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State Bar Court of California  
Hearing Department  
Los Angeles  
DISBARMENT

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<p>Counsel For The State Bar</p> <p><b>Desiree Fairly</b> Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1038</p> <p>Bar # 307991</p>	<p>Case Number(s): 16-O-16571-DFM</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>MK</i> <b>MAR 23 2018</b> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p><b>Kathleen Margaret FitzGerald</b> 625 The City Drive South, Suite 260 Orange, CA 92868 (714) 940-0117</p> <p>Bar # 145252</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p><b>DISBARMENT</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>KATHLEEN MARGARET FITZGERALD</b></p> <p>Bar # 145252</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 13, 1989**.
- (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 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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs to be awarded to the State Bar.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**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 **06-H-12126 et. al. See page 8 and Exhibit 1, 32 pages, which the parties stipulate is an authentic copy.**
  - (b)  Date prior discipline effective **June 25, 2011**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rules 1-110, 4-200(A), 3-110(A), 3-700(D)(1)/ Business and Professions Code, sections 6068(m), 6068(i), 6068(a) by violating section 6125 and 6126**
  - (d)  Degree of prior discipline **90 days actual suspension, two-year stayed suspension, three-year probation**
  - (e)  If respondent has two or more incidents of prior discipline, use space provided below:  
  
**State Bar Court case # 04-O-14672, effective July 13, 2005, Business and Professions Code, section 6068(a) by violating sections 6125 and 6126, public reproof. See page 8 and Exhibit 2, 12 pages, which the parties stipulate is an authentic copy.**  
  
**State Bar Court case # 03-O-02533, effective June 30, 2004, Business and Professions Code, section 6068(i), public reproof. See page 8 and Exhibit 3, 10 pages, which the parties stipulate is an authentic copy.**  
  
**State Bar Court case # 02-O-12629 et. all., effective September 18, 2003, Rules of Professional Conduct, rules 3-700(D)(2), 4-100(B)(3), 3-110(A), Business and Professions Code, section 6068(m), public reproof. See page 8 and Exhibit 4, 10 pages, which the parties stipulate is an authentic copy.**
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

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- (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)  **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)  **Lack of Candor/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.

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- (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 subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

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**D. Discipline: Disbarment.**

**E. Additional Requirements:**

- (1) **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.
- (2)  **Restitution:** Respondent must make restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_. If the Client Security Fund has reimbursed \_\_\_\_\_ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than \_\_\_\_\_ days from the effective date of the Supreme Court order in this case.
- (3)  **Other:**



9. On May 18, 2016, respondent received an email from Mr. Claiborne requesting a case status update. Respondent did not reply.

10. On June 1, 2016, respondent received an email from Mr. Claiborne again requesting a status update. Respondent did not reply.

11. On July 21, 2016, respondent received an email from Mr. Claiborne informing respondent that he still had not received any word from the court regarding the adoption petition and requesting that respondent provide a status update. Again, respondent did not respond.

12. On September 5, 2016, after Mr. Claiborne learned from the Superior Court clerk that no case had been filed in the matter, respondent received a voice message from Mr. Claiborne informing her that he would file a complaint with the State Bar if he did not receive a response. Respondent failed to respond.

13. Respondent failed to file the Claiborne step-parent adoption petition, and therefore did not earn the \$2,500 in advanced fees paid.

14. On November 2, 2016, the attorney-client relationship was terminated.

15. Respondent did not provide a refund to Mr. Claiborne until January 25, 2017.

#### CONCLUSIONS OF LAW:

16. By failing to file the step-parent adoption petition for the Claiborne family, respondent intentionally, recklessly or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

17. By failing to respond to three emails and one telephone call between May 18, 2016 and September 5, 2016, respondent failed to respond promptly to reasonable status inquiries made by her client, Joseph Claiborne, in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

18. By accepting \$3,220 from a non-client, Lesleigh Claiborne, as compensation for representing Mr. and Mrs. Claiborne, without obtaining the clients' informed written consent to receive such compensation, respondent willfully violated of the Rules of Professional Conduct, rule 3-310(F).

19. By delaying until January 25, 2017 to return the unearned fees to the Claiborne family, respondent failed to promptly return, upon respondent's termination of employment on November 2, 2016, any part of the \$2,500 fee to the clients, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

20. By depositing \$720 in advance court filing fees for the Claiborne adoption petition into respondent's general account, respondent failed to deposit funds held for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation Rules of Professional Conduct, rule 4-100(A).

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## **AGGRAVATING CIRCUMSTANCES.**

### **Prior Record of Discipline (Std. 1.5(a)):**

Respondent has four prior records of discipline.

Effective June 25, 2011, in case no. 06-H-12126 (07-O-11706, 09-O-13246), respondent received discipline of 90 days actual suspension, a two-year stayed suspension, and was placed on probation for three years. She stipulated to misconduct in three different matters. In one matter, respondent willfully violated California Rules for Professional Conduct (RPC) rule 1-110 by failing to timely file three Quarterly Reports, a required condition of a prior public reproof. In the second matter, respondent accepted fees for a family law proceeding at a time when she was not entitled to practice law in California. Respondent failed to file a required stipulated judgment in the case and took no further action on the case for more than a year. Despite numerous reasonable inquiries by the client, respondent failed to provide updates and failed to release the client's file. After initiation of a State Bar investigation, respondent failed to provide a response to the allegations. Respondent's misconduct violated RPC, rules 3-110(A), 4-200(A), 3-700(D)(1), and Business and Professions Code (Bus. & Profs. Code), sections 6068(m), 6068(i), and 6068(a) by violating sections 6125 and 6126. In the third case, respondent violated RPC, rule 3-110(A) by failing to complete legal services for her client after she did not perform any services on a probate law matter. In mitigation, respondent successfully completed the State Bar's Alternative Discipline Program.

Effective July 13, 2005, respondent was publically reproofed with conditions for one year in case no. 04-O-14672. Respondent engaged in the unauthorized practice of law when she appeared in a family law proceeding while she was not entitled to practice law in California. She violated Bus. & Profs. Code, sections 6125 and 6126, and thereby failed to support the laws of California and willfully violated section 6068(a). In mitigation, respondent did not harm the client and demonstrated remorse.

Effective June 30, 2004, respondent was publically reproofed with conditions for one year in case no. 03-O-02533. Respondent stipulated that she failed to cooperate in a State Bar investigation in willful violation of Bus. & Profs. Code, section 6068(i). In the stipulation, it was noted that the misconduct in this matter occurred at the same time as the misconduct in respondent's prior 2003 matter.

Effective September 18, 2003, respondent was publically reproofed in case no. 03-O-00840 (02-O-14382, 02-O-12629). She stipulated to misconduct in three different matters. In one matter, respondent failed to perform with competence in violation of RPC, rule 3-110(A) when she delayed for more than 13 months to prepare a formal judgement in a divorce proceeding and failed to file a motion for the court's approval of the formal judgement. In a second matter, respondent failed to respond to a total of 18 telephone calls and four letters from a client in violation of Bus. & Prof. Code, section 6068(m). In the third matter, respondent failed to refund unearned fees and failed to provide written accounting for over nine months after termination of employment in violation of RPC, rules 3-700(D)(2) and 4-100(B)(3). In mitigation, respondent had no prior record of discipline and had favorable witnesses as to good character.



## **AUTHORITIES SUPPORTING DISCIPLINE.**

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

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

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

In this matter, respondent admits to committing five acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

Considering respondent’s prior disciplinary record, Standard 1.8(b) is the most severe applicable standard in this case and presumes disbarment. Under that standard, if a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

1. Actual suspension was ordered in any one of the prior disciplinary matters;
2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
3. The prior disciplinary matters coupled with the current record demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.

