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State Bar Court of California

Hearing Department ☐ Los Angeles ☒ San Francisco

Counsel for the State Bar	Case number(s)	(for Court's use)
Manuel Jimenez Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2288 Bar # 218234	00-O-10357 00-O-11255 00-O-11726 00-O-12631 00-O-13953 RECEIVED SEP 02 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	PUBLIC MATTER FILED SEP 29 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
☒ Counsel for Respondent ☐ In Pro Per, Respondent Doron Weinberg Weinberg & Wilder 523 Octavia Street San Francisco, CA 94102 Bar # 46131	Submitted to ☒ assigned judge ☐ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of Kelechi Charles Emeziem Bar # 159652 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted June 31, 1992 (date)

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

(3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 18 pages.

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

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

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(Do not write above this line.)

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

☒ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.

☐ costs to be paid in equal amounts prior to February 1 for the following membership years:

(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

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-O-16017, 96-O-03007

(b) ☒ Date prior discipline effective October 5, 2000

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

rule 3-101(A); rule 4-100(A); rule 4-100(A); rule 4-100(A)

(d) ☒ Degree of prior discipline One year suspension, stayed, two years probation.

(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.

(Do not write above this line.)

(5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

(1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.

(2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

(4) ☒ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(5) ☐ **Restitution:** Respondent paid $ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☒ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted in good faith.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(Do not write above this line.)

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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

Additional mitigating circumstances:

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of three (3) 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: _____

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of three years., which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Calif. Rules of Ct.)

(Do not write above this line.)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of eighteen (18) months.

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: _____

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 learning and ability in general law, pursuant to standard 1.4(c)(ii), 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.

(Do not write above this line.)

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

☐ Substance Abuse Conditions ☒ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

(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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

☐ No MPRE recommended. Reason: _____

(2) ☒ **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, 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 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, 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:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Kelechi Charles Emeziem

CASE NUMBER(S): 00-O-10357 ET AL.

FACTS AND CONCLUSIONS OF LAW.

Facts

Kelechi Emeziem ("Respondent") was admitted to the practice of law in the State of California on July 31, 1992, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

At the relevant times, the day-to-day operations of the San Jose Office were delegated to Respondent's office managers Kimmie Phan and Thanh Chu. Kimmie Phan and Thanh Chu are not licensed to practice law in California. Because of the lack of supervision, Kimmie Phan and Thanh Chu were able to collect and distribute some client funds with no oversight by Respondent. Respondent authorized Thanh Chu to sign the lease for Respondent's San Jose office and on some occasions Thanh chu and Kimmie Phan made lease payments.

Respondent filed a police report accusing Chu and Phan of embezzlement and misappropriation, and did initiate and pursue a civil action on behalf of his office and his clients, which resulted in a monetary judgment against Chu and Phan. To date, no funds have been collected as a result of this judgement.

A. The Hoa Kim Tran Matter

On September 12, 1998 Hoa Kim Tran ("Tran") hired Respondent, as successor counsel, to represent her and her two minor children, Linda and Mary Dinh, in a personal injury matter which occurred on March 18, 1998. She had been previously represented by the Law Offices of Doan and Tran. In September 1998 Tran's case settled for the sum of $15,000.00 for Tran, $2,729.10 for Mary Dinh, and $2,644.41 of Linda Dinh.

On September 23, 1998, State Farm Mutual Automobile Insurance Company (hereinafter "State Farm") issued three checks made out to The Law Offices of Doan and Tran, Respondent, and to the following: (1) Hoa Kim Tran, check no. 112148970J for $15,000, (2) Linda Dinh and Hoa Kim Tran, check no. 112148971J for $2,644.41, and (3) Mary Dinh and Hoa Kim Tran, check no. 112148973J for $2,729.10. On May 18, 1999 State Farm replaced check no. 112148971J by issuing check number 112366086A for $2,644.41, made out to Linda Dinh, Hoa Kim Tran and Respondent. On June 28, 1999, State Farm replaced check no. 112148970J by issuing check number 112873131J in the amount of $15,000.00 to Hoa Kim Tran, and Respondent. On July 29, 1999, Respondent or someone purporting to be Respondent's agent deposited check number 112366086A in the amount of $2,644.41 and check number 112873131J in the amount of $15,000.00 into a bank account at the Orange County Teachers

Federal Credit Union, account number 0000400394, belonging to Kimmie Phan DBA Emeziem and Ogbu Attorney Services. Kimmie Phan was former employee of Respondent's. The account is not designated as a client trust account. Both of those checks were negotiated on July 23, 1999.

