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| State Bar Court of California Hearing Department Los Angeles | | |
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| <p>Counsel For The State Bar</p> <p>Miho Murai Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 213-765-1219</p> <p>Bar # 235178</p> | <p>Case Number (s)</p> <p>06-O-11724 06-O-12561</p> | <p>(for Court's use)</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">FILED</p> <p style="text-align: center; font-size: 18pt;">JAN 09 2008 <i>R</i></p> <p style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> |
| <p>Counsel For Respondent</p> <p>Ellen Pansky Pansky & Markle 1010 Sycamore Avenue, Suite 101 South Pasadena, CA 91030 213-626-7300</p> <p>Bar # 77688</p> | <p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>In the Matter Of:</p> <p>MICHAEL ROBERT KILPATRICK</p> <p>Bar # 103263</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 10, 1982**.
- (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 **16** 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."

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- (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 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: **Costs to be paid in equal amounts prior to February 1 for the following two (2) billing cycles following the effective date of the Supreme Court order.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - 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 **95-C-18813**
 - (b) Date prior discipline effective **December 29, 1996**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(a)**
 - (d) Degree of prior discipline **Private reproof, with public disclosure. The prior is unrelated to the practice of law, and remote in time, having occurred almost eleven (11) years ago.**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

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- (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. **The current misconduct acknowledged by the member evidences multiple acts of wrongdoing.**
- (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. **Respondent's misconduct did not significantly harm any of his clients. Although there was a delay in both cases, Ms. Krob ultimately received all of the money that was owed to her from her ex-husband, and Mr. Harris eventually obtained his divorce decree.**
- (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. **Respondent has been cooperative with the State Bar during its disciplinary 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.

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- (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. **According to Respondent, during the time of misconduct, Respondent was undergoing a difficult period of marital strife, which caused him to feel overwhelmed and stressed. He has since reconciled with his wife.**
- (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:

Respondent has been practicing law for twenty-five (25) years and is a Family Law Legal Specialist.

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 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

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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 reprobation. 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 reprobation 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 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 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 reprobation.

No MPRE recommended. Reason:

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

- | | |
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| <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:

N/A

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

IN THE MATTER OF: MICHAEL ROBERT KILPATRICK

CASE NUMBER(S): 06-O-11724 and 06-O-12561

FACTS AND CONCLUSIONS OF LAW

Michael Robert Kilpatrick ("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

1. Respondent was admitted to the practice of law in the State of California on June 10, 1982, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Facts of Case No. 06-O-11724

2. In 1981, Shirley Krob ("Ms. Krob") and Clayton Fairchild ("Mr. Fairchild") divorced, in the matter entitled *Shirley A. Fairchild v. Clayton Alvin Fairchild*, in Kern County Superior Court, Case No. S-1500-CV-168205 (the "dissolution action").
3. Pursuant to the divorce agreement, Ms. Krob was entitled to a portion of Mr. Fairchild's retirement benefits, once he retired from his job, in April 1994. By virtue of the 1981 dissolution, Kern County Superior Court retained jurisdiction over the pension benefit plan.
4. From and after April 1994, Ms. Krob did not receive any monies from Mr. Fairchild.
5. In January 2003, Ms. Krob retained Jill White ("Ms. J. White") of The Law Firm of Kilpatrick and White to obtain prospective and retroactive pension payments from Mr. Fairchild. Ms. Krob paid Ms. J. White \$1,500.00. There was a written letter agreement on March 20, 2003, memorializing the representation.
6. In September 2003, Ms. J. White filed a Qualified Domestic Relations Order ("QDRO") in the dissolution action, which was approved by Kern County Superior Court on September 19, 2003. Pursuant to the September 19, 2003 Order, Ms. Krob was entitled

to receive monthly payments in the sum of \$331.58 from Mr. Fairchild's pension benefit plan. She received her first payment of benefits in November 2003.

