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ORIGINAL

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Alex Hackert Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1498 Bar # 267342	Case Number(s): 15-C-12992-DFM	For Court use only <div style="text-align: center;"> FILED MAR -1 2016 <i>Jep</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent McKinley Dirk Eastmond 140 W 9000 S #8 Sandy, UT 84070 (801) 566-4000 Bar # 89470	<h1 style="margin: 0;">PUBLIC MATTER</h1>	
In the Matter of: MCKINLEY DIRK EASTMOND Bar # 89470 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> 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 **November 29, 1979**.
- (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 **13** 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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **Three billing cycles immediately following the effective date of the Supreme Court order in this matter.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

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

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (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.

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See page 9.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Record of Discipline, see page 9-10.
Pretrial Stipulation, see page 10.
Good Character, see page 10.

D. Discipline:

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

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason: **Respondent resides in Utah. A comparable alternative to Ethics School is provided in section F below.**
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

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

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

F. Other Conditions Negotiated by the Parties:

(1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

No MPRE recommended. Reason: **Respondent took the MPRE on March 28, 2015, in compliance with his discipline imposed by the Utah State Bar in connection with the same criminal conviction. Respondent scored 89, which is a passing score in California.**

(2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

(5) **Other Conditions:** As a further condition of probation, because respondent lives out of state, respondent must either (1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of the same satisfactory to the Office of Probation of the State Bar of California within one (1) year of the effective date of the discipline herein; or (2) complete a total of six (6) hours of live, in-person Minimum Continuing Legal Education (MCLE) approved courses in legal ethics offered through a certified/accredited MCLE provider in Utah or California and provide proof of the same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MCKINLEY DIRK EASTMOND

CASE NUMBER: 15-C-12992

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved moral turpitude.

Case No. 15-C-12992 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On December 15, 2008, the District Attorney for Salt Lake County, Utah filed a Domestic Violence Information in the Third District Court, Salt Lake County, Utah, case no. 081909586, charging respondent with four counts for violating Utah Code Annotated 76-5-106.5 (stalking – domestic violence), a third degree felony.

3. On April 22, 2009, the District Attorney for Salt Lake County filed an Amended Domestic Violence Information charging respondent with four counts for violating Utah Code Annotated 76-5-106.5 and 77-36-1 (stalking – domestic violence), a third degree felony.

4. On May 7, 2010, the District Attorney for Salt Lake County filed an Amended Information charging respondent with one count for violating Utah Code Annotated 76-5-106.5 (attempted stalking – domestic violence), a class A misdemeanor.

5. On May 7, 2010, respondent signed a Statement of Defendant in Support of Guilty Plea and Certificate of Counsel, wherein he pled guilty to the charges in the Amended Information, one count for violating Utah Code Annotated 76-5-106.5 (attempted stalking – domestic violence), a class A misdemeanor. The judge signed the attached order, and thereby the court accepted and entered respondent's guilty plea.

6. On August 6, 2010, the court sentenced respondent to 365 days in jail, with 350 days suspended. Respondent was ordered to complete community service and was placed on twenty-four months' probation, with terms including that respondent have no contact with the victim, and that respondent was to obtain mental health and substance abuse evaluations and successfully complete any recommended treatment.

7. On August 25, 2011, the court issued an order to show cause and a bench warrant due to respondent's failure to comply with his probation, as he was arrested in connection with a domestic violence incident on August 8, 2011.

8. On April 30, 2012, the court ordered respondent's probation revoked and unsuccessfully terminated. Respondent was sentenced to 365 days in jail, with credit for 30 days of time served.

9. Thereafter, respondent's conviction became final.

10. On November 5, 2015, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

11. Respondent lives in Utah where he is admitted to practice law. The underlying criminal conduct occurred in Utah.

12. In 2008 respondent separated from his wife, Ms. E, pending their divorce. Between June 24 and August 6, 2008 respondent sent Ms. E over thirty text messages and several voicemail messages that were vulgar, harassing and threatening, despite Ms. E's requests that respondent stop his conduct. The text messages from these various dates included the following statements by respondent to Ms. E:

"Due [sic] you bitch. I ment [sic] die you bitch."

