
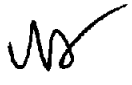


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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Johnna G. Sack Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415)538-2357 Bar # 270534	Case Number(s): 16-O-14992 kwiktag® 226 154 858 	For Court use only PUBLIC MATTER FILED JAN 12 2018  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Esther M. Kim 14073 Main Street, Ste 109 Hesperia, CA 92345 Bar # 271155	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Esther M. Kim Bar # 271155 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 **October 28, 2010**.
- (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."

B

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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. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **Three billing cycles immediately following the effective date of the Supreme Court Order in this matter.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

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

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case **15-O-11666-PEM (See page 8 and Exhibit 1.)**
 - (b) Date prior discipline effective **January 6, 2017.**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rules 3-110(A), 3-700(A)(2), and 3-700(D)(1); Business and Professions Code, sections 6103, 6068(i), 6068 (j) and 6068(m).**
 - (d) Degree of prior discipline **30-day actual suspension.**
 - (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.

(Do not write above this line.)

- (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. (See page 8.)
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (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:

Pre-filing Stipulation. (See page 8.)

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and 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) 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:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:** Respondent was ordered to provide proof of attendance of Ethics School and proof of passage of the MPRE in case no. 15-O-11666-PEM. Discipline became effective on January 6, 2017, and her proof of passage of the MPRE and proof of attendance of Ethics School are due by January 6, 2018. Respondent's compliance in that case will satisfy the Ethics School and MPRE requirements in this case.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ESTHER M. KIM

CASE NUMBERS: 16-O-14992

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 16-O-14992 (Complainant: Vivian Greer)

FACTS:

1. On May 18, 2014, Vivian Greer retained respondent to represent her in a personal injury matter and sent respondent the signed fee agreement. She also sent respondent documents she received from her insurance company, Mt. Hawley Insurance Company, including their recent settlement offer. This was the last contact that Ms. Greer had with respondent until August 2015.
2. On June 11, 2014, respondent notified Mt. Hawley Insurance Company that she was representing Ms. Greer on her personal injury claim. Subsequently, Michelle May, a Claim Examiner with Mt. Hawley Insurance Company, attempted to contact respondent about Ms. Greer's personal injury claim by fax on June 16, 2014 and July 31, 2014, and then by mail on September 17, 2014. Respondent never responded to Ms. May's correspondence. On September 15, 2014, Ms. May called respondent's office and received a message that the phone number was no longer in service.
3. The statute of limitations for Ms. Greer's personal injury claim expired on April 1, 2015. Between May 2014 and March 2015, prior to the expiring of the statute of limitations, respondent never contacted the insurance company to negotiate a settlement on behalf of Ms. Greer. During this time, respondent did not communicate with Ms. Greer or take any steps to protect her claim. Instead, respondent let the statute of limitations on Ms. Greer's personal injury claim lapse.
4. On August 15, 2015, Ms. Greer received a letter from respondent stating, "Due to extreme circumstances, our offices are being closed for good." Enclosed with the letter were the insurance documents that Ms. Greer sent respondent on May 18, 2014. Ms. Greer was unable to recover any damages for her injuries because respondent allowed her personal injury claim to lapse.

CONCLUSIONS OF LAW:

5. By failing to respond to communications from the insurance company, failing to negotiate a settlement for her client, and failing to file a lawsuit prior to the statute of limitations in order to preserve her client's claim, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

6. By failing to inform her client of the statute of limitations date on her claim and failing to provide her client with any status updates or communications regarding her case, respondent willfully failed to provide reasonable status updates in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

7. By failing to take any action on behalf of Ms. Greer after being hired, and by constructively terminating her employment thereafter without taking any steps to protect the interests of Ms. Greer, respondent failed upon termination to take reasonable steps to avoid reasonably foreseeable prejudice to respondent's client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): In case number 15-O-11666-PEM, effective January 6, 2017. Respondent stipulated to a 30-day actual suspension for failing to perform, failing to communicate, disobeying a court order, failing upon termination to take reasonable steps to avoid reasonably foreseeable prejudice to respondent's clients, failing to release the clients' file, failing to respond to the State Bar's investigation, and failing to update her membership records within 30-days of closing her law office in Santa Clara.