From September 29, 1998 through March 27, 1001, the Law Offices of Doan and Tran repeatedly wrote to Respondent requesting that he honor their attorney lien.

On March 2, 2000, Viet Dinh, Hoa Kim Tran's husband, wrote to Respondent inquiring about the status of the case. Respondent wrote to Viet Dinh on April 7, 2000, and stated (1) he would be willing to sign the settlement checks but had not received them from Tran's former attorney. On April 13, 2000, the Respondent wrote to the State Bar and stated that he had never received the replacement checks.

Respondent later became aware that his office staff had absconded with the proceeds of those two settlement checks. Respondent terminated Chu and Phan on or about April 30, 1999. On May 21, 1999, following her termination, Phan opened an account at the Orange County Teachers Federal Credit Union, without Respondent's knowledge. Respondent/Respondent's agent caused the signature of Viet Dinh and Hoa Tran to be placed on check number 112873131J in the amount of $15,000.00 without Viet Dinh and Hoa Tran's knowledge or authority in order to deposit said check into the Orange County Teachers Federal Credit Union account belonging to Kimmie Phan DBA Emiziem and Ogbu attorney services.

Respondent's agent caused the signature of Hoa Tran and Linda Dihn to be placed on check number 112366086A in the amount of $2,644.41 without Hoa Tran's and Linda Dihn's knowledge or authority in order to deposit said check into the Orange County Teachers Federal Credit Union account belonging to Kimmie Phan DBA Emeziem and Ogbu attorney services.

Conclusions of Law

By failing to ensure that check number 112366086A was deposited in the amount of $2,644.41, check number 112148973J in the amount of $2,729.10 and check number 112873131J in the amount of $15,000.00 received for the benefit of Tran and her minor children as his clients in a bank account labeled "Trust Account," "Client's Funds Account", Respondent failed to deposit funds received for the benefit of his clients in a trust account, in violation of Rules of Professional Conduct, rule 4-100(A).

B. The Nam Vu Matter

In or about December 1998, Nam Vu ("Vu") hired Respondent to represent her and her minor son, Danny Chu in a personal injury matter. After Chu and Phan were terminated in April 1999, Chu continued to handle the negotiations and settlement of the matter. Vu met with Respondent's agent Thanh Chu at Respondent's Sacramento Office located on Folsom Blvd. Danny Chu's settlement was court ordered to a compromise on or about October 15, 1999. Vu's matter settled on or near July 1999.

On July 29, 1999, Mercury Insurance Group and Mercury Casualty Company ("Mercury Insurance") issued check number 21733202 in the amount of $30,000.00 in Vu's name and Respondent's name. Mercury Insurance sent the Vu settlement check to Respondent's office in

San Jose. Chu and Phan intercepted the Vu settlement check in the amount of $30,000.00. Vu never endorsed check number 21733202.

On August 3, 1999, Respondent's agent deposited check number 21733202 into the Orange County Teachers Federal Credit Union account number 0000400394, belonging to Kimmie Phan and DBA Emiziem and Ogbu attorney services. This account is not designated as a client trust account. Respondent/Respondent's agent caused the signature of Nam Vu to be affixed to check number 21733202 in the sum of $30,0000.00 without Vu's knowledge or authority in order to deposit said check.

On January 18, 2000, Vu sent a letter to Respondent's San Jose Office requesting a status update of her case and the settlement funds. Vu informed Respondent that a settlement check in the amount of $30,000.00 had issued and that it appeared that his office staff had forged her signature and negotiated the settlement check. Vu requested that Respondent address the situation of the missing funds and resolve the matter. The letter was returned to Vu. To date, Respondent has not provided any portion of the $30,000.00 settlement funds to Vu.