7. In July 2004, Ms. J. White filed a Supplemental QDRO, which was approved by Kern County Superior Court on July 19, 2004. Pursuant to the July 19, 2004 Order, Mr. Fairchild owed Ms. Krob \$37,800.12 for the total sum of arrears that accrued from Mr. Fairchild's date of retirement on April 1, 2004, though the date of the first payment of benefits to Ms. Krob on November 1, 2003. To pay off the principal sum of \$37,800.12, Ms. Krob would receive an additional \$600.00 per month for a period of 63 months, in addition to the monthly sum of \$331.58 from Mr. Fairchild's pension benefit plan.
8. On September 23, 2004, Ms. J. White filed a Notice of Withdrawal as Attorney for Ms. Krob.
9. On November 1, 2004, Mr. Fairchild, through his attorney Cynthia White ("Ms. C. White"), filed an Order to Show Cause in the dissolution action, alleging that he had not stipulated to the Supplemental QDRO and seeking to set it aside. The Order to Show Cause hearing was scheduled for November 17, 2004.
10. On November 9, 2004, Ms. Krob retained Respondent, from The Law Firm of Kilpatrick and White, to represent her with regards to the new issues raised by Mr. Fairchild in the dissolution action, as well as to ensure that she received the payments owed to her by Mr. Fairchild. Ms. J. White was not available to represent her personally. A written retainer agreement was executed, which provided generally that Respondent was to represent Ms. Krob's "interest in connection with the [dissolution action] and to take all appropriate actions and tactics to reach a disposition of that matter by settlement, and if necessary, by litigation." Ms. Krob paid the sum of \$1,500.00 in advanced fees at the time she retained Respondent.
11. On November 17, 2004, Respondent appeared for the Order to Show Cause hearing on behalf of Ms. Krob. The matter was continued to December 15, 2004 to allow the parties to attempt a resolution.
12. On December 15, 2004, Respondent appeared for the Order to Show Cause hearing on behalf of Ms. Krob. The matter was argued and submitted to the Court for review and a decision.
13. On January 5, 2005, the Court issued a ruling, granting Mr. Fairchild's request to set aside the Supplemental QDRO. The Court ordered that the funds already received by Ms. Krob may be retained, pending further hearing on February 16, 2005. The Court

also ordered that no other withholdings were permitted until further order of the Court. The ruling was mailed to both parties on January 5, 2005 by the Court Clerk.

14. On February 16, 2005, on the Court's own motion, the matter was continued to March 23, 2005 due to the illness of the judge and to allow time for the filing of motions.
15. On March 21, 2005, Ms. J. White, on behalf of Respondent, filed a responsive declaration to Mr. Fairchild's request to set aside the Supplemental QDRO and an Order to Show Cause requesting orders on behalf of Ms. Krob.
16. On March 23, 2005, Respondent and Ms. Krob appeared for the Order to Show Cause hearing, as well as Mr. Fairchild and his attorney, Ms. C. White. The parties stipulated that Mr. Fairchild, within ninety (90) days from and after March 23, 2005, would refinance the community home and pay Ms. Krob \$37,000.00 (the "judgment") from the refinance to pay off the sum Mr. Fairchild owed Ms. Krob for arrearage. The Court continued the Order to Show Cause hearing to June 22, 2005, and ordered Respondent to prepare the Order after the hearing reflecting the parties' stipulation.
17. The March 23, 2005 stipulation was conditioned on Mr. Fairchild being able to refinance the community home. According to Respondent, he was concerned that collection on the judgment would prove problematic because Mr. Fairchild was retired and living on Social Security payments, had limited means, and might have difficulty obtaining refinancing for the residence. Additionally, Respondent was concerned that Mr. Fairchild could defend against enforcement of the judgment, or simply declare bankruptcy and quickly wipe out any interest Ms. Krob might have under the judgment.
18. During the representation, Respondent discovered that Ms. Krob already held a promissory note and deed of trust on Mr. Fairchild's home. Mr. Fairchild's attorney claimed that the promissory note and deed of trust needed to be surrendered before Mr. Fairchild could refinance the house.
19. On June 22, 2005, Respondent appeared for the Order to Show Cause hearing on behalf of Ms. Krob. Mr. Fairchild and his attorney did not appear. The Court continued the hearing to July 20, 2005 to give Mr. Fairchild additional time to refinance the community home and pay Ms. Krob the sum of \$37,000.00 for arrearage.
20. On July 20, 2005, Respondent and Ms. Krob appeared for the Order to Show Cause hearing. Mr. Fairchild and his attorney, Ms. C. White, also appeared. The matter was argued and submitted to the Court for review and a decision.