The present case meets two of the three criteria to bring respondent within the purview of Standard 1.8(b). First, respondent has four prior records of discipline, and an actual suspension of 90 days was imposed in the most recent. Second, despite already receiving serious discipline, respondent has again reoffended by committing the same misconduct involving failure to perform and failure to communicate,

which demonstrates her unwillingness or inability to fulfill ethical duties. (See *In Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448 [disbarment under Standard 1.8(b) where attorney's two prior discipline records and current disciplinary matter included similar misconduct of misleading a tribunal and abandoning clients, demonstrating unwillingness or inability to conform conduct to ethical norms].)

The exception regarding contemporaneous misconduct does not apply because respondent committed the current misconduct after previously being disciplined for similar misconduct. (See *In Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. at 511, 528 [declining to find an exception to 1.8(b) where, after attorney was disciplined in 2000 and 2010 for misconduct, he committed similar acts in 2014].) "[P]art of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) In this case, respondent's second disciplinary case in 2004 does not warrant full aggravation because that misconduct occurred during the same time period as respondent's first disciplinary case in 2003 and therefore does not evidence recidivism. (See *Id.* [instructing that weight afforded to a record of prior discipline is diminished when the current misconduct occurred during the same time period as the prior misconduct].) However, respondent's two subsequent disciplinary cases each warrant full weight in aggravation because the misconduct in each occurred after respondent had previously been given the opportunity to heed the import of her prior discipline. Therefore, the exception to Standard 1.8(b) does not apply because respondent has had three opportunities to conform her practice to ethical standards before engaging in similar violations.

Likewise, the exception to Standard 1.8(b) based on compelling mitigating circumstance clearly predominating does not apply. No mitigating facts exist in this matter.

The present case is similar to *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, in which the court disbarred an attorney under Standard 1.8(b) for knowingly committing unlawful practice of law. Standard 1.8(b) applied because Carver had two prior records of discipline including a public reproof with conditions in 2011 based on a conviction for driving without a license and resisting arrest, and an actual suspension of 90 days for failing to comply with the conditions of his reproof in the first disciplinary matter. (*Id.* at p. 430-31.) The court noted the two exemptions from disbarment under 1.8(b), but found neither applicable because Carver's current misconduct occurred after he was put on notice of his prior misconduct, and his mitigation for good character was neither compelling nor predominated over the significant aggravation for two prior discipline records, concealment, and indifference. (*Id.* at p. 436.) The court found no other clear reason to deviate from disbarment. (*Id.*) Similar to Carver, respondent has received three public reprovals and an actual suspension prior to the current misconduct, making Standard 1.8(b) relevant. Like *Matter of Carver*, neither exception to disbarment applies because the present conduct occurred after respondent was put on notice of her prior misconduct, and the current lack of mitigation clearly does not predominate over the aggravation for multiple prior discipline records.

This is the fifth time that the State Bar has been required to intervene to ensure that respondent adheres to the professional standards required of those who are licensed to practice law in California. Further probation or suspension would be inadequate to protect the public, maintain high ethical standards, and ensure public confidence in the legal profession. Disbarment is appropriate under the Standards, in accordance with case law, and necessary to meet the goals of attorney discipline.

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**COSTS OF DISCIPLINARY PROCEEDINGS.**

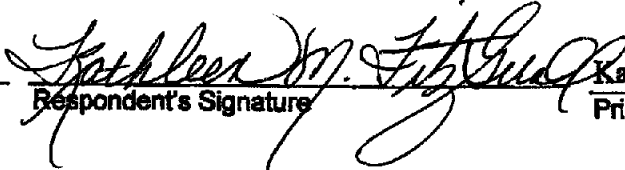

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 23, 2018, the discipline costs in this matter are \$3,758. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: <b>KATHLEEN MARGARET FITZGERALD</b>	Case number(s): <b>16-O-16571-CV</b>
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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>3/9/18</u> Date	 Respondent's Signature	<u>Kathleen FitzGerald</u> Print Name
<u>3/21/2018</u> Date	 Deputy Trial Counsel's Signature	<u>Desiree Fairly</u> Print Name

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In the Matter of: <b>KATHLEEN MARGARET FITZGERALD</b>	Case Number(s): <b>16-O-16571</b>
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**DISBARMENT 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.)**

Respondent , Kathleen Margaret FitzGerald, is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

March 23, 2018  
Date

Cynthia Valenzuela  
**CYNTHIA VALENZUELA**  
Judge of the State Bar Court



MAY 26 2011

(State Bar Court Nos. 06-H-12126; 07-O-11706; 09-O-13246 Cons.)

Frederick K. Ohlrich Cl.

S191633

Deputy

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re KATHLEEN MARGARET FITZGERALD on Discipline

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The court orders that Kathleen Margaret FitzGerald, State Bar Number 145252, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and she is placed on probation for three years subject to the following conditions:

1. Kathleen Margaret Fitzgerald is suspended from the practice of law for the first 90 days of probation;
2. Kathleen Margaret Fitzgerald must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on January 26, 2011; and
3. At the expiration of the period of probation, if Kathleen Margaret Fitzgerald has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

Kathleen Margaret Fitzgerald 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).)

Kathleen Margaret Fitzgerald must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension.

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.

I, Frederick K. Ohlrich, 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

day of MAY 26 2011

Clerk

By: 

Deputy

**CANTIL-SAKAUYE**

Chief Justice



**FILED**

**JAN 26 2011**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**PUBLIC MATTER**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case Nos.: <b>06-H-12126; 07-O-11706;</b>
	)	<b>09-O-13246 (Cons.)</b>
<b>KATHLEEN MARGARET</b>	)	
<b>FITZGERALD,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 145252,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

In this consolidated disciplinary proceeding, respondent Kathleen Margaret FitzGerald (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that she be placed on probation for three (3) years subject to certain conditions, including a 90-day period of suspension.

**PERTINENT PROCEDURAL HISTORY**

On June 28, 2006, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist her with her mental health issue.

The State Bar of California's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case no. 06-H-12126 on July 3, 2006.

On January 16, 2007, respondent entered into a long-term Participation Plan with the LAP.

In furtherance of her participation in the ADP, respondent submitted a declaration to the court which established a nexus between respondent's mental health issue and her misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation I) on or prior to February 26, 2007, which set forth the factual findings, legal conclusions, and aggravating circumstances in case no. 06-H-12126. Stipulation I was received by the court on February 26, 2007.

Following briefing by the State Bar,<sup>1</sup> the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After respondent agreed to the alternative possible dispositions, the court memorialized the alternative dispositions in writing in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); respondent and her counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court signed an order approving Stipulation I; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on September 18, 2007.<sup>2</sup>

The State Bar filed a NDC against respondent in case no. 07-O-11706 on August 12, 2009.

On November 12, 2009, the court ordered another matter involving respondent, case no. 09-O-13246, consolidated for ADP evaluation.

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<sup>1</sup> Respondent did not submit a brief on the issue of discipline.

<sup>2</sup> Stipulation I, the Confidential Statement, and the ADP Contract were lodged on September 19, 2007.

In November 2007, the parties entered into a Stipulation Re Facts and Conclusions of Law which set forth the factual findings, legal conclusions, and aggravating circumstances with respect to case nos. 07-O-11706 and 09-O-13246 (Stipulation II). Stipulation II was received by the court on November 17, 2009.<sup>3</sup>

Respondent submitted a nexus statement on February 5, 2010, with respect to case nos. 07-O-11706 and 09-O-13246.

In March 2010, respondent and her counsel executed an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's ADP.<sup>4</sup>

On March 30, 2010, the court executed an Order Amending Confidential Statement of Alternative Dispositions and Orders. The alternative discipline recommendations, however, were not increased by the inclusion of case nos. 07-O-11706 and 09-O-13246 in this ADP matter.

On April 1, 2010, the court filed an order consolidating case nos. 07-O-11706 and 09-O-13246 with case no. 06-H-12126, and Stipulation II, the Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's ADP, and the Order Amending Confidential Statement of Alternative Dispositions and Orders were lodged.