Conclusions of Law

By failing to ensure that check number 21733202 was deposited in a bank account labeled "Trust Account," "Client's Funds Account", Respondent failed to deposit funds received for the benefit of his clients in a trust account, in violation of Rules of Professional Conduct, rule 4-100(A).

C. The Trang Ngo Matter

In January 1995, Trang Ngo ("Ngo") hired Respondent to represent her in a personal injury matter. Ngo met with Than Chu, Respondent's one of Respondent's office manager in Respondent's San Jose California office, when she executed the fee agreement. Ngo never received a copy of the fee agreement.

On or about February 23, 1995, Respondent and Ngo executed a medical lien with Dr. Chen.

On or about June 14, 1995, Farmers Insurance issued check number 6025023823 in the amount of $2,700.00 to Trang Ngo and Respondent as a full and final settlement of the Ngo matter.

Respondent received the check in his office. Respondent deposited check number 6025023823 into Bank of America client trust account number 16646-00674 shortly after he received the check. On June 30, 1995, Ngo received $900.00 from Respondent, representing her share of the $2,700 settlement. On September 9, 1999, Ngo received a letter from Dr. Chen's office indicating that they had not been paid the sum of $1,659.00 for the services rendered to Ngo. On March 21, 2000, Ngo wrote to Respondent and informed Respondent that Dr. Chen's office had not been paid for the medical treatment rendered and requested that Respondent to provide a payment to Dr. Chen. Respondent received the letter from Ngo in his office but did not respond to Ngo's request that he provide a payment to Dr. Chen on the outstanding lien. Respondent had been informed by Kimmie Phan that the medical lien in this matter had been paid in cash. Because the Respondent relied on this representation, to date, Respondent has not

paid the outstanding medical lien in the Ngo matter.

Conclusions of Law

By failing to pay the sum of $1,659.00 to Dr. Chen after the Ngo matter settled and by failing to pay Dr. Chen after Ngo made her request in March 2000, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, in violation of Rules of Professional Conduct, rule 4-100(B)(4).

D. The Nho Pham Matter

Respondent maintained an office at 586 North First Suite 222A in San Jose California. Respondent entrusted the day-to-day supervision and operations of this office to his office managers Kimmie Phan and Thanh Chu. In December 1997 Nho Pham ("Pham") met Kimmie Phan, Respondent's office manager in his San Jose Office. Pham responded to an advertisement in Vietnamese which stated that Respondent practiced in the area of immigration law. Pham inquired of Kimmie Phan if the Respondent would handle an immigration matter and what the attorney fees would be. Kimmie Phan informed Pham that Respondent would charge a fee of $10,000 ($2,500 for adults and $1,250.00 per child.).

On January 20, 1998 Pham hired Respondent, by and through his agent Kimmie Phan, to file immigration petitions on behalf of a family relative and the relatives' entire family. Pham provided to Respondent's agent Kimmie Phan two checks as advanced attorney fees for the immigration matter. Pham dated one check for December 8, 1997, made out to Kimmie Phan in the amount of $4,500.00; the second check was also made out to Kimmie Phan in the amount of $2,500.00 dated January 20, 1998.

On November 19, 1998, an Immigration and Naturalization Service Form ("INS") I-130, Immigrant petition for Relative Fiancé(e) or orphan was filed on behalf of Nho Pham's family. The application indicates that the the Law Offices of Kelechi Emeziem represented the complainants, and specifically purports to show the Respondent as being their attorney. On November 30, 1998 Respondent's office was notified by the INS that the fee that accompanied the I-130 petition in the form of check had not been paid by the issuing bank due to insufficient funds. The INS instructed the Respondent to provide payment via a cashiers check and to include a service fee for the insufficient funds check. This notice was also provided to Pham.