Significant Harm to the Client (Std. 1.5(j)): Ms. Greer lost the ability to recover any damages related to her personal injury claim because respondent allowed the statute of limitations on her case to lapse. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [loss of case constitutes significant harm, even if the amount of damages would have been relatively modest].)

MITIGATING CIRCUMSTANCES.

Pre-filing Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to the filing of charges in the above referenced disciplinary matter, thereby saving the 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 "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re 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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached.

(Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

The applicable Standard for performance, communication, or withdrawal violations is 2.7(b), which states: "Suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time." Standard 1.8(a) also applies because respondent has a prior record of discipline where she received a 30-day actual suspension. Standard 1.8(a) states, "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 that imposing greater discipline would be manifestly unjust.

Respondent has a prior record of discipline for misconduct that is similar to her current misconduct. Respondent's prior misconduct and current misconduct both occurred between June 2014 and August 2015. In *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, the court held that when considering misconduct that occurred during the same time period as prior misconduct, the aggravating impact of the prior disciplinary matter is diminished. (See *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. at p.171; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.) The court in *Sklar* found that the attorney's prior and present misconduct should be viewed together, as if brought in a single disciplinary proceeding. Therefore, in determining the appropriate level of discipline in respondent's case, her current misconduct and previous misconduct should be considered together.

The range of discipline for cases in which an attorney with no prior record of discipline has been found culpable of abandoning a single client matter is between a stayed suspension and a 90-day actual suspension. (See *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 45-46; *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 466; *In the Matter of Nunez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 196, 206.) Given respondent abandoned two client matters, her misconduct warrants discipline on the higher end of the range.

Case law is instructive. In *Harris v. State Bar* (1990) 51 Cal.3d 1082, the attorney received a 90-day actual suspension for abandoning her client in a wrongful death suit and allowing the statute of limitations to lapse without properly filing and serving a complaint. The attorney in *Harris* failed to preserve testimony, engage in discovery, or vigorously litigate the wrongful death action. The attorney received mitigation for suffering from typhoid fever prior to and during some of the misconduct. The court found the attorney's lack of remorse and the significant harm to her client as factors in aggravation.

In *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, the attorney received a 90-day actual suspension for two serious instances of reckless failure to perform legal services. The attorney failed to perform by not appearing at a status conference in one client matter and, in the other client matter, the attorney failed to communicate with his client, failed to perform legal services with

competence, and violated a court order to comply with discovery. In both client matters, the civil lawsuits that the clients were pursuing were dismissed because of the attorney's misconduct. The court found no factors in mitigation.

In *King v. State Bar* (1990) 52 Cal.3d 307, the Supreme Court imposed a 90-day actual suspension. The attorney failed to perform legal services in two client matters. In one client matter, the attorney failed to serve the complaint and summons on the defendant, failed to initiate discovery, and failed to obtain his own witnesses' records, which resulted in the court dismissing his client's case. The client received a malpractice judgment for \$84,000 against the attorney; however, the client was unable to recover due to the attorney's lack of insurance and financial issues. In the other client matter, the attorney was hired to close probate after a prior attorney failed to do so. During the three years he was counsel on the matter, the attorney failed to communicate with his client or perform any legal services. The court found mitigation for no prior record of discipline.

Respondent failed to perform in two client matters and caused significant harm to Ms. Greer when she allowed the statute of limitations on her personal injury claim to lapse without properly filing and serving a complaint. Based on the forgoing, if respondent's past and current misconduct were brought together in a single disciplinary proceeding, then a 90-day actual suspension would be the appropriate level of discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 20, 2017, the prosecution costs in this matter are \$3,215. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT


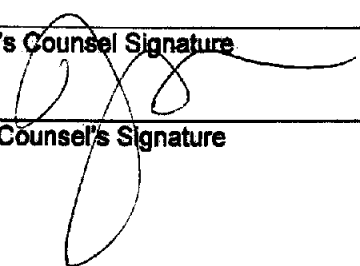
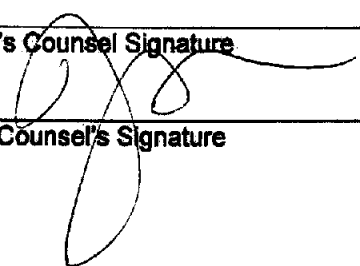
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: Esther M. Kim	Case number(s): 16-O-14992
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SIGNATURE OF THE PARTIES

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

<u>12/21/18</u> Date	 Respondent's Signature	<u>Esther M. Kim</u> Print Name
<u>12/27/18</u> Date	 Respondent's Counsel Signature	<u>Johnna G. Sack</u> Print Name
<u>12/27/18</u> Date	 Senior Trial Counsel's Signature	<u>Johnna G. Sack</u> Print Name

(Do not write above this line.)

In the Matter of:
ESTHER M. KIM

Case Number(s):
16-O-14992-LMA

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.

On page 5 of the Stipulation, at paragraph E. (8):

- 1) the "X" in the box is deleted to remove the Ethics School requirement;
- 2) an "X" is inserted into the box next to "No Ethics School recommended;" and
- 3) the following is inserted after "No Ethics School recommended. Reason": "It is not recommended that respondent be ordered to attend the State Bar's Ethics School, as she has recently been ordered to do so on December 7, 2016, by the Supreme Court in case No. S237731."

On page 6 of the Stipulation, at paragraph F. (1):

- 1) the "X" in the box is deleted to remove the MPRE requirement;
- 2) an "X" is inserted into the box next to "No MPRE recommended;" and
- 3) the following is inserted after "No MPRE recommended. Reason": "It is not recommended that respondent be ordered to take and pass the MPRE, as she has recently been ordered to do so on December 7, 2016, by the Supreme Court in case No. S237731."

On page 6 of the Stipulation, at paragraph F. (2), an "X" is inserted into the box to include the requirement that respondent comply with California Rules of Court, rule 9.20.

On page 6 of the Stipulation, at paragraph F. (5), the "X" in the box and all of the text following "Other Conditions" are deleted to remove the explanation regarding compliance with Ethics School and the MPRE.

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.)**

(Effective July 1, 2015)

(Do not write above this line.)

Jan 12, 2018

Date



LUCY ARMENDARIZ
Judge of the State Bar Court

EXHIBIT 1

S237731

IN THE SUPREME COURT OF CALIFORNIA

En Banc

**SUPREME COURT
FILED**

DEC 7 2016

In re ESTHER M. KIM on Discipline

Jorge Navarrete Clerk

Deputy

The court orders that Esther M. Kim, State Bar Number 271155, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and she is placed on probation for two years subject to the following conditions:

1. Esther M. Kim is suspended from the practice of law for the first 30 days of probation;
2. Esther M. Kim must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on August 15, 2016; and
3. At the expiration of the period of probation, if Esther M. Kim has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Esther M. Kim must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs are 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. One-third of the costs must be paid with her membership fees for each of the years 2018, 2019, and 2020. If Esther M. Kim 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.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

DEC 07 2016

____ day of _____ 20____

Month


By: _____

Deputy

CANTIL-SAKAUYE

Chief Justice

(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Robert A. Henderson Supervising Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2385 Bar # 173205	Case Number(s): 15-O-11666-PEM	For Court use only PUBLIC MATTER FILED  AUG 15 2016 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jonathan I. Arons Law Office of Jonathan I. Arons 100 Bush St., Suite 918 San Francisco, CA 94104 (415) 957-1818 Bar # 111257	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: ESTHER M. KIM Bar # 271165 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 **October 28, 2010**.
- (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."

(Do not write above this line.)

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

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

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **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.

(Do not write above this line.)

- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment to Stipulation at p. 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:

C. Mitigating Circumstances [see standards 1.2(l) & 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

(Do not write above this line.)

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:

Pre-trial Stipulation - See Attachment to Stipulation at p. 9.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one year.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of 30 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.

(Do not write above this line.)