"Have you been served for fraud yet? What else would you call using my Am. Ex. Card with out [sic] my authorization, you user Slut. One day you will be very sorry. You do it again will sue you and spick ... One day you will be very sorry as will that spick."

"You stupid bitch I am going to hammer you until you beg for mercy ... I hate you so much that I pray each night that you and spick and dumb bitch sister, shitfon [sic], your stupid shit attorney, Paula, Pam and the rest of your coconspiratos [sic] are brought before the court. Change your number. Get a new email address but you and spick can't hide. Dumb bitch. It is cuming [sic]."

"Please die"

"May you die soon you stupidest of all sluts."

"Please die you old cunt."

"Hope you die a horrible death, soon."

"You are iike [sic] that bitch dog thft [sic] doesn't die. Please do so soon."

"You stupid bitch. I will love the day you are dead. Please hurry it up."

13. On August 6, 2008, Ms. E contacted the Cottonwood Heights Police Department to report respondent's harassing and threatening conduct. Ms. E gave copies of the text messages and voicemails to the police.

14. On August 6, 2008, a detective visited respondent at his office and told him that his communications to Ms. E became illegal under Utah's Electronic Communication Harassment code, upon her telling respondent to stop.

15. After respondent sent two more vulgar text messages to Ms. E, Ms. E contacted the police on September 2, 2008. The investigating detective then submitted charges for prosecution.

16. As set forth above, respondent was eventually convicted of a misdemeanor violation of Utah Code Annotated 76-5-106.5 (attempted stalking – domestic violence) on May 7, 2010.

17. On August 8, 2011, respondent and his live-in girlfriend were both arrested for domestic assault at their shared home after getting into a physical altercation with each other. On August 31, 2011 the Sandy City Attorney's Office filed charges against respondent for one count of domestic assault in violation of Sandy City Ordinance 7-5-1(a)(1), a misdemeanor (Sandy Justice Court, Salt Lake County, Utah, case no. 111001376). On May 8, 2012, respondent pled no contest to a lesser charge of disorderly conduct. The court held respondent's plea in abeyance and ordered him to a twelve-month term of probation, which was successfully completed.

18. Disciplinary charges were brought against respondent by the Utah State Bar Office of Professional Conduct regarding the stalking and disorderly conduct convictions. After an evidentiary hearing, the Utah District Court issued Findings of Fact and Conclusions of Law on October 10, 2014, finding that the two convictions violated rule 8.4(b) of the Utah Rules of Professional Conduct for committing criminal acts that reflected adversely on a lawyer's honesty, trustworthiness or fitness to practice.

19. After conducting a hearing on the level of discipline, the Utah District Court issued an Order on Sanctions on January 30, 2015, imposing a two year stayed suspension with two years of probation and requiring respondent to complete additional Continuing Legal Education courses in ethics, and take and pass the Multistate Professional Responsibility Examination by the end of 2015.

CONCLUSIONS OF LAW:

20. The facts and circumstances surrounding the above-described violation involved moral turpitude.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's repeated harassment of Ms. E over several months constitutes multiple acts of wrongdoing. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.)

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to practice in California in 1979 and went on inactive status in 1985. Respondent was also admitted to practice in Utah in 1980. While respondent has no record of prior discipline in California, in May 2002 respondent received a private admonition in Utah, which constitutes a record of discipline in Utah under Utah Judicial Council Rules of Judicial Administration, rule 14-603(f). Under Utah rule 14-605(d) an admonition is considered appropriate for negligent violations of the Utah Rules of Profession Conduct that cause little or no injury to the client, the public or the legal system, or for other misconduct that adversely reflects upon the lawyer's fitness to

practice. Respondent's prior record of discipline in Utah involved a 2001 complaint about a client matter where respondent made errors in drafting a power of attorney form, thus violating Utah Rules of Professions Conduct, rule 1.1, concerning competence. Since respondent's foreign discipline involved negligent conduct and does not involve wilful misconduct that would lead to the imposition of reciprocal discipline in California under Business and Professions Code section 6049.1, it would not constitute aggravation as a prior record of discipline in this matter. However, it does limit respondent's mitigation for no prior record of discipline from the time of his admission through 2001. Still, over twenty years in practice without discipline entitles respondent to significant mitigation. (*In the Matter of Elkins, supra*, 5 Cal. State Bar Ct. Rptr. at 167.)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into this stipulation prior to trial, thereby preserving State Bar Court time and resources, as well as acknowledging and accepting responsibility for his misconduct. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

Good Character: In respondent's Utah disciplinary proceeding, he presented testimony from four witnesses, three attorneys and a personal friend, who have each known respondent for several decades and who attested to their belief in respondent's good character and his ability as an attorney. These witnesses were aware of the details of the criminal matter involving Ms. E to varying degrees. If respondent was able to present similar testimony from these witnesses in this proceeding, respondent would be entitled to mitigating credit, albeit reduced, as these references do not represent a wide range of references in the legal and general communities. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.)