21. On July 29, 2005, the Court issued a ruling, ordering Mr. Fairchild to pay \$37,000.00 to Ms. Krob plus judgment rate interest of 10% or \$10.14 per day from and after June 22, 2005, until paid in full. Mr. Fairchild was further ordered to pay \$1,000.00 in attorney fees, if he did not pay the entire sum of \$37,000.00 to Ms. Krob by August 19, 2005. Respondent was ordered to prepare the Order after the hearing. The ruling was mailed to both parties on July 29, 2005 by the Court Clerk.
22. On August 11, 2005, the credit union, through which Mr. Fairchild was attempting to refinance the community home, sent Respondent a Grant Deed for Ms. Krob's signature. Her signature was needed in order to go forward with the refinancing of the community home. Ms. Krob did not receive the Grant Deed from Respondent.
23. On September 28, 2005, Respondent received a copy of a letter from Ms. C. White to East Kern Escrow, dated September 26, 2005. In the letter, Ms. C. White advised the escrow company about the Court's Findings and Orders regarding the \$37,000.00 owed to Ms. Krob, as well as the interest and attorney fees owed by Mr. Fairchild. Ms. C. White instructed the escrow company on how to distribute the loan, which would become available on October 3, 2005. On September 29, 2005, Respondent forwarded a copy of the letter to Ms. Krob with a brief cover letter, stating that the enclosed letter was "self-explanatory." Respondent's cover letter did not provide any significant information to Ms. Krob, nor did it explain the content of opposing counsel's letter to East Kern Escrow.
24. On September 30, 2005, Respondent received a letter from Ms. C. White, dated September 28, 2005. In the letter, Ms. C. White advised Respondent that her client, Mr. Fairchild, was diligently trying to comply with the Stipulation, and that the loan was ready to fund as soon as Respondent returned the Grant Deed with Ms. Krob's signature. Ms. C. White further advised that the Grant Deed was forwarded to Respondent's office by the credit union on August 11, 2005, over seven weeks ago, and requested Respondent to contact her as soon as possible to explain why it had not been sent yet. She also stated that Ms. Krob's delay was causing Mr. Fairchild harm since he had to pay daily interest and attorney's fees if the settlement funds were not received by Ms. Krob in August. On October 7, 2005, Respondent forwarded a copy of the letter to Ms. Krob with a brief cover letter, advising her to review the letter and then to contact him to "discuss this matter further." Respondent's cover letter did not address any of the concerns raised in Ms. C. White's letter to Respondent.
25. From and after October 11, 2005 until November 21, 2006, Ms. Krob had difficulty communicating with Respondent. On numerous occasions, she would leave a message at his office requesting him to call her back regarding the status of her case.

- Respondent failed to respond to her status inquiries.
26. On October 27, 2005, over six (6) months after the court hearing, Respondent filed the Findings and Order After Hearing, reflecting the March 23, 2005 stipulation of the parties.
 27. On November 4, 2005, Ms. Krob wrote a letter to Respondent, complaining that she had not been told anything about the deed, and, in part, asking why he had it for over two months without doing anything with it. The letter was sent to Respondent as his office located at 1122 Truxtun Avenue, Suite 200, Bakersfield, CA 93301. The letter was properly mailed to Respondent via the U.S. Postal Service, first class postage prepaid, in a sealed envelope properly addressed to his office address. The letter was not returned to Ms. Krob as undeliverable or for any other reason by the U.S. Postal Service.
 28. On November 4, 2005, Respondent received a letter from Ms. C. White, dated November 1, 2005. In the letter, she stated, in part, that when she had last spoken to him four weeks ago, she understood from Respondent that he was waiting for his client, Ms. Krob, to sign the deed in order to complete the refinancing. She stated that since that time, her office had left several messages with him, but he failed to respond to them. She advised him that Ms. Krob had contacted her for information on how to complete the transaction, since he failed to return Ms. Krob's phone calls. Finally, she advised him that because of his delay, the loan documents would need to be redone. On November 8, 2005, Respondent forwarded a copy of the letter to Ms. Krob with a brief cover letter, advising her to review the letter and then to contact him to "discuss the matter further." He also enclosed a copy of the Findings and Order from the hearing held on March 23, 2005, which he filed on October 27, 2005. Respondent's cover letter did not address any of the concerns raised in Ms. C. White's letter to Respondent nor did it explain his delay and lack of response.
 29. Soon thereafter, Ms. Krob obtained the Grant Deed directly from the escrow company. Ms. Krob signed it and immediately returned it to the escrow company.
 30. On November 14, 2005, Respondent received a copy of a letter from Ms. C. White to East Kern Escrow, dated November 14, 2005. In the letter, Ms. C. White advised the escrow company about the Court's July 29, 2005 ruling, wherein Mr. Fairchild was ordered to pay the interest rate of 10% or \$10.14 per day until he paid Ms. Krob the full sum of \$37,000.00. She directed the escrow company to issue a check to Ms. Krob for \$38,034.288 and to herself for \$2,287.90, once the funds became available. On November 18, 2005, Respondent forwarded a copy of the letter to Ms. Krob with a brief cover letter, stating that the enclosed letter was "self-explanatory." Respondent's cover letter did not provide any provide any significant information to Ms. Krob, nor did it respond to her concerns or questions.