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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

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

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

(Do not write above this line.)

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

- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ESTHER M. KIM

CASE NUMBER: 15-O-11666-LMA

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. 15-O-11666 (Complainant: Harjinder Pal and Meena Kumari)

FACTS:

1. In 2013, Harjinder Pal ("Pal") and Meena Kumari ("Kumari") hired respondent to represent them as plaintiffs in a matter involving an automobile accident.
2. Pal and Kumari received an undated contract that had not been signed by respondent.
3. On November 18, 2013, respondent spoke with Michael Katz the adjuster for AAA Insurance ("AAA"). In the conversation there was an offer of settlement for Kumari.
4. On November 22, 2013, a written offer of settlement was made by AAA of \$16,000 for Pal and a memorialization of a settlement of \$1,200 for Kumari. Follow-up letters on the offer to settle were sent by AAA on January 8, 2014 and June 4, 2014. Although respondent verbally confirmed the settlement of Kumari's claim, she never provided the signed release. Although respondent received the letters, she did not provide AAA with a response to any of the letters.
5. Respondent did not inform Pal and Kumari of the settlement offers by AAA, but respondent's brother did inform Pal of the offer months after the fact.
6. On July 17, 2014, Pal emailed respondent expressing concern about a lack of communication. The email referenced "many" voicemails that had been left for respondent without a response.
7. On September 4, 2014, and November 12, 2014, Pal and Kumari contacted the State Bar complaining about respondent's lack of communication.
8. On December 26, 2014, respondent filed *Pal v. Mead*, Santa Clara County Superior Court case no. 114CV274965. Respondent failed to serve the defendant. The initial Case Management Conference was set for April 21, 2015. Respondent ceased communicating with Pal and Kumari subsequent to filing and thereby constructively terminated her employment. Subsequent to the filing, respondent did not take any steps to protect the interests of Pal and Kumari, including failing to notify Pal and Kumari that she would no longer be working on the matter.

9. On March 13, 2015, the County of Santa Clara filed a Notice of Lien in the matter, which was served on respondent. Respondent did not notify Pal and Kumari of the lien.

10. On April 21, 2015, a Case Management Conference was held in the matter. Respondent failed to appear. The court set an Order to Show Cause hearing for June 25, 2015 re: failure to appear and serve the defendant. Respondent received the order, but did not inform Pal and Kumari.

11. In May 2015, respondent vacated her office in Santa Clara. Respondent did not change her official membership address until February 2016. Respondent did not provide Pal and Kumari new contact information.

12. On June 25, 2015, respondent failed to appear and the matter was continued to August 27, 2015. Respondent received notice of the continuance, but did not inform Pal and Kumari.

13. In August 2015, Pal and Kumari hired Matthew Webb ("Webb") to take over the matter.

14. On August 13, 2015, Pal and Kumari signed a substitution of attorney form, which was also signed by successor counsel Webb. Although Webb attempted to get respondent to sign the substitution of attorney, he was unsuccessful. Webb was forced to file an Ex Parte Application to Remove respondent as counsel.

15. On August 27, 2015, respondent failed to appear and the matter was continued to December 3, 2015. Thereafter, Webb successfully entered the representation of Pal and Kumari. Thereafter, respondent failed to communicate with successor counsel and did not turn over the file.

16. On December 9, 2014, May 13, 2015 and July 17, 2015, letters were sent to respondent by a State Bar investigator requesting a substantive written response to the complaints of Pal and Kumari. Respondent received these letters, but failed to provide a substantive response.