After respondent was accepted for participation in the ADP in September 2007, respondent participated in both the LAP and the State Bar Court's ADP. On November 3, 2010, after receiving a satisfactory recommendation from a mental health professional, the court filed an order finding that respondent has successfully completed the ADP. This matter was submitted for decision on November 3, 2010.

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<sup>3</sup> The court signed an order approving Stipulation II on March 30, 2010.

<sup>4</sup> The Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court' ADP was signed by the undersigned on March 30, 2010.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Stipulation I and Stipulation II, as well as the court's orders approving each stipulation, are attached hereto and hereby incorporated by reference, as if fully set forth herein.

In case no. 06-H-12126, respondent stipulated that she willfully violated rule 1-110 of the Rules of Professional Conduct of State Bar of California<sup>5</sup> by failing to comply with certain conditions of her public reproof imposed in a prior disciplinary matter.

With respect to case no. 07-O-11706,<sup>6</sup> respondent stipulated that she: (1) willfully entered into an agreement for, charged, and collected an illegal fee in violation of rule 4-200(A); (2) willfully failed to support the laws of California in violation of Business and Professions Code section<sup>7</sup> 6068, subdivision (a) by violating section 6125 and 6126; (3) intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of rule 3-110(A); (4) willfully failed to respond promptly to reasonable client status inquiries in violation of section 6068, subdivision (m); (5) willfully failed to release promptly, upon termination of employment, to the client, at the client's request, all the client's papers and property in violation of rule 3-700(D)(1); and (6) willfully failed to participate and cooperate in a disciplinary investigation in violation of section 6068, subdivision (i).

In case no. 09-O-13246, respondent stipulated that she violated rule 3-110(A) by failing to complete legal services for her client.

In mitigation, it is now appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

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<sup>5</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

<sup>6</sup> Although Stipulation II refers to this matter as case no. 09-O-13246, this is in error, as the proper case no. is 07-O-11706.

<sup>7</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

In aggravation, respondent has three prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)<sup>8</sup>

A. Effective September 18, 2003, respondent was publicly reprovved with a condition in case nos. 02-O-12629 (02-O-14382; 03-O-00840) for willfully failing to promptly refund unearned fees in violation of rule 3-700(D)(2); willfully failing to render appropriate accounts to a client in violation of rule 4-100(B)(3); repeatedly or recklessly failing to perform legal service with competence in violation of rule 3-110(A); and (4) willfully failing to respond promptly to reasonable client status inquiries in violation of section 6068, subdivision (m). In mitigation, respondent had no prior record of discipline (std. 1.2(e)(i)), and respondent had favorable witnesses as to her good character from a variety of attorneys and judges (std. 1.2(e)(vi)). There were no mitigating circumstances.

B. Effective June 30, 2004, respondent was publicly reprovved with conditions for one year in case no. 03-O-02533 for failing to cooperate in a State Bar investigation in willful violation of section 6068, subdivision (i). In aggravation, respondent had a prior record of discipline. (Std. 1.2(b)(i).) There were no mitigating circumstances. It was noted that the misconduct in this matter occurred at or about the same time as the misconduct in respondent's prior matters and had this matter been included with the prior disciplinary matters, the appropriate level of discipline would have remained a public reprovval. In addition, it was noted that after the filing of the NDC in this matter, respondent fully cooperated with the State Bar and refunded all legal fees paid by her client.

C. Effective July 13, 2005, respondent was publicly reprovved with conditions for one year in case no. 04-O-14672 for holding herself out as entitled to practice law and actually practicing law while not an active member of the State Bar in willful violation of

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<sup>8</sup> All further references to standard(s) or std. are to this source.

sections 6125 and 6126, and thereby failing to support the laws of California and willfully violating section 6068, subdivision (a) by advertising or holding herself out as practicing or entitled to practice law or otherwise practicing law when she was not an active member of the State Bar. In aggravation, respondent had two prior records of discipline (std. 1.2(b)(i)). In mitigation, respondent did not harm the client or the person who was the object of the misconduct. (Std. 1.2(e)(iii).) Respondent also promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of her misconduct. (Std. 1.2(e)(vii).)

#### DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the State Bar, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(b), 2.4(b), 2.6, 2.9 and 2.10 and *Conroy v. State Bar* (1990) 51 Cal.3d 799 and *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

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## DISCIPLINE

### Recommended Discipline

It is hereby recommended that respondent Kathleen Margaret FitzGerald, State Bar Number 145252, be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that she be placed on probation<sup>9</sup> for a period of three (3) years subject to the following conditions:

1. Respondent Kathleen Margaret FitzGerald is suspended from the practice of law for the first 90 days of probation;
2. Respondent Kathleen Margaret FitzGerald must also comply with the following additional conditions of probation:
  - A. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
  - B. 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;
  - C. Within thirty (30) days after 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;
  - D. 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 her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would

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<sup>9</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

cover less than thirty (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 the probation period;

- E. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
  - F. 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;
  - G. Respondent must comply with all provisions and conditions of her Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of her Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.
3. At the expiration of the period of probation, if Kathleen Margaret FitzGerald has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

#### **Multistate Professional Responsibility Examination**

It is also recommended that Kathleen Margaret FitzGerald be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter 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 an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)



**Rule 9.20, California Rules of Court<sup>10</sup>**

It is further recommended that respondent Kathleen Margaret FitzGerald be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's final disciplinary order in this matter.

**Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file Stipulation I and Stipulation II, as well as this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),<sup>11</sup> all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former rule 23) of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by

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<sup>10</sup> Rule 9.20 was formerly rule 955 of the California Rules of Court.

<sup>11</sup> On January 1, 2011, new Rules of Procedure became effective.

the person making the disclosure.

**IT IS SO ORDERED.**

Dated: January 25, 2011.



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**RICHARD A. PLATEL**  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 26, 2011, I deposited a true copy of the following document(s):

**DECISION AND ORDER SEALING CERTAIN DOCUMENTS; (2) STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

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

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

JOHN W NELSON  
WEISENBERG & NELSON INC  
12437 LEWIS ST STE 204  
GARDEN GROVE CA 92840

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

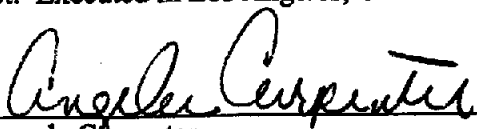
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 26, 2011.

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

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ALTERNATIVE DISCIPLINE PROGRAM</b>		
<b>Counsel For The State Bar</b>  <b>MONIQUE T. MILLER</b> <b>DEPUTY TRIAL COUNSEL</b> 1149 South Hill Street Los Angeles, California 90015-2299 213-765-1486  Bar # 212469	<b>Case Number (s)</b> 07-O-11706	(for Court's use)   <div style="text-align: center;"> <del>CONFIDENTIAL</del>  <b>PUBLIC MATTER</b>  <b>LODGED</b>                      APR 01 2010                      STATE BAR COURT                      CLERK'S OFFICE                      LOS ANGELES                 </div> <div style="text-align: right; margin-top: 20px;"> <b>FILED</b>                       NOV 03 2010                      STATE BAR COURT                      CLERK'S OFFICE                      LOS ANGELES                 </div>
<b>Counsel For Respondent</b>  <b>JOHN W. NELSON</b> Weisenberg & Nelson, Inc. 12437 Lewis Street, Suite 204 Garden Grove, CA 92840-4652 (714) 703-7070  Bar # 73958	<b>Submitted to: Program Judge</b>  <b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Kathleen M. Fitzgerald   Bar # 145252  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 December 13, 1989.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 8 pages, excluding 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) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
  - (a)  State Bar Court case # of prior case 04-O-14672
  - (b)  Date prior discipline effective July 13, 2005
  - (c)  Rules of Professional Conduct/ State Bar Act violations: B&P Code Section 6126-Unauthorized practice of law.
  - (d)  Degree of prior discipline Public Reprimand - (12) months.
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:  
  
02-O-12629 (02-O-14382; 03-O-00840): 9/18/03 effective date, Violations: RPC Rule 3-700(D)(2): Failure to refund unearned fees, 4-100(B)(3): Failure to provide accounting, 3-110(A): Failure to perform competently, B&P code Section 6068(m): Failure to communicate; Degree Prior Discipline: Public Reprimand-(12) months; 03-O-02533: 6/30/04 effective date, Violations: B&P code Section 6068(i): Failure to cooperate in State Bar investigation, Degree prior Discipline: Public Reprimand -(12) months.
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(Do not write above this line.)