31. On December 14, 2005, Ms. Krob wrote to Respondent regarding his failure to respond to her. The letter was sent to Respondent at his office located at 1122 Truxtun Ave., Suite 200, Bakersfield, CA 93301. The letter was properly mailed to Respondent via the U.S. Postal Service, first class postage prepaid, in a sealed envelope properly addressed to his office address. The letter was not returned to Ms. Krob as undeliverable or for any other reason by the U.S. Postal Service. Ms. Krob did not receive a response from Respondent.
32. On January 14, 2006, Ms. Krob received a bill for December 2005 from Respondent, with a balance of \$188.85 owed to him.
33. On January 18, 2006, Respondent wrote to Ms. Krob advising her, in part, that he discovered that a prior Deed of Trust had been recorded against the community home, and that this would have to be resolved before the settlement with Mr. Fairchild could be concluded. Respondent proposed that either they meet or, if Ms. Krob wished, he could substitute out of the case. Enclosed with the letter, he provided a Substitution of Attorney form. Respondent also advised her that the case was taking "more time than necessary" because Mr. Fairchild had been "less than cooperative in connection with the entire process."
34. From and after January 18, 2006, Ms. Krob was unable to meet with Respondent.
35. On January 23, 2006, Ms. Krob filed her complaint against Respondent to the State Bar.
36. On May 26, 2006, after the State Bar complaint was made, Respondent and Ms. Krob spoke with one another. Ms. Krob advised Respondent to do whatever was necessary to settle the matter.
37. On June 2, 2006, Respondent wrote to Ms. Krob, in part, asking her to propose specific directions of how the matter should be resolved. He also advised her that he had written a letter to Ms. C. White demanding that her client follow through with the refinancing or else he would initiate foreclosure proceedings based on the trust deed he had discovered. Ms. C. White never received any such letter.
38. On June 12, 2006, Ms. Krob left a message with Respondent's office seeking to tell him to proceed with the foreclosure proceedings. He did not call her back.
39. Ms. Krob heard nothing further from Respondent until November 21, 2006.
40. Respondent eventually completed the services for which he was retained. In March 2007, Ms. Krob received the entire amount owed to her by Mr. Fairchild.

Conclusions of Law of Case No. 06-O-11724

By failing to timely respond to Ms. Krob's telephone calls and letters from September 2005 until November 2006 and by failing to notify Ms. Krob in or about August 2005, or any time thereafter, regarding the receipt of the Grant Deed and that her signature on the Grant Deed was necessary for Mr. Fairchild to refinance the community home, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