On or about December 6, 1998, Pham sent the November 30, 1998 INS notice to Respondent's agent Kimmie Phan and delineated to Phan that they had called the office several days ago and that they had not heard back from Ms. Phan. Pham requested that Kimmie Phan return their phone calls or to set up an appointment to discuss the INS Notice. Neither Respondent nor his agent returned Pham's phone calls or addressed his request for an appointment. No further work was done on Pham's immigration matter.

On May 18, 1999, Pham paid a visit to Respondent's Oakland California office and spoke with Respondent/Respondent's partner Ogbu about his immigration matter. Pham was promised that the firm would look into the matter and contact him. Neither Respondent nor any of his agents contacted Pham after his in-person visit. Respondent did not properly supervise Kimmie Phan in the Pham immigration matter.

Conclusions of Law

By failing to properly supervise Kimmie Phan's interactions, and abdicating responsibility for a case to support staff, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence, Rules of Professional Conduct, rule 3-110(A).

E. The Huong Tran Matter

On December 4, 1997, Huong Tran ("Tran") met with met with Thanh Chu, Respondent's office manager at the San Jose Office, and through Chu retained Respondent's office to represent her in a personal injury matter. Thanh Chu identified himself as Respondent's law intern. Tran never met Respondent. On December 8 and December 18, 1997 Kimmie Phan Respondent's office manager for the San Jose Office wrote to California State Automobile Association informing them that Respondent was retained by Tran in her claim against their insured. The California State Automobile Association acknowledged receipt of Phan's December 8, 1997 letter.

On January 6, 1998, Farmers Insurance Group of Companies ("Farmers") issued check number 1012078957 to Tran in the amount of $555.00 for payment of her medical treatment rendered at Monterey Bay Advanced Medical Group. Farmers mailed the check to Respondent's office in due course of business. Tran never received nor did she endorse check number 1012078957. On January 12, 1998, the check was negotiated at a Home Savings of America Bank branch, and the check bore an endorsement as well as the account number. Tran did not receive any portion of the funds from check number 1012078957.

On January 1, 1998, California State Automobile Association wrote to Kimmie Phan, and enclosed the release of property damage to be executed by Tran. On January 20, 1998, Kimmie Phan sent a fax to California State Automobile Association on Tran's matter and requested that California State Autombile Association make the check payable to Tran, but to mail the check to Respondent's office. On February 27, 1998, Farmers issued check number 1012081351 to Tran in the amount of $2,079.00, for payment of her medical treatment rendered at Cohen Chiropractic. Farmers mailed the check to Respondent's office in due course of business. Tran never received nor did she endorse the check. On March 4, 1998, check number 1012081351 was negotiated at a Home Savings of America Bank branch and the check bore an endorsement as well as account number 323300186. Tran did not receive any portion of the funds from the check.

On March 2, 1998, Kimmie Phan wrote to Monterey Bay Advanced Medical Group and requested that they provide Tran's medical costs to Respondent's firm. On April 15, 1998, someone from Respondent's office, purporting to be Respondent wrote to California State Automobile Association on Tran's behalf and made a demand to settle Tran's claim in the amount of $12,000.00. On April 23 1998, Tran's case settled for the sum of $8,668.00, which included the medical payments sent to Respondent's office in totaling of $3,468.00, and $5,200.00 for other losses. On April 23, 1998, California State Automobile Association issued check number 035726286 to Tran and Respondent in the amount of $5,200.00 as final settlement on Tran's case. On May 5, 1998, CSSA check number 035726286 was deposited into his client

trust account at Bank of America, account number 16646-00674.

On May 5, 1998 Farmers issued check number 1012084306 to Tran in the amount of $834.00, for payment of her medical treatment rendered at Cohen Chiropractic. Farmers mailed the check to Respondent's office in due course of business. Tran never received nor did she endorse check number 1012084306. On or about May 12, 1998, check number 1012084306 was negotiated at a Home Savings of American Bank branch and the check bore an endorsement as well as account number 323300186. Tran did not receive any portion of the funds from check number 1012084306.