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).)

The facts and circumstances surround respondent's conviction involve moral turpitude. (*In the Matter of Elkins, supra*, 5 Cal. State Bar Ct. Rptr. 160 [numerous threatening and harassing voicemail messages to administrators and court officers constituted moral turpitude]; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 147 [numerous phone calls to a client resulting in harassment and intentional infliction of emotional distress constituted acts of moral turpitude].) Utah Code Annotated 76-5-106.5 includes the required element that the criminal conduct induced fear in the victim, or caused the victim to suffer emotional distress. Under California law, the crime of making criminal threats under Penal Code section 422 involves moral turpitude. (*People v. Thorton* (1992) 3 Cal.App.4th 419, 422.) The Utah stalking statute under which respondent was convicted does not include a required element that the threat be to kill or cause serious bodily injury to the victim, as required by Penal Code section 422. However, a violation of Penal Code section 422 involves moral turpitude due to the required elements that the threat be made willfully and that the victim actually and reasonably feared for their safety, which is similar to the Utah statute. (*People v. Thorton, supra*, 3 Cal.App.4th. at 423-424 ["The knowing infliction of mental terror is [...] deserving of moral condemnation."].)

Because respondent's misdemeanor conviction involves moral turpitude, Standard 2.16(c) is applicable. Standard 2.16(c) provides that, "Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude." The recommended level of discipline is a two-year stayed suspension, with two years of probation, including a ninety-day actual suspension, which is within the range of discipline suggested by Standard 2.16(c).

Case law supports this result. In *In the Matter of Elkins, supra*, 5 Cal. State Bar Ct. Rptr. 160, the attorney left over fifty harassing and threatening voicemail messages to various persons involved in the probate of his father's estate, which caused some of the victims to suffer fear. (*Id.* at 164-166.) This course of conduct was found to constitute moral turpitude under Business and Professions Code section 6106. (*Id.* at 166.) The attorney was given significant mitigating credit for a lack of prior discipline over twenty-four years in practice. (*Id.* at 167.) Aggravating factors were multiple acts of misconduct, harm to the administration of justice and a lack of insight. (*Id.* at 168.) The court imposed discipline consisting of a two-year stayed suspension, with two years of probation, including a ninety-day actual suspension. (*Id.* at 169.)

Respondent's misconduct in sending harassing and threatening text and voicemail messages to his ex-wife is similar to the misconduct in *Elkins*, but respondent's misconduct is worse since it was found to be a criminal misconduct. The weight of the aggravating factors is similar to *Elkins*, given the presence of multiple acts of misconduct and the harm caused by the misconduct. Respondent's mitigation for having no prior record of discipline is nearly identical to *Elkins*, but respondent is also entitled to mitigative credit for his character evidence and for entering into a pretrial stipulation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 11, 2016, the prosecution costs in this matter are \$2,507. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

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

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In the Matter of: MCKINLEY DIRK EASTMOND	Case number(s): 15-C-12992
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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.

Feb 19, 2016 *McKinley Dirk Eastmond* McKinley Dirk Eastmond
Date Respondent's Signature Print Name

2/23/2016 *Alex Hackert* Alex Hackert
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of:
MCKINLEY DIRK EASTMOND

Case Number(s):
15-C-12992

ACTUAL SUSPENSION ORDER

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

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

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

February 29, 2016
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
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 March 1, 2016, I deposited a true copy of the following document(s):

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

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:

**MCKINLEY DIRK EASTMOND
140 W 9000 S #8
SANDY, UT 84070**

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

ALEX HACKERT, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 1, 2016.



Tammy Cleaver
Case Administrator
State Bar Court