Facts of Case No. 06-O-12561

41. On October 14, 2004, Alan J. Harris ("Mr. Harris") retained Respondent to represent him in a dissolution matter. Mr. Harris paid Respondent \$3,500.00 as advanced fees.
42. On November 23, 2004, Respondent properly filed the Petition for Dissolution of Marriage and Summons on behalf of Mr. Harris in Kern County Superior Court, in the matter entitled *Marriage of Alan J. Harris and Nikki Ann (Harris) Terry*, Case No. S-1501-FL-592290 (the "dissolution matter").
43. On January 30, 2005, at Respondent's request, Mr. Harris completed and returned an Income and Expense Declaration to Respondent's office.
44. Thereafter, from approximately March 2005 until October 2006, Respondent took no further action to proceed with the dissolution matter on behalf of Mr. Harris.
45. From and after March 31, 2005 until October 2006, both Mr. Harris and his business office manager, Sue Hale ("Ms. Hale"), called Respondent's office numerous times about the dissolution matter, including the filing of a default motion. They left messages requesting Respondent to contact Ms. Hale regarding the status of the dissolution matter. Respondent failed to respond to their status inquires.
46. On January 13, 2006, Mr. Harris sent a letter to Respondent at his office address located at 1122 Truxtun Avenue, Suite 200, Bakersfield, California 93301. The letter was properly mailed to Respondent via the U.S. Postal Service, first class postage prepaid, in a sealed envelope properly addressed to his office address. The letter was not returned to Mr. Harris as undeliverable or for any other reason by the U.S. Postal Service. In the letter, Mr. Harris advised Respondent that he had suffered from three heart attacks since October 2005, and he felt it was urgent that the divorce be completed. Mr. Harris requested Respondent to forward any necessary papers to his office so that the divorce could come to a conclusion. He advised Respondent that he had 15 days to respond. Mr. Harris did not receive a response from Respondent.

47. On April 4, 2006, Mr. Harris sent another letter to Respondent at his office address located at 1122 Truxtun Avenue, Suite 200, Bakersfield, California 93301. The letter was properly mailed to Respondent via the U.S. Postal Service, first class postage prepaid, in a sealed envelope properly addressed to his office address. The letter was not returned to Mr. Harris as undeliverable or for any other reason by the U.S. Postal Service. In the letter, Mr. Harris requested that either Respondent complete and file the Declaration of Default or complete a Substitution of Attorney form and refund the balance of his credit so that he could retain another attorney. He requested Respondent to respond within the next 10 days, or else he would file a complaint with the California Bar Association. In the letter, he indicated that, "[t]his is imperative since my health is failing." Mr. Harris did not receive a response from Respondent.
48. On June 7, 2006, the State Bar opened an investigation, case number 06-O-12561, pursuant to the complaint filed by Mr. Harris on May 8, 2006.
49. On October 2, 2006, Respondent re-established contact with Mr. Harris.
50. In late October 2006, Respondent filed a Final Declaration of Disclosure, Request to Enter Default and a proposed Judgment of Dissolution of Marriage on behalf of Mr. Harris. The default hearing was scheduled for November 13, 2006.
51. On November 13, 2006, the court held a default hearing. Respondent and Mr. Harris both appeared. A judgment was entered dissolving the marriage on November 29, 2006.
52. Respondent eventually completed the services for which he was retained.

Conclusions of Law of Case No. 06-O-12561

By failing to take any action on behalf of Mr. Harris from March 2005 until October 2006 in the dissolution matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

By failing to respond to Mr. Harris' numerous attempts to contact him from and after March 31, 2005 until October 2006, Respondent failed to respond to reasonable client inquiries in a matter in which he agreed to provide legal services in willful violation of rule 3-500 of the Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to, on page two, paragraph A.(7), was December 27, 2007.

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DISMISSALS

The parties respectfully request the Court to dismiss the following alleged violation in the interest of justice.

| <u>Case No.</u> | <u>Count</u> | <u>Alleged Violation</u> |
|-----------------|--------------|---|
| 06-O-12561 | Four | Business and Professions Code § 6068(i) |

AUTHORITIES SUPPORTING DISCIPLINE

Pursuant to standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct, the primary purposes of disciplinary proceedings and imposing sanctions for professional misconduct 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.”

Here, the requested discipline furthers the purposes set forth in standard 1.3.

Standard 1.7(a) provides that if a member is found culpable of misconduct and has a prior record of one imposition of discipline, the degree of discipline imposed in the current proceeding *shall be greater than that imposed in the prior proceeding* unless the prior was remote in time and the offense for which it was imposed was so minimal that it would be manifestly unjust to impose greater discipline in the current proceeding.

Pursuant to standard 2.4(b), the “[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 reproof or suspension* depending upon the extent of the misconduct and the degree of harm to the client” (emphasis added).

The Supreme Court gives the Standards “great weight,” and will reject a recommendation consistent with the Standards only where the Court entertains “grave doubts” as to its propriety. *In re Naney* (1990) 51 Cal. 3d 186, 190; *see also In re Silvertown* (2005) 36 Cal. 4th 81, 91, 92. Further, although the Standards are not mandatory, it is well-established that the Standards may be deviated from only when there is compelling, well-defined reason to do so. *See Aronin v. State Bar* (1990) 52 Cal. 3d 276, 291; *see also Bates v. State Bar* (1990) 52 Cal. 3d 1056, 1060, fn. 2.