- (8)  No aggravating circumstances are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  No mitigating circumstances are involved.

**Additional mitigating circumstances:**

**ATTACHMENT TO**

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

IN THE MATTER OF: Kathleen Fitzgerald

CASE NUMBER(S): 07-O-11706 and 09-O-13246

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties hereby waive any variance between the Notice of Disciplinary Charges ("NDC") filed on August 12, 2009 in Case No. 07-O-11706, and the facts and conclusions of law contained in this stipulation. The parties also waive the issuance of an amended Notice of Disciplinary Charges relating to Case No. 07-O-11706 that is a subject matter of this stipulation.

**WAIVER OF ISSUANCE OF NOTICE OF DISCIPLINARY CHARGES IN CASE NO. 09-O-13246**

In addition, the parties hereby agree to resolve Case No. 09-O-13246 by this ADP stipulation.

**INCORPORATION OF PRIOR STIPULATION**

This stipulation is an addendum intended to supplement the Stipulation re: Facts and Conclusions of Law in Case No. 06-H-12126, which the parties lodged with this Court on February 26, 2007 (the "Prior Stipulation"). The Prior Stipulation is also incorporated as if fully set forth herein.

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.

**FACTS AND CONCLUSIONS OF LAW IN CASE NOS. 09-O-13246**

**FACTS**

1. Between September 16 and September 30, 2004, Respondent was suspended from the practice of law in California by the California Supreme Court, order number S126962, due to her failure to pay membership fees to the State Bar of California.
2. Between September 16 and October 18, 2004, Respondent was not entitled to practice law in California due to her failure to comply with Minimum Continuing Legal Education rules.
3. Respondent knew or reasonably should have known that she was not authorized to practice law from September 16 through October 18, 2004.
4. On September 21, 2004, when Respondent was not entitled to practice law, Greg Baker ("Baker") employed Respondent to provide legal representation in a family law matter pending with

Nghi Vo ("Vo") in the Orange County Superior Court entitled, *In the Matter of Greg Baker and Nghi Vo*, case number 04P000738, and paid Respondent a \$500 advance fee for the representation.

5. On September 22, 2004, when Respondent was not entitled to practice law, Baker paid Respondent a \$2,500 advance fee for the representation.

6. Baker informed Respondent that a hearing was set in the matter for October 6, 2004 on child support and custody issues when he employed Respondent. Respondent told Baker that she would attend the hearing with Baker.

7. Between September 21 and October 18, 2004, Respondent did not disclose to Baker that she was not entitled to practice law in California, but held herself out as entitled to practice law to Baker during that period.

8. By holding herself out as entitled to practice law to Baker between September 21 to October 18, 2004, Respondent violated Business and Professions Code sections 6125 and 6126 ("sections 6125 and 6126").

9. Respondent did not appear for the hearing on October 6, 2004, but sent another attorney to appear and continue the hearing to November 17, 2004 without Baker's knowledge or consent.

10. On November 16, 2004, the parties entered into a stipulated judgment for paternity, and child custody, visitation and support in the matter. Respondent informed Baker that she would appear on his behalf at the hearing regarding child custody, visitation and support set for November 17, 2004 and file the stipulated judgment, so that the judgment could be entered. Respondent informed Baker that he need not appear for the hearing.

11. On November 17, 2004, Respondent appeared at the November 17, 2004 hearing, but did not file the stipulated judgment. Respondent represented that the matter had been resolved. Therefore, the court took the hearing off calendar without issuing any orders regarding child custody, visitation or support.

12. Respondent took no action in the matter until November 9, 2005, when Respondent filed an at issue memorandum in the matter on behalf of Baker. However Respondent had not substituted into the matter as the attorney for Baker, so the court could not set the matter for a trial setting conference.

13. Respondent took no further action to obtain a judgment for Baker between December 2005 and March 2007.

14. On March 2, 2007, Vo set the matter for a hearing regarding child custody and visitation on April 9, 2007, and the court ordered the parties to mediation.

15. On April 9, 2007, Respondent filed a substitution of attorney naming her as Baker's attorney in the matter. Respondent also filed a declaration, signed by Baker in October 2005 and by Vo in December 2005, in support of the entry of an uncontested judgment regarding child custody, visitation and support, along with the stipulated judgment that had been signed by the parties in November 2004. The court entered the judgment on April 18, 2007.



16. Between March and October 2006, Baker left several messages in which he requested the status of his family law matter from Respondent. Respondent did not contact Baker with the status of his family law matter.

17. Baker terminated Respondent's employment by letter dated March 5, 2007. In the letter, Baker requested that Respondent execute a substitution of attorney and release his client file. Respondent received the letter. Respondent did not release the client file to Baker, despite his subsequent attempts to obtain the file from Respondent on April 13 and 18, 2007.

18. On April 20, 2007, the State Bar of California ("State Bar") opened an investigation identified as case number 07-O-11706, concerning a complaint submitted by Baker against Respondent regarding her representation in the family law matter.

19. On or about June 22, 2007, a State Bar investigator sent a letter to Respondent regarding the allegations raised by Baker's complaint at her membership records address of 1 City Blvd. W., #1442, Orange, CA 92868. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service ("USPS") in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter.

20. In the June 22, 2007 letter, the investigator requested a response to the allegations raised by Baker's complaint by July 6, 2007. Respondent did not respond to the letter.

21. On September 10 and 11, 2007, a State Bar investigator left telephone messages for Respondent in which he requested a response to the allegations raised by Baker's complaint.

22. To date, Respondent has not provided a response to the investigator to the allegations raised by Baker's complaint.

#### CONCLUSIONS OF LAW

23. By accepting the \$3,000 in advance fees from Baker when she was not entitled to practice law in California, Respondent wilfully entered into an agreement for, charged, and collected an illegal fee, in violation of Rules of Professional Conduct, rule 4-200(A).

24. By violating sections 6125 and 6126, Respondent wilfully failed to support the laws of this state, in violation of Business and Professions Code section 6068(a).

25. By not appearing at the October 2004 hearing, by not filing the stipulated judgment in November 2004; and by not obtaining the judgment for Baker until April 2007, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

26. By not contacting Baker with the status of his family law matter, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client, in violation of Business and Professions Code section 6068(m).

27. By not releasing the client file to Baker, Respondent wilfully failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client's papers and property, in violation of Rules of Professional Conduct, rule 3-700(D)(1).

28. By not providing a response to the investigator to the allegations raised by Baker's complaint, Respondent wilfully failed to cooperate and participate in a disciplinary investigation pending against Respondent, in violation of Business and Professions Code section 6068(i).

#### **FACTS AND CONCLUSIONS OF LAW IN CASE NO. 09-O-13246**

##### **FACTS**

29. On July 2, 2007, Valerie Tedesco ("Tedesco") employed Respondent to represent the Tedesco family in filing for probate.

30. On July 2, 2007, Tedesco paid Respondent \$1,000 advanced costs.

31. Thereafter, Respondent failed to perform any legal service on behalf of Tedesco and her family.

32. By failing to perform any legal service on behalf of Tedesco and her family, Respondent did not utilize any portion of the \$1,000 advanced costs.

