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ORIGINAL

State Bar Court of California
Hearing Department
Los Angeles
REPROVAL

PUBLIC MATTER

Counsel For The State Bar	Case Number(s):	For Court use only
Erin McKeown Joyce Senior Trial Counsel 1149 South Hill Street Los Angeles, California 90015 (213) 765-1356 Bar # 149946	13-O-12159	FILED OCT 31 2013 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Stephen J. Strauss Law Offices of Stephen Strauss 1107 Fair Oaks Avenue # 885 South Pasadena, CA 91030 (310) 556-1300 Bar # 129648	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: DAVID IRA KUSSIN Bar # 151344 A Member of the State Bar of California (Respondent)	**PUBLIC REPROVAL** ☐ PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted December 4, 1990.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(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 are added to membership fee for calendar year following effective date of discipline (public reproval).
- ☐ Case ineligible for costs (private reproval).
- ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: the two (2) billing cycles immediately following the effective date of the discipline in this matter. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.

(9) The parties understand that:

(a) ☐ A private reproval 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 reproval 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 reproval 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 reproval 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 a separate attachment entitled "Prior Discipline.

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

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

(4) ☐ **Harm:** Respondent's misconduct harmed significantly 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.

(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. See attachment to Stipulation Re Facts, Conclusions of Law and Disposition at page 7.

(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:

Respondent's entering a prefiling stipulation is an additional mitigating circumstance. See page 7 of the attachment to the Stipulation Re Facts, Conclusions of Law and Disposition for a fuller explanation and factual basis for this mitigating circumstance.

D. Discipline:

(1) ☐ **Private reproval (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 reproval (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

(1) ☒ Respondent must 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 must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and

conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproval. 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 reproval 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 30 (thirty) 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 the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

(7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproval.

(8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason: .

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

(10) ☒ 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 reproval.

☐ No MPRE recommended. Reason: .

(11) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID IRA KUSSIN

CASE NUMBER: 13-O-12159

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of a violation of the specified Rule of Professional Conduct.

Case No. 13-O-12159 (Complainant: Lucia Guh-Siesel)

FACTS

1. Prior to June 2012, Respondent was employed by Veloce Technologies, Inc., to file applications for permanent labor certifications (PERMs) with the Department of Labor for several of Veloce's key technical employees.

2. On June 20, 2012, Applied Micro Circuits Corporation (APM) acquired Veloce and employed Respondent to continue working on the applications for PERMs which were already in process for five employees.

3. The Department of Labor approved the applications for PERMs filed by Respondent for the five employees.

4. After the five PERMs were approved, APM engaged Respondent to file I-140 Immigrant visa applications for the five employees.

5. APM's staff and several counsel contacted Respondent on multiple occasions from November 2012 through January 2013 to inquire concerning the status of the five I-140 applications which were outstanding.

6. Despite being contacted by APM's staff and several counsel on several occasions from November 2012 through January 2013, Respondent failed to timely file the I-140 applications for three of the five employees, which were due in that time period. The other two I-140 applications were not yet due.

7. During this time period, Respondent's office experienced a catastrophic information technology ("IT") failure, which caused Respondent's calendaring system to malfunction. Respondent's failure to timely file the I-140 applications resulted in part from the calendar malfunction in Respondent's office. However, Respondent had been reminded on several occasions about the approaching deadlines, but failed to take steps to ensure that the I-140 applications were timely filed.

8. In January 2013, APM hired new immigration counsel who filed the two outstanding I-140 applications which were not yet time-barred. By that time, the deadline to file I-140 applications for the other three employees had expired.

9. Replacement counsel re-filed applications for PERMs for the three other employees whose deadlines to file the I-140 applications had elapsed, successfully obtained new PERMs and filed timely I-140 applications based on the new PERMs.

CONCLUSIONS OF LAW

10. By failing to timely file the three I-140 applications in the time period from November 2012 through January 2013, when he was replaced as APM's immigration counsel, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rule of Professional Conduct 3-110(A).