The State Bar recognizes that the Standards should not be applied in a talismanic fashion. *Gary v. State Bar* (1988) 44 Cal. 3d 820, 828. However, Respondent bears the burden to demonstrate that the State Bar should deviate from the Standards.

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Turning to case law, discipline for conduct analogous to that involved in the instant case, in which there were isolated, unrelated, improper delays of performance and failures to communicate in two client matters, that occurred during an aberrational period of personal difficulty for Respondent, has ranged from an admonition where one client was involved, *see In the Matter of Respondent C* (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439, to private reproof, *see In the Matter of Respondent G* (Rev. Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, to higher discipline where multiple clients were abandoned.

In a case quite similar to similar to this matter, *In the Matter of Hanson* (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, the respondent had been charged with client neglect in two matters, and found culpable of failure to refund unearned fees and improper withdrawal from employment in one matter. The respondent, who had previously been disciplined by imposition of a private reproof, received a public reproof with conditions. Attorney Hanson's misconduct was more serious than Respondent's herein, as attorney Hanson actually withdrew from employment without advising opposing counsel, and retained unearned fees. Also, unlike Respondent, attorney Hanson's prior discipline involved a client matter.

In light of the mitigating circumstances demonstrated by Respondent in this matter and the lack of significant harm to either clients, the imposition of a public reproof with conditions would adequately protect the public, the courts, and the legal profession from further misconduct from this Respondent.

COSTS OF DISCIPLINARY PROCEEDINGS



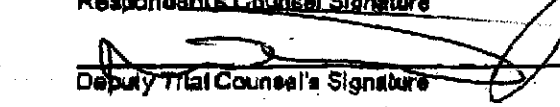
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that, as of December 27, 2007, the costs in this matter is \$3,654.00. Costs to be paid in equal amounts prior to February 1 for the following two (2) billing cycles following the effective date of the Supreme Court order. Respondent further acknowledges that should this stipulation be rejected or should relief from this stipulation be granted, the costs in this matter may increase due to the costs of further proceedings.

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| In the Matter of MICHAEL KILPATRICK | Case number(s): 06-Q-11724 and 06-Q-12561 |
|---|--|

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.

| | | |
|----------------|--|---|
| 1/4/08 Date |  | Michael Robert Kilpatrick Print Name |
| 1/4/08 Date |  | Ellen Pansky Print Name |
| 1/4/08 Date |  | Miho Mural Print Name |



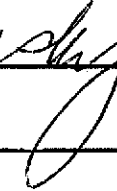
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|---|--|
| In the Matter of MICHAEL KILPATRICK | Case number(s): 06-O-11724 and 06-O-12581 |
|---|--|

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>1/4/08</u> Date |  Respondent's Signature | <u>Michael Robert Kilpatrick</u> Print Name |
| <u>1/4/08</u> Date |  Respondent's Counsel Signature | <u>Ellen Pansky</u> Print Name |
| _____ Date |  Deputy Trial Counsel's Signature | <u>Miho Mural</u> Print Name |

(Do not write above this line.)

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| In the Matter of MICHAEL KILPATRICK | Case number(s): 06-O-11724 and 06-O-12561 |
|---|---|

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>1/4/08</u> Date |  Respondent's Signature | <u>Michael Robert Kilpatrick</u> Print Name |
| _____ Date | _____ Respondent's Counsel Signature | <u>Ellen Pansky</u> Print Name |
| _____ Date | _____ Deputy Trial Counsel's Signature | <u>Miho Murai</u> Print Name |

(Do not write above this line.)

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|---|---|
| In the Matter Of MICHAEL KILPATRICK | Case Number(s): 06-O-11724 and 06-O-12561 |
|---|---|

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 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 125(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.

01/08/08
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 January 9, 2008, 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:

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

**ELLEN ANNE PANSKY, ESQ.
PANSKY & MARKLE
1010 SYCAMORE AVE #101
SOUTH PASADENA, CA 91030**

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

MIHO MURAI, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 9, 2008**.



Rose M. Luthi
Case Administrator
State Bar Court