33. In late August 2009, Respondent refunded the \$1,000 unutilized costs to Tedesco.

##### **CONCLUSIONS OF LAW**

34. By failing to perform any legal service on behalf of Tedesco and her family, Respondent failed to complete legal services, in willful violation of Rules of Professional Conduct, rule 3-110(A).

#### **RULE 133 NOTICE OF PENDING PROCEEDINGS**

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on November 10, 2009.

(Do not write above this line.)

In the Matter of <b>KATHLEEN M. FITZGERALD</b>	Case number(s): <b>07-O-11706; 09-O-13246</b>
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**SIGNATURE OF THE PARTIES**

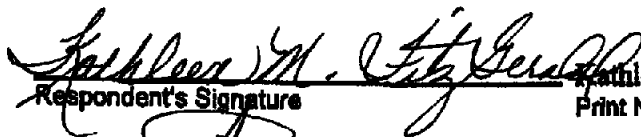
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

11/10/09  
Date

  
Respondent's Signature

Kathleen M. Fitzgerald  
Print Name

11/10/09  
Date

  
Respondent's Counsel Signature

John 'Jack' W. Nelson  
Print Name

Nov. 17, 2009  
Date

  
Deputy Trial Counsel's Signature

Monique T. Miller  
Print Name

(Do not write above this line.)

In the Matter Of <b>KATHLEEN M. FITZGERALD</b>	Case Number(s): <b>07-O-11706; 09-O-13246</b>
---	--

**ORDER**

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

3-30-10  
Date

  
Judge of the State Bar Court

**RICHARD A. PLATEL**

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 1, 2010, I deposited a true copy of the following document(s):

AGREEMENT AND ORDER AMENDING CONTRACT AND WAIVER FOR PARTICIPATION IN TH STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM; ORDER AMENDING CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS; STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

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

JOHN WILLIAM NELSON  
WEISENBERT & NELSON INC  
12437 LEWIS ST STE 204  
GARDEN GROVE CA 92840

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:


by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 1, 2010.

  
Angela Owens-Carpenter  
Case Administrator  
State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 26, 2011, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS; (2) STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

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

JOHN W NELSON  
WEISENBERG & NELSON INC  
12437 LEWIS ST STE 204  
GARDEN GROVE CA 92840

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:


by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 26, 2011.

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

ORIGINAL

PUBLIC MATTER

FILED

(Do not write above this line.)

State Bar Court of California  
Hearing Department

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

NOV 03 2010  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

Counsel For The State Bar  
DAVID T. SAUBER  
Deputy Trial Counsel  
1149 South Hill Street  
Los Angeles, California 90015  
Bar # 176554 Tel: (213) 765-1252

Case Number (s)  
06-H-12126

(for Court's use)

RECEIVED

JOHN W. NELSON  
12437 Lewis Street, Suite 204  
Garden Grove, California 92840

LODGED

FEB 26 2007

Bar # 73958 Tel: (714) 703-7070

SEP 19 2007

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT  
CLERK'S OFFICE

Submitted to Judge

In the Matter Of:  
KATHLEEN MARGARET FITZGERALD

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

Bar # 145252

PREVIOUS STIPULATION REJECTED

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 December 13, 1989
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (6) pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." -See Attachment
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". -See Attachment
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

(Do not write above this line.)

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case 04-O-14672
- (b)  Date prior discipline effective July 13, 2005
- (c)  Rules of Professional Conduct/ State Bar Act violations: B&P Code §6126 - Unauthorized Practice of Law
- (d)  Degree of prior discipline Public Reprimand - (12) Months
- (e)  If Respondent has two or more incidents of prior discipline, use space provided below:  
02-O-12629 (02-O-14382; 03-O-00840); 9/18/03 effective date, Violations: RPC Rule 3-700(D)(2): Failure to refund unearned fees, 4-100(B)(3): Failure to provide accounting, 3-110(A): Failure to perform competently, B&P Code §6068(m): Failure to communicate; Degree Prior Discipline: Public Reprimand - (12) Months; 03-O-02533: 6/30/04 effective date, Violations: B&P Code §6068(i): Failure to cooperate in State Bar investigation, Degree Prior Discipline: Public Reprimand - (12) Months.
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances are involved.**

Additional aggravating circumstances:

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.



(Do not write above this line.)

- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances are involved.**

**Additional mitigating circumstances:**

ATTACHMENT TO  
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

145252  
MEMBER # 189654 *AMP*

IN THE MATTER OF: KATHLEEN MARGARET FITZGERALD  
CASE NUMBER(s): 06-H-12126

**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.

Facts for Case No. 06-H-12126

1. On or about June 7, 2005, Respondent entered into a Stipulation As To Facts and Disposition ("Stipulation") with the State Bar of California in Case No. 04-O-14672.
2. On June 22, 2005, the Hearing Department of the State Bar Court filed an Order approving the Stipulation and recommending respondent receive a public reproof with conditions (the "Order").
3. On or about June 22, 2005, the Order was properly served by mail upon Respondent. Respondent received the Order.
4. The Order and the public reproof became effective on July 13, 2005.
5. Pursuant to the Order, Respondent was required to comply with certain terms and conditions attached to the public reproof for a period of one year, including the following conditions:
  - a. To comply with the State Bar Act and the Rules of Professional Conduct during the condition period attached to the reproof; and
  - b. To submit to the Probation Unit written quarterly reports each January 10, April 10, July 10, and October 10 of each year or part thereof during the condition period attached to the reproof, certifying under penalty of perjury that she has complied with all provisions of the State Bar Act and the Rules of Professional Conduct during the preceding calendar quarter or part thereof covered by the report and to file the final report no earlier than twenty days prior to the expiration of the condition period attached to the reproof and no later than the last day of said period.
6. On June 23, 2005, the Office of Probation of the State Bar of California wrote a letter to Respondent in which it reminded Respondent of the terms and conditions of her reproof. The letter also listed the reporting due-dates for the Quarterly Reports and Ethics School. The June 23, 2005 letter also specifically warned Respondent that failure to timely submit reports or any other proof of compliance will result in a non-compliance referral to the Enforcement Unit of the Office of the Chief Trial Counsel. Attached to the letter was a copy of the portion of the Stipulation setting forth the conditions of Respondent's reproof, and Quarterly Report Instructions.

7. The letter was mailed on or about June 23, 2005 via United States Postal Service, first class mail, postage-paid, addressed to Respondent at her official State Bar membership records address. The June 23, 2005 letter was not returned as undeliverable by the United States Postal Service.

8. Respondent received the June 23, 2005 letter from the Probation Unit.

9. As set forth below respondent was late in filing three of her required Quarterly Reports:

- a. Quarterly Report due on October 10, 2005 was filed on November 23, 2005;
- b. Quarterly Report due on January 10, 2006 was filed on June 28, 2006; and
- c. Quarterly Report due on April 10, 2006 was filed on June 28, 2006.

**Conclusions of Law for Case No. 06-H-12126**

10. By failing to comply with the conditions of her reproval as set forth in the Stipulation, Respondent willfully violated California Rules of Professional Conduct, Rule 1-110.

(Do not write above this line.)

In the Matter of KATHLEEN MARGARET FITZGERALD MEMBER #145252	Case number(s): 06-H-12126
--	-------------------------------




### 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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date		KATHLEEN M. FITZGERALD
<u>02/23/07</u>	Respondent's Signature	Print Name
Date		JOHN W. NELSON
<u>2/26/07</u>	Respondent's Counsel Signature	Print Name
Date		DAVID T. SAUBER
	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter Of KATHLEEN MARGARET FITZGERALD MEMBER #145252	Case Number(s): 06-H-12126
--	-------------------------------

**ORDER**

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

09-18-07  
Date

  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 19, 2007, I deposited a true copy of the following document(s):

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND  
ORDERS; STIPULATION RE FACTS AND CONCLUSIONS OF LAW;  
CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR  
COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

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


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

**JOHN W NELSON  
WEISENBERG & NELSON INC  
12437 LEWIS ST STE 204  
GARDEN GROVE CA 92840**

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

**ERIC HSU, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 19, 2007.

  
**Angela Owens-Carpenter**  
Case Administrator  
State Bar Court



(Do not write above this line.)

