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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION			PUBLIC MATTER
<p>Counsel For The State Bar</p> <p>Lara Bairamian Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1338</p> <p>Bar # 253056</p>	<p>Case Number(s): 12-H-12371-RAP</p>	<p>For Court use only</p> <div style="text-align: center;"> <p>FILED</p> <p>SEP 06 2012</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div> <div style="text-align: right; margin-top: 20px;"> <p>kwiktag® 152 141 670</p>  </div>	
<p>In Pro Per Respondent</p> <p>Kimberly Sue Daniels 1234 Ramona Avenue Grover Beach, CA 93433 (805) 459-0889</p> <p>Bar # 195839</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>		
<p>In the Matter of: Kimberly Sue Daniels</p> <p>Bar # 195839</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 June 5, 1998.
- (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."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two (2) billing cycles following the effective date of the Supreme Court order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [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 09-O-10245-RAP.
 - (b) Date prior discipline effective January 26, 2011.
 - (c) Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code sections 6068(a), 6068(i), and 6068(m).
 - (d) Degree of prior discipline Public Reprimand.
 - (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.

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- (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

N/A

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.

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(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

See attachment.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two (2) years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
 - ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
 - iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of one (1) year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: Respondent attended Ethics School on March 22, 2012, and passed the test given at the end of the session .
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: Respondent has been ordered to take and pass the MPRE in relation to State Bar Court case no. 09-O-10245, effective January 26, 2011.
- (2) **Other Conditions:**

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

In *Matter of Downey* (Rev. Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156, the court found that Respondent was entitled to mitigation for cooperating with the State Bar by entering into a fairly comprehensive pretrial stipulation of facts. Although the stipulated facts were not difficult to prove, and Respondent did not admit culpability, the stipulation was relevant and assisted the State Bar's prosecution of the case. The court accorded Respondent limited mitigation under standard 1.2(e)(v). Similar to *Downey*, Respondent cooperated with the State Bar and agreed to enter into a pretrial stipulation of facts. Unlike *Downey*, Respondent admitted culpability. Under the circumstances, Respondent is entitled to limited mitigation.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was August 1, 2012.

AUTHORITIES SUPPORTING DISCIPLINE.

The court looks first to the Standards when setting discipline; the Standards are to be given great weight and followed wherever possible. (*In re Silvertown* (2005) 36 Cal. 4th 81, 91-92; *In the Matter of Sullivan* (Rev. Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189, 195.)

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Standard 2.9 provides that culpability of a member of a willful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

In *Conroy v. State Bar* (1990) 51 Cal. 3d 799, the Respondent was publicly reprimanded and then failed to take and pass the MPRE within one year as required. Respondent defaulted in the matter before the Hearing Department, but participated in the Review Department and Supreme Court proceedings. The court found Respondent's subsequent passage of the MPRE was mitigating but was outweighed by aggravating factors. In aggravation the court considered Respondent's prior discipline, Respondent's default at the Hearing Department level and Respondent's lack of remorse for the present violation. The discipline imposed in light of the aggravation was one year suspension, stayed, two years of probation and sixty-days actual suspension.

Similar to *Conroy*, Respondent belatedly complied with the conditions attached to her public approval and has a prior record of discipline. However, unlike *Conroy*, Respondent has participated and agreed to resolve the matter prior to trial, did not default before the Hearing Department and did not display a

lack of remorse during the disciplinary proceedings. These mitigating factors suggest that unlike *Conroy*, actual suspension is not required.

Although untimely, Respondent made efforts to satisfy the terms of her probation. Based on the above-described standards, a two (2) year stayed suspension accompanied by a one (1) year probationary period serves the purpose of State Bar discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

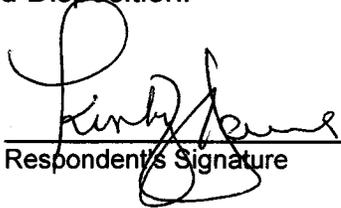
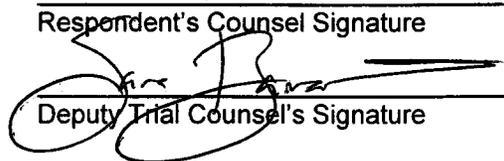
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 30, 2012, the prosecution costs in this matter are \$3,349. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of Kimberly Sue Daniels	Case number(s): 12-H-12371
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SIGNATURE OF THE PARTIES

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

<u>July 15, 2012</u> Date	 Respondent's Signature	<u>Kimberly Sue Daniels</u> Print Name
<u>8/22/12</u> Date	 Deputy Trial Counsel's Signature	<u>Lara Bairamian</u> Print Name

(Do not write above this line.)

In the Matter of: Kimberly Sue Daniels	Case Number(s): 12-H-12371
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STAYED SUSPENSION ORDER

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

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

*PAGE 5 - D. (2) - PROBATION - DELETE - "ONE YEAR"
INSERT - "TWO (2) YEARS"*

*PAGE 6 - F. (1) - PLACE CHECKMARK IN BOX.
UNCHECK BOX - "NO MPPE RECOMMENDED."
DELETE SENTENCE AFTER "REASON."*

*PAGE 9 - 2ND PARAGRAPH, 2ND SENTENCE - DELETE - "ONE (1) YEAR"
INSERT - "TWO (2) YEARS"*

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.)**

09-24-2012
Date


 RICHARD A. PLATEL
 Judge of the State Bar Court

RICHARD A. PLATEL

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 September 6, 2012, 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:

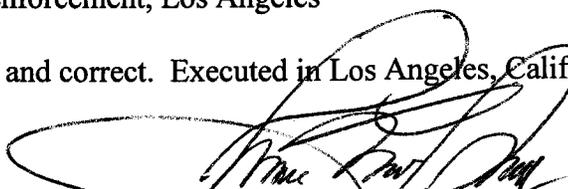
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

KIMBERLY S. DANIELS
LAW OFC KIMBERLY DANIELS
1234 RAMONA AVE
GROVER BEACH, CA 93433

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

Lara Bairamian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 6, 2012.



Johnnie Lee Smith
Case Administrator
State Bar Court