with the Supreme Court order in this case. Therefore, respondent's misconduct warrants a discipline substantially less than disbarment.

Balancing all of the appropriate factors, 60-days actual suspension is consistent with the Standards and applicable caselaw, and is appropriate taking into consideration the facts and circumstances of this case.

#### COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of March 22, 2016, the prosecution costs in this matter are \$ 3,066. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

### **EXCLUSION FROM MCLE CREDIT**

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

In the Matter of:	Case number(s):
ELIZABETH ANN MELLO	16-O-11084

#### 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.

3 30 Elizabeth Ann Mello Respondent's Signature Print Name

Date 6

Deputy Trial Counsel's Signature

**Respondent's Counsel Signature** 

Print Name

Heather E. Abelson Print Name

(Effective July 1, 2015)

In the Matter of:	Case Number(s):
ELIZABETH ANN MELLO	16-O-11084

#### ACTUAL SUSPENSION ORDER

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

The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.

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

All Hearing dates are vacated.

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

ril 12,2016 Date Judge of the State Bar Court

#### **CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On April 12, 2016, 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:

ELIZABETH A. MELLO PO BOX 13205 COYOTE, CA 95013

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

Heather E. Abelson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 12, 2016.

weille Come Sauretta Cramer

Case Administrator State Bar Court