CONCLUSIONS OF LAW:

17. By failing to respond to settlement offers made by AAA Insurance, failing to serve the defendant after filing the lawsuit, failing to appear at the Case Management Conference and by failing to appear at the OSC set for June 25, 2015 and continued to August 27, 2015, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By failing to respond promptly to the email and numerous voicemails of Pal requesting a status update, respondent willfully failed to provide reasonable status updates in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

19. By failing to inform Pal and Kumari that AAA had made an offer of settlement, that AAA had not been served the complaint, that the County of Santa Clara had asserted a lien, that respondent failed to appear at the Case Management Conference and that an Order to Show Cause re: Dismissal had been filed, respondent willfully failed to keep a client informed of significant developments in a matter in which respondent had agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

20. By failing to attend the April 21, 2015, Case Management Conference as ordered on December 26, 2014, and by failing to appear at the Order to Show Cause hearing set for June 25, 2015 and continued to August 27, 2015, as ordered on April 21, 2015, respondent willfully disobeyed an order of the court, requiring respondent to do or forbear an act connected with her profession, which respondent ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

21. By failing to take any action on behalf of Pal and Kumari after the filing of December 26, 2014, and by constructively terminating her employment thereafter without taking any steps to protect the interests of Pal and Kumari, respondent failed upon termination to take reasonable steps to avoid reasonably foreseeable prejudice to respondent's clients, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

22. By failing to release the client file to successor counsel, respondent failed to promptly release the client file after termination of employment, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

23. By failing to respond to the State Bar investigator's letters of December 9, 2014, May 13, 2015 and July 17, 2015, respondent willfully violated Business and Professions Code, section 6068(i).

24. By failing to update her official membership records address within 30-days of closing her Santa Clara office in May 2015, respondent willfully violated Business and Professions Code, section 6068(j).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent has committed eight violations of the Rules of Professional Conduct and Business and Professions Code, which constitute multiple-acts of misconduct.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

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 Spaitth* (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, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the

courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re 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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, respondent's professional misconduct is in a single client matter. The applicable Standard is 2.12 which states:

- (a) 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).

Case law supports a suspension. 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, in a single client matter, failed to perform in criminal appellate and habeas corpus proceedings, failed to obey court orders and failed to report sanctions. 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.

Unlike *Riordan*, respondent has the single mitigating factor of a pre-trial stipulation. Respondent as did *Riordan*, failed to obey a court order, failed to perform and has other acts of misconduct. Respondent did not return the client file or provide a substantive response to the State Bar, so a higher level of discipline is appropriate. However, as the misconduct is limited to a single client matter, discipline on the low end of the Standard is appropriate. On balance a 30 day actual suspension will follow the applicable Standard and is adequate to protect the profession and the public.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of July 11, 2016, the prosecution costs in this matter are \$5,680. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT



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

(Do not write above this line.)

In the Matter of: ESTHER M. KIM	Case number(s): 15-O-11666-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 Facts, Conclusions of Law, and Disposition.

<u>7/4/2016</u> Date	 Respondent's Signature	<u>Esther M. Kim</u> Print Name
<u>August 9, 2016</u> Date	 Respondent's Counsel Signature	<u>Jonathan I. Arons</u> Print Name
<u>8/10/2016</u> Date	<u>Sherrill B. McVetcher</u> Deputy Trial Counsel's Signature Sr.	<u>Sherrill B. McVetcher</u> Robert A. Henderson Print Name

(Do not write above this line.)

In the Matter of: ESTHER M. KIM	Case Number(s): 15-O-11666-PEM
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ACTUAL SUSPENSION ORDER

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

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

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

Date

Aug. 15, 2016


LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 15, 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:

JONATHAN IRWIN ARONS
LAW OFC JONATHAN I ARONS
100 BUSH ST STE 918
SAN FRANCISCO, CA 94104

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

SHERRIE B. McLETCHE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 15, 2016.



Bernadette Molina
Case Administrator
State Bar Court

**PUBLIC MATTER
FILED**

DEC 01 2015

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

1 STATE BAR OF CALIFORNIA
2 OFFICE OF CHIEF TRIAL COUNSEL
3 JAYNE KIM, No. 174614
4 CHIEF TRIAL COUNSEL
5 JOSEPH R. CARLUCCI, No. 172309
6 DEPUTY CHIEF TRIAL COUNSEL
7 GREGORY P. DRESSER, No. 136532
8 ASSISTANT CHIEF TRIAL COUNSEL
9 ROBERT A. HENDERSON, No. 173205
10 SUPERVISING SENIOR TRIAL COUNSEL
11 180 Howard Street
12 San Francisco, California 94105-1639
13 Telephone: (415) 538-2385

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

12 In the Matter of:) Case No.: 15-O-11666
13 ESTHER M. KIM,)
14 No. 271155,) NOTICE OF DISCIPLINARY CHARGES
15 A Member of the State Bar.)