State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL WILLIAM F. STRALKA 1149 South Hill Street Los Angeles, CA 90015, 10th Fl. Telephone: (213) 765-1091 Bar # 56146</p>	<p>Case number(s) 04-0-14672</p> <p><b>PUBLIC MATTER</b></p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>JUN 22 2005 <i>hec</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p><input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent John W. Nelson 12399 Lewis Street, #103 Garden Grove, CA 92840-4643 Bar # 73958</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge</p> <p><b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b></p> <p>REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of Kathleen M. Fitzgerald Bar # 145252 A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 13, 1989  
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 11 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.



(Do not write above this line.)

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

- (a)  costs added to membership fee for calendar year following effective date of discipline (public reproof)  
(b)  case ineligible for costs (private reproof)  
(c)  costs to be paid in equal amounts for the following membership years:

(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

- (d)  costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"  
(e)  costs entirely waived

(9) The parties understand that:

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

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts Supporting Aggravating Circumstances are required.**

(1)  Prior record of discipline [see standard 1.2(f)]

(a)  State Bar Court case # of prior case 02-0-12629

(b)  Date prior discipline effective September 18, 2003

(c)  Rules of Professional Conduct/ State Bar Act violations: 3-110(A), 3-700(D)(2) and 4-100(B)(3)-  
Rules of Professional Conduct; 6068(m)- Business and Professions Code.

(d)  Degree of prior discipline Public Reproof

(Do not write above this line.)

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

03-0-02533, June 9, 2004, Violation: 6068(1) Business and Professions Code  
Public Repeval

- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances are involved.**

Additional aggravating circumstances:

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(Do not write above this line.)

- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances are involved.**

**Additional mitigating circumstances:**

(Do not write above this line.)

**D. Discipline:**

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

**E. Conditions Attached to Reproval:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of one year
- (2)  During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within 30 days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next following quarter date and cover the extended period.
- In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.
- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

(Do not write above this line.)

- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. Reason: \_\_\_\_\_
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.
- (10)  Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703.
- No MPRE ordered. Reason: violation was for failure to keep license current
- (11)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

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

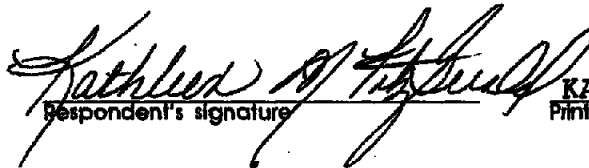
(Do not write above this line.)

In the Matter of  KATHLEEN M. FITZGERALD	Case number(s):  04-0-14672
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### SIGNATURE OF THE PARTIES

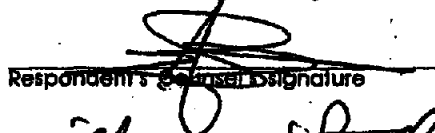
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

06/07/05  
Date

  
Respondent's signature

KATHLEEN M. FITZGERALD  
Print name

06/01/05  
Date

  
Respondent's Counsel's signature

JOHN W. NELSON  
Print name

06/14/05  
Date

  
Deputy Trial Counsel's signature

WILLIAM F. STRALKA  
Print name

(Do not write above this line.)

In the Matter of  KATHLEEN M. FITZGERALD	Case number(s):  04-O-14672
--	-----------------------------------

**ORDER**

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All Hearing dates are vacated.

Page 1, check box - settlement judge.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

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

06-22-05  
Date

  
RICHARD A. PLATEL  
Judge of the State Bar Court

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        KATHLEEN MARGARET FITZGERALD

CASE NUMBER:            04-O-14672

**PENDING PROCEEDINGS:**

The disclosure date referred to, on page one paragraph A.(7), was May 18, 2005.

**PARTIES ARE BOUND BY THE STIPULATED FACTS:**

The parties intend to be and are hereby bound by the stipulated facts contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law and/or stipulated disposition set forth herein are rejected or changed in any manner whatsoever by the California Supreme Court.

**STIPULATION AS TO 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, or has otherwise committed acts of misconduct warranting discipline:

**FACTS:**

**Case No.: 04-O-14672**

1.     On October 26, 2001, Respondent was appointed by the Orange County Superior Court to represent a minor in a family law matter entitled *Gary A. Gustafson vs. Kerstin L. Gustafson*, case no. 01D010200, (the "Gustafson matter").
2.     Between October 30, 2003, and May 21, 2004, the State Bar's Office of Membership Billing Services ("membership billing") sent notices to Respondent advising that her membership fees were due.
3.     On August 27, 2004, membership billing sent a notice to Respondent at her membership records address advising her that her name was included on a list submitted to the California Supreme Court regarding State Bar members delinquent in the payment of their membership fees. Said notice further advised Respondent that effective September 16, 2004, she would be suspended from the practice of law for nonpayment of State Bar membership fees, penalties, and/or costs.



4. On August 27, 2004, the California Supreme Court entered an order (S126962), effective on or about September 16, 2004, suspending Respondent from the practice of law as a result of failure to pay State Bar membership fees. Respondent paid the membership fees and was reinstated to the practice of law on or about September 30, 2004.
5. On September 16, 2004, Respondent was rendered *Not Entitled* to practice law for non-compliance with the State Bar's Mandatory Continuing Legal Education ("MCLE") requirements. Respondent complied and was removed from *Not Entitled* status effective on October 18, 2004.
6. On September 28, 2004, Respondent appeared in Court on behalf of the minor while suspended from the practice of law.
7. On September 29, 2004, the minor's mother, Kerstin Gustafson, 5121 East Marita Lane D, Anaheim Hills, CA 92807, (714) 970-6917, brought Respondent's suspension and not entitled status to the attention of the Judge presiding in the Gustafson matter.
8. On November 5, 2004, Respondent provided proof to the Court that she paid her Bar membership fees and was reinstated to practice law effective September 30, 2004, and that she had been removed from *Not Entitled* status effective October 18, 2004.
9. On November 5, 2004, during the Court proceeding, at the request of the minor's mother Kerstin Gustafson, the Judge relieved Respondent as the minor's attorney with no objections from Respondent.

#### **CONCLUSIONS OF LAW:**

By appearing in Court representing the minor, Respondent held herself out to the Court as entitled to practice law and actually practiced law while she was not an active member of the State Bar in wilful violation of Business and Professions Code, sections 6125 and 6126, and thereby failed to support the laws of the State of California, and wilfully violated Business and Professions Code, section 6068(a), by advertising or holding herself out as practicing or entitled to practice law or otherwise practicing law when she was not an active member of the State Bar.

**SUPPORTING AUTHORITY:**

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. In Hanson respondent had a prior private reproof. The review department weighed the misconduct and judged that it was not serious enough to justify suspension and issued a public reproof.

**COSTS OF DISCIPLINARY PROCEEDINGS:**

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of May 16, 2005 the estimated prosecution costs in this matter are approximately \$2,021.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment.

Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 22, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed June 22, 2005**

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

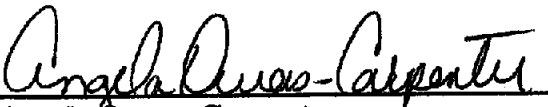
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOHN W NELSON ESQ  
WEISENBERG & NELSON  
12399 LEWIS STREET #103  
GARDEN GROVE CA 92840-4643**

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

**WILLIAM STRALKA ESQ, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 22, 2005**.

  
**Angela Owens-Carpenter**  
Case Administrator  
State Bar Court



ORIGINAL

Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ELI D. MORGENSTERN, # 190560 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1334	Case number(s) 03-0-02533-RAH  <b>PUBLIC MATTER</b>	(for Court's use)  <b>FILED</b>  JUN 09 2004 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel for Respondent JOHN "JACK" W. NELSON, # 73958 12399 Lewis Street, #103 Garden Grove, CA 92840-4643 (714) 703-7070	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  REPROVAL <input type="checkbox"/> PRIVATE <input type="checkbox"/> PUBLIC  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  KATHLEEN MARGARET FITZGERALD  Bar # 145252 A Member of the State Bar of California (Respondent)		

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 13, 1989 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 9 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - costs added to membership fee for calendar year following effective date of discipline (public reproof)
  - case ineligible for costs (private reproof)
  - costs to be paid in equal amounts for the following membership years:  
2005, 2006, 2007  
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth under "Partial Waiver of Costs"
  - costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

(8) The parties understand that:

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

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1)  Prior record of discipline [see standard 1.2(f)]

- (a)  State Bar Court case # of prior case 02-0-125629; 02-0-14382; 03-0-00840
- (b)  Date prior discipline effective September 18, 2003
- (c)  Rules of Professional Conduct/ State Bar Act violations: Case No. 02-0-12629 (a) rule 3-700(D) (2) of the Rules of Professional Conduct ("RPC"); (b) rule 4-100(B)(3) of the RPC. Case No. 02-0-14382: (a) Business and Professions Code sec. 6068(m). Case No. 03-0-00840: (a) rule 3-110(A) of the RPC.
- (d)  degree of prior discipline Public Reproval
- (e)  If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

- (2)  Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

- (5)  Indifference: Respondent demonstrated indifference toward reparation of or atonement for the consequences of his or her misconduct.
- (6)  Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  No aggravating circumstances are involved.

Additional aggravating circumstances:

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3)  Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  Restitution: Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  Good Faith: Respondent acted in good faith.
- (8)  Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

- (12)  Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  No mitigating circumstances are involved.

Additional mitigating circumstances:

**D. Discipline:**

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

or

- (2)  Public reproof (check applicable conditions, if any, below)

**E. Conditions Attached to Reproval:**

- (1)  Respondent shall comply with the conditions attached to the reproval for a period of One (1) year
- (2)  During the condition period attached to the reproval, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent shall report to the Membership Records Office and to the Probation Unit, 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)  Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproval. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproval during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following quarter date and cover the extended period.

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



- (5)  Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the monitor.
- (6)  Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproof.
- (7)  Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered.
- (8)  Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.
- (9)  Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the reproof.
- No MPRE ordered.
- (10)  The following conditions are attached hereto and incorporated:
- |   |  |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions                        |
- (11)  Other conditions negotiated by the parties:

In the Matter of **KATHLEEN M. FITZGERALD**  
A Member of the State Bar

Case Number(s):  
03-0-02533-RAH

**Law Office Management Conditions**

- a.  Within \_\_\_ days/ \_\_\_ months/ \_\_\_ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.
- b.  Within 180 days/ \_\_\_ months \_\_\_ years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 5 hours of MCLE approved courses in law office management, attorney client relations and/ or general legal ethics. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for \_\_\_ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

**ATTACHMENT TO**

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

IN THE MATTER OF:        KATHLEEN MARGARET FITZGERALD

CASE NUMBER(S):        03-O-02533-RAH

**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 Rules of Professional Conduct.

**Facts**

1. On July 22, 2003, the State Bar opened an investigation on a complaint filed by Gloria Clark ("Clark") against Respondent. The complaint involved Clark's allegation that Respondent failed to obtain standing for her in a juvenile proceeding involving two of Respondent's grandchildren.

2. On July 22, 2003, and again on August 19, 2003, State Bar Investigator Rose Sandoval ("Sandoval") wrote to Respondent regarding this matter and requested Respondent's written response. Respondent failed to provide a written response to the complaint to Sandoval.

**Legal Conclusions**

By failing to respond to Sandoval's written inquiries, Respondent failed to cooperate in a State Bar Investigation in wilful violation of Business and Professions Code section 6068(i).

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was April 30, 2004.

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**DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
03-O-02533	ONE	Rules of Professional Conduct, rule 3-110(A)
03-O-02533	TWO	Rules of Professional Conduct, rule 4-100(B)(3)
03-O-02533	THREE	Rules of Professional Conduct, rule 3-700(D)(2)

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 30, 2004, the estimated prosecution costs in this matter are approximately \$2, 296.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**OTHER FACTORS IN CONSIDERATION.**

Respondent was publicly reprovved on September 18, 2003 for misconduct occurring in three client matters. The misconduct in the instant matter occurred at or about the same time as the misconduct in the prior matters. Had the instant matter been included with the three prior matters, the appropriate level of discipline would have remained a public reprovval. (See generally In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

Subsequent to the filing of the Notice of Disciplinary Charges for this matter, Respondent cooperated fully with the State Bar and willingly provided any and all documentation requested. Respondent also refunded the entire \$1,750 that Clark paid for Respondent's legal services.

**STATE BAR ETHICS SCHOOL EXCLUSION.**

It is not recommended that Respondent attend State Bar Ethics School since Respondent attended Ethics School within the last two years, in 2003, in connection with case numbers 02-O-12629, 02-O-14382, and 03-O-00840.

In lieu of State Bar Ethics School, the parties agree that Respondent will complete five (5) hours of MCLE approved courses in General Legal Ethics. The classes must be participatory. Please see the Law Office Management Conditions portion of the stipulation on page 6.

5-10-04  
Date

*[Handwritten Signature]*  
Respondent's signature

ATHLEEN M. FITZGERALD  
print name

5-10-04  
Date

*[Handwritten Signature]*  
Respondent's Counsel's signature

JOHN "JACK" W. NELSON  
print name

5-12-04  
Date

*[Handwritten Signature]*  
Deputy Trial Counsel's signature

ELI D. MORGENSTERN  
print name

**ORDER**

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

All references to "Probation Unit" or "Probation Unit of the Office of the Chief Trial Counsel" shall be deemed deleted and replaced with "Office of Probation."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

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

6/7/04  
Date

*[Handwritten Signature]*  
Judge of the State Bar Court  
**RICHARD A. HONN**

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 9, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed June 9, 2004**

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

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

**JOHN W NELSON ESQ  
WEISENBERG & NELSON  
12399 LEWIS ST #103  
GARDEN GROVE, CA 92840-4643**

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

**Eli D. Morgenstern, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 9, 2004.

  
\_\_\_\_\_  
**Julleta E. Gonzales**  
Case Administrator  
State Bar Court



Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT LARRY DeSHA, BAR NO. 117910 1149 So. Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1000	Case number(s) 02-0-12629 02-0-14382 03-0-00840  <b>PUBLIC MATTER</b>	(for Court's use)  <b>FILED</b>  AUG 28 2003 STATE BAR COURT CLERKS OFFICE LOS ANGELES
Counsel for Respondent JOHN W. NELSON, BAR NO. 73958 WEISENBERG & NELSON, INC. 12399 Lewis St., Ste. #103 Garden Grove, CA 92840 (714) 703-7070	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  KATHLEEN M. FITZGERALD  Bar # 145252  A Member of the State Bar of California (Respondent)		

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 13, 1989 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 9 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - costs added to membership fee for calendar year following effective date of discipline (public reproof)
  - case ineligible for costs (private reproof)
  - costs to be paid in equal amounts for the following membership years:  
2004 and 2005  
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth under "Partial Waiver of Costs"
  - costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."



(8) The parties understand that:

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

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1)  Prior record of discipline [see standard 1.2(f)]

(a)  State Bar Court case # of prior case \_\_\_\_\_

(b)  Date prior discipline effective \_\_\_\_\_

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

(d)  degree of prior discipline \_\_\_\_\_

(e)  If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

(2)  Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3)  Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4)  Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

- (5)  Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1)  No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3)  Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  Restitution: Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  Good Faith: Respondent acted in good faith.
- (8)  Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

- (12)  Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  No mitigating circumstances are involved.