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES

No Prior Discipline (Standard 1.2(e)(i)): Respondent has no prior record of discipline. Respondent was admitted in December 1990, almost 22 years before the onset of the misconduct. Respondent's lengthy period of discipline free practice should be afforded mitigating weight. (See *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 106-107 [where Review Department gave mitigating credit for over 12 years of discipline free practice despite seriousness of misconduct]).

Good Character (Standard 1.2(e)(vi)): Respondent submitted character letters from three attorneys and three respected members of the community familiar with Respondent's misconduct and Respondent's community service. Respondent's good character has been attested by a wide range of distinguished members of the legal and general communities who are fully aware of Respondent's misconduct in connection with his handling of the three I-140 applications for APM. (See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171.) Respondent has established that he is entitled to mitigating credit for an extraordinary demonstration of good character.

Prefiling Stipulation: Respondent met with State Bar personnel, admitted his misconduct, and entered this stipulation fully resolving this matter. Respondent's cooperation at this early stage has saved the State Bar significant resources and time. Respondent's stipulation to the facts, his culpability, and discipline is a mitigating circumstance. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigating credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE

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

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

Respondent has stipulated to one violation of Rule of Professional Conduct 3-110(A) for failing to perform with competence in the handling of three of APM's key employees' I-140 applications. The standard which applies to Respondent's misconduct is Standard 2.4(b). Standard 2.4(b) provides that "[c]ulpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client."

Considering the extent of the misconduct, Respondent failed to timely file three out of five I-140 applications in a two-and-one-half month period, despite being reminded by Veloce's staff and general counsel on multiple occasions of the looming deadlines. Respondent's failure to file the applications timely was caused, in part, by the IT failure at his office.

Turning to the degree of harm to APM, Respondent's client, at least three of APM's key employees whose I-140 applications were not timely filed faced having to re-file applications for PERMs, and the possible loss of the employees' visa priority dates. APM risked losing key employees due to Respondent's mishandling of the I-140 applications. However, the quick work of APM's replacement counsel significantly diminished any harm to APM and its employees, since she re-filed applications for PERMs where the deadlines had expired and successfully filed I-140 applications for those three employees, once she obtained new PERMs. For the two other employees whose deadlines had not yet passed, the replacement attorney filed timely I-140 applications without incident.

The mitigating circumstances must also be considered. In mitigation, Respondent has demonstrated good character, which is recognized mitigation under Standard 1.2(e)(iv). Moreover, Respondent has fully cooperated with the State Bar to resolve this matter with a stipulation. Further, before the misconduct began, Respondent had no record of discipline in almost 22 years of practice.

Following Standard 2.4(b) and considering the extent of the misconduct and degree of harm to the client, APM, and APM's three key employees, and considering the mitigating circumstances, the appropriate level of discipline is a public reproval. Imposition of a public reproval will be sufficient to protect the public, the courts and the legal profession under Standard 1.3, and falls squarely within the Standards for discipline in this matter.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 2, 2013, the prosecution costs in this matter are $2,988. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

Pursuant to Rule of Procedure 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School.

In the Matter of:	Case number(s):
DAVID IRA KUSSIN	13-O-12159

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.

Date	Respondent's Signature	David I. Kussin Print Name
10/22/13 Date	Respondent's Counsel Signature	Stephen J. Strauss Print Name
Date	Deputy Trial Counsel's Signature	Erin McKeown Joyce Print Name

(Do not write above this line.)

In the Matter of:	Case number(s):
DAVID IRA KUSSIN	13-O-12159

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.

10/21/13		David I. Kussin
Date	Respondent's Signature	Print Name
		Stephen J. Strauss
Date	Respondent's Counsel Signature	Print Name
10-25-13		Erin McKeown Joyce
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: DAVID IRA KUSSIN	Case Number(s): 13-O-12159

REPROVAL ORDER

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

- [x] 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 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. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

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

10/30/13
Date

Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 31, 2013, I deposited a true copy of the following document(s):

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

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

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

STEPHEN J. STRAUSS
LAW OFFICES OF STEPHEN STRAUSS
1107 FAIR OAKS AVE # 885
SOUTH PASADENA, CA 91030

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

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 31, 2013.

Paul Barona
Case Administrator
State Bar Court