NOTICE - FAILURE TO RESPOND!

17 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
18 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
19 **THE STATE BAR COURT TRIAL:**

- 19 (1) **YOUR DEFAULT WILL BE ENTERED;**
20 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
21 **WILL NOT BE PERMITTED TO PRACTICE LAW;**
22 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
23 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**
24 **AND THE DEFAULT IS SET ASIDE, AND;**
25 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
26 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
27 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**
28 **ORDER RECOMMENDING YOUR DISBARMENT WITHOUT**
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

The State Bar of California alleges:

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JURISDICTION

1. Esther M. Kim ("respondent") was admitted to the practice of law in the State of California on October 28, 2010, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 15-O-11666
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

2. In or about 2013, Harjinder Pal ("Pal") and Meena Kumari ("Kumari") employed respondent to perform legal services, namely to represent them as plaintiffs in a matter involving a December 27, 2012 automobile accident with Dale Mead, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by the following:

- A) failing to respond to settlement offers made by AAA Insurance on or about November 22, 2013 and retransmitted on or about January 8, 2014 and or about June 4, 2014;
- B) failing to serve the defendant after filing the lawsuit on or about December 26, 2014;
- C) failing to appear at the Case Management Conference on or about April 21, 2015;
- D) failing to appear at the OSC hearing set for on or about June 25, 2015; and,
- E) failing to appear at the OSC hearing set for on or about August 27, 2015.

COUNT TWO

Case No. 15-O-11666
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

3. Respondent failed to respond promptly to multiple telephonic and email reasonable status inquiries made by respondent's clients, Harjinder Pal ("Pal") and Meena Kumari ("Kumari"), between in or about April 2014 through in or about August 18, 2014, that Respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

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COUNT THREE
Case No. 15-O-11666
Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Development]

4. Respondent failed to keep respondent's clients, Harjinder Pal ("Pal") and Meena Kumari ("Kumari"), reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m), by failing to inform the client of the following:

- A) That AAA Insurance made an offer of settlement on or about November 22, 2013 and retransmitted on or about January 8, 2014 and or about June 4, 2014;
- B) That respondent failed to serve the defendant after filing the lawsuit on or about December 26, 2014;
- C) That respondent failed to appear at the Case Management Conference on or about April 21, 2015;
- D) That an Order to Show Cause re: dismissal was set for hearing on or about June 25, 2015;
- E) That respondent failed to appear at the Order to Show Cause hearing on or about June 25, 2015;
- F) That an Order to Show Cause re: dismissal was set for hearing on or about August 27, 2015;
- G) That respondent failed to appear at the Order to Show Cause hearing on or about August 27, 2015; and,
- H) That an Order to Show Cause re: dismissal was set for hearing on or about December 3, 2015.

COUNT FOUR
Case No. 15-O-11666
Business and Professions Code, section 6103
[Failure to Obey a Court Order]

5. Respondent disobeyed or violated an order of the court, requiring respondent to do or forbear an act connected with or in the course of respondent's profession, which respondent ought in good faith to do or forbear by failing to comply with the:

1 (A) December 26, 2014 Case Management Conference ("CMC") order setting a CMC
2 hearing, at which respondent was to appear, for on or about April 21, 2015,

3 (B) April 21, 2015 CMC order setting an Order to Show Cause ("OSC") hearing, at
4 which respondent was ordered to appear, for failure to appear and failure to serve
5 defendant and also advising that failure to appear may result in case being dismissed set
6 for June 25, 2015;

7 (C) June 25, 2015 OSC order setting an OSC re: why case should not be dismissed for
8 failure to appear at the June 25, 2015 OSC hearing and failure to serve defendant set for
9 August 27, 2015

10 in *Pal v. Mead*, Santa Clara County Superior Court, case no. 1-14-CV-274965 in willful
11 violation of Business and Professions Code, section 6103.