Additional mitigating circumstances:

D. Discipline:

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

E. Conditions Attached to Reproof:

- (1)  Respondent shall comply with the conditions attached to the reproof for a period of \_\_\_\_\_
- (2)  During the condition period attached to the reproof, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent shall report to the Membership Records Office and to the Probation Unit, 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)  Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following quarter date and cover the extended period.

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

- (5)  Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the monitor.
- (6)  Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproval.
- (7)  Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered.
- (8)  Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.
- (9)  Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the reproval.
- No MPRE ordered.
- (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             |
- (11)  Other conditions negotiated by the parties:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        KATHLEEN M. FITZGERALD  
CASE NUMBERS:            02-O-12629; 02-O-14382; 03-O-00840

**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.

**Facts:**

1.     Case No. 02-O-12629

a.     On October 2, 2001, Deborah Phillipson ("Phillipson") employed Respondent to represent her in a proceeding to obtain a modification of a family law order. The moving papers were already filed with the court, and a hearing was set for October 18th. Respondent and Phillipson signed a retainer agreement which provided that Respondent would receive \$275.00 per hour for her services, and Phillipson would pay \$5,000.00 as advanced fees. Phillipson paid the \$5,000.00 promptly.

b.     On October 18, 2001, the hearing on the Phillipson matter was continued to November 2, 2001. On October 19, 2001, Phillipson sent a letter to Respondent terminating Respondent's employment, and requesting an accounting and refund of unearned fees.

c.     On October 23, 2001, Respondent sent Phillipson her case file, but did not provide an accounting or refund. On November 14, 2001, Phillipson sent Respondent a second letter requesting an accounting and refund. Respondent did not reply to the letter.

d.     On December 17, 2001, Phillipson sent Respondent a third letter requesting an accounting and refund. Respondent replied to this letter on December 19, 2001, with a letter promising, "I am currently completing your bill and will send it to you ASAP." However, Respondent did not send the accounting or refund.

e.     On June 5, 2002, the State Bar sent a written inquiry to Respondent, notifying her of Phillipson's complaint of failure to account and refund unearned fees. On July 12, 2002, the State Bar sent a second letter to Respondent, requesting an explanation. On July 22, 2002, Respondent sent Phillipson an accounting and a refund of \$2,617.75, and sent the State Bar copies of the accounting and refund check.

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2. Case No. 02-O-14382

a. On November 9, 1999, Nancy Grossman ("Grossman") employed Respondent to represent her in a dissolution of marriage. Respondent promptly filed the petition and began lengthy settlement discussions. All issues were finally settled on February 27, 2001.

b. During the period from September 6, 2000 to January 11, 2001, Grossman made a total of 18 telephone calls to Respondent's office, seeking legal advice concerning how to protect certain joint assets and satisfy certain joint debts pending the division of such assets and debts. Grossman also sent letters to Respondent on August 29 and 30, 2000; November 6, 2000; and January 15, 2001; requesting specific legal advice and a status report. Respondent made no reply to the 18 telephone calls and four letters, and did not otherwise provide the requested legal advice or status report to Grossman.

3. Case No. 03-O-00840

a. On July 6, 2000, Laura Pell ("Pell") employed Respondent to represent her in a dissolution of marriage. The case had been settled on May 8, 2000, and the terms of settlement placed on the record. Pell's husband's attorney had been ordered to prepare a formal judgment and submit it to the court by June 1, 2000, but that attorney had failed to do so.

b. As of October 16, 2000, Respondent had substituted into the case, obtained Pell's file, and learned that the delay had been caused by Pell's husband's attorney. Thereafter, Respondent delayed taking action to get the judgment prepared and filed.

c. In August of 2001, Respondent prepared a final judgment and sent it to the husband's attorney on August 22, 2001. A dispute followed concerning whether the order should include payment of the husband's attorney's fees by Pell. This dispute was resolved in the affirmative by November 20, 2001.

d. On July 24, 2002, Respondent sent the revised formal judgment to the husband's attorney for signature. That attorney failed to sign it. On August 14, 2002, Respondent sent the judgment to the court for approval and filing. The court rejected it because it did not have opposing counsel's signature, and because the proper corrective action was to seek the court's approval by a noticed motion.

e. On January 16, 2003, Pell terminated Respondent's services. The formal final judgment had still not been submitted properly to the court.

Conclusions of Law:

1. Case No. 02-O-12629

a. By delaying until July 22, 2002, to refund unearned fees after being terminated nine months earlier, Respondent wilfully failed to promptly refund unearned fees. She thereby violated rule 3-700(D)(2) of the California Rules for Professional Conduct.

b. By ignoring Philipson's three written requests for an accounting, and by delaying the accounting for over nine months after termination of her employment, Respondent wilfully failed to render appropriate accounts to the client regarding the funds. She thereby violated rule 4-100(B)(3) of the California Rules for Professional Conduct.

2. Case No. 02-O-14382

a. By failing to communicate with her client after 20 specific requests from the client concerning the status of her case, Respondent willfully failed to respond promptly to reasonable status inquiries of a client. She thereby violated section 6068(m) of the Business and Professions Code.

3. Case No. 03-O-00840

a. By failing to pressure opposing counsel to submit the formal judgment, by delaying for more than 13 months to prepare the formal judgment and submit it to opposing counsel, and by failing to file a noticed motion for the court's approval of the formal judgment, Respondent recklessly or repeatedly failed to perform legal services with competence. She thereby violated rule 3-110(A) of the California Rules of Professional Conduct.

**MITIGATING CIRCUMSTANCES:**

a. No Prior Discipline. Respondent has no prior discipline in more than 13 years of practice in California.

b. Good Character. Respondent has favorable witnesses as to her good character from a variety of judges and attorneys practicing in Orange County.

**PENDING CASES:**

a. The written advice of pending cases, referenced in paragraph A.(6), was sent on August 12, 2003.

b. There are two pending cases not unresolved by this stipulation. They are case nos. 03-O-02533 and 03-O-03033.

Date 8/15/03

*Athleen M. Fitzgerald*  
Respondent's signature

ATHLEEN M. FITZGERALD  
print name

Date 08/18/03

*[Signature]*  
Respondent's Counsel's signature

WEISENBERG & NELSON, INC.  
By: JOHN W. NELSON  
print name

Date 8/20/03

*Larry DeSha*  
Deputy Trial Counsel's signature

LARRY DeSHA  
print name

### ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

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

Date 8/27/03

*Alvan D. [Signature]*  
Judge of the State Bar Court



**CERTIFICATE OF SERVICE**

**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 28, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed August 28, 2003**

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

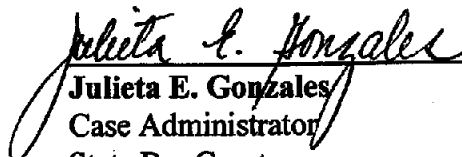
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOHN W NELSON ESQ  
WEISENBERG & NELSON  
12399 LEWIS ST #103  
GARDEN GROVE, CA 92840-4643**

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

**Larry DeSha, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 28, 2003.

  
\_\_\_\_\_  
**Julieta E. Gonzales**  
Case Administrator  
State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 23, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

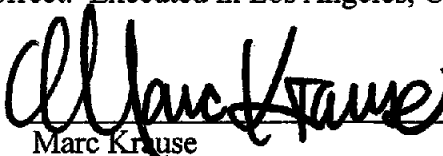
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

KATHLEEN M. FITZGERALD  
625 THE CITY DR S, STE 260  
ORANGE, CA 92868

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

DESIREE M. FAIRLY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 23, 2018.



Marc Krause  
Court Specialist  
State Bar Court