In May 1998, Tran met with Thanh Chu at Respondent's law office and she was shown a distribution sheet of her settlement funds. Thanh Chu then provided Tran $860.00. The distribution sheet showed that Dr. Cohen was paid $2,500.00 and that Monterey Bay Advanced Medical Group was paid, an unknown amount. No further legal services were rendered of Tran's behalf after negotiating the final settlement check from California State Automobile Association.

On July 1, 1998, Cohen Chiropractic wrote to Mr. Ogbu, Respondent's partner and offered to compromise the medical lien owed to him in the Tran matter for $2,500.00. On May 15, 2000, Farmers wrote to Tran requesting payment for outstanding medical reimbursement in the amount of $3,468.00. The sum included bills from Monterey Bay Advanced Medical in the amount of $555.00, Cohen Chiropractic in the amount of $2,913.00. On May 16, 2000, Monterey Bay Advanced Medical Group sent a bill to Tran indicating the outstanding sum of $555.00 and requested payment. Tran attempted to locate and speak with Respondent about the failure to reimburse Farmers and the failure to pay the medical providers. She was unsuccessful. Respondent did not inform Tran that he intended to terminate the attorney-client relationship and took no affirmative steps to withdraw as counsel of record. To date, no portion of the Tran medical payment checks to Huong Tran, have been provided.

Conclusions of Law

By failing to oversee Kimmie Phan's and Thanh Chu's activities with respect to his San Jose Office; allowing through either active approval or through recklessly abdicating his responsibility, Kimmie Phan and Thanh Chu to meet with prospective clients and allowing Phan and Chu to advise these clients, without supervision; by allowing Kimmie Phan and Thanh Chu to collect and distribute client funds; by allowing Kimmie Phan and Thanh Chu to execute leases for Respondent's San Jose Office, Respondent aided a person or entity in the unauthorized practice of law, in violation of Rules of Professional Conduct, Rule 1-300(A).

All Matters

By grossly, negligently or recklessly abdicating responsibility of his San Jose law practice to support staff, thereby failing to oversee any of Kimmie Phan's and Thanh Chu's activities with respect to the San Jose Office, Respondent helped create an environment in which Kimmie Phan and Thanh Chu met with prospective clients, allowed Phan and Chu to advise these clients, without supervision, by allowing Kimmie Phan and Thanh Chu to collect and distribute client funds, by allowing Kimmie Phan and Thanh Chu to execute leases for

Respondent's San Jose Office, by allowing Kimmie Phan to place advertisements in local Vietnamese newspapers utilizing Respondent's name and contact information, Respondent aided a person or entity in the unauthorized practice of law, in violation of Rules of Professional Conduct, rule 1-300(A).

PENDING INVESTIGATIONS

As of April 13, 2004, the Respondent has no pending investigations/proceedings not resolved by this stipulation necessitating disclosure as required, on page one, paragraph A.(7).

FINANCIAL CONDITIONS, RESTITUTION.

Within thirty (30) days from the effective date of discipline in this matter, Respondent must make restitution to the following clients; Hoa Kim Tran, Nam Vu, and Nho Pham, or the Client Security Fund if it has paid as specified below. The restitution represents only those proceeds that the respective purported clients were entitled from settlement proceeds, or restitution for fees paid and unearned, under fee agreements made by Respondent or Respondent's agents. All other potential claims from medical care providers or attorney liens are not covered by this stipulation.

1.	Hoa Kim Tran	$11,830.00
2.	Nam Vu	$20,000.00
3.	Nho Pham	$ 7,000.00

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 13, 2005, the estimated prosecution costs in this matter are approximately $2,296.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards

Standards for Attorney Sanctions for Professional Misconduct ("the standards"):

In determining the appropriate level of discipline, the court should look to the Standards for Professional Misconduct. In In re Morse (1995) 11 Cal.4th 184, 206, the California Supreme Court stated;

"To determine the appropriate level of discipline ... we... must first look to the standards for guidance. 'These guidelines are not binding on us, but they promote the consistent and uniform application of disciplinary measures. Hence we have said that 'we will not reject a recommendation arising from application of the standards unless we have grave doubts as to the propriety of the recommended discipline.