12 COUNT FIVE

13 Case No. 15-O-11666

14 Rules of Professional Conduct, rule 3-700(A)(2)

[Improper Withdrawal from Employment]

15 6. Respondent failed, upon termination of employment, to take reasonable steps to avoid
16 reasonably foreseeable prejudice to respondent's clients, Harjinder Pal ("Pal") and Meena
17 Kumari ("Kumari"), by constructively terminating respondent's employment on or about
18 December 26, 2014, by failing to take any action on the client's behalf after filing filed *Pal v.*
19 *Mead*, Santa Clara County Superior Court case no. 114CV274965 on December 26, 2014, and
20 thereafter failing to inform the client that respondent was withdrawing from employment, in
21 willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

22 COUNT SIX

23 Case No. 15-O-11666

24 Rules of Professional Conduct, rule 3-700(D)(1)

[Failure to Release File]

25 7. Respondent failed to release promptly, after termination of Respondent's employment
26 on or about December 26, 2014, to respondent's clients, Harjinder Pal ("Pal") and Meena
27 Kumari ("Kumari"), all of the client's papers and property following the client's request for the
28

1 client's file in or about August 2015, in willful violation of Rules of Professional Conduct, rule
2 3-700(D)(1).

3 **COUNT SEVEN**

Case No. 15-O-11666

4 Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

5 8. Respondent failed to cooperate and participate in a disciplinary investigation pending
6 against respondent by failing to provide a substantive response to the State Bar's letters of
7 December 9, 2014, May 13, 2015 and July 17, 2015, which respondent received, that requested
8 respondent's response to the allegations of misconduct being investigated in case no. 15-O-
9 11666, in willful violation of Business and Professions Code, section 6068(i).

10 **COUNT EIGHT**

Case No. 15-O-11666

11 Business and Professions Code, section 6068(j)
12 [Failure to Update Membership Address]

13 9. In or about May 2015, respondent vacated respondent's office at the address
14 maintained on the official membership records of the State Bar and thereafter failed to comply
15 with the requirements of Business and Professions Code section 6002.1, by failing to notify the
16 State Bar of the change in respondent's address within 30 days, in willful violation of Business
17 and Professions Code, section 6068(j).

18 **NOTICE - INACTIVE ENROLLMENT!**

19 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
20 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
21 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
22 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
23 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
24 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
25 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
26 RECOMMENDED BY THE COURT.**

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NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: December 1, 2015

By: 
Robert A. Henderson
Supervising Senior Trial Counsel

DECLARATION OF SERVICE
BY CERTIFIED AND REGULAR MAIL

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CASE NO.: 15-O-11666

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

NOTICE OF DISCIPLINARY CHARGES

in a sealed envelope placed for collection and mailing as *certified mail, return receipt requested*, and in an additional sealed envelope as *regular mail*, at San Francisco, on the date shown below, addressed to:

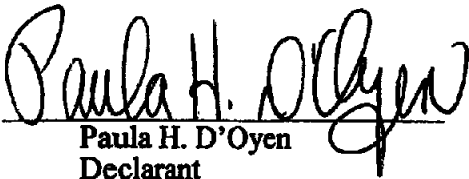
Article No.: 9414 7266 9904 2042 4861 68
Esther M. Kim
3052 El Camino RI
Santa Clara, CA 95051

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

N/A

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

DATED: December 1, 2015

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 25, 2017

State Bar Court, State Bar of California,
Los Angeles

By Elizabeth Alvarez
Clerk

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 January 12, 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:

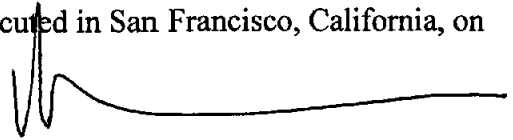
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ESTHER M. KIM
8558 OJAI AVE
HESPERIA, CA 92344 - 3803

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

Johnna G. Sack, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 12, 2018.



Vincent Au
Case Administrator
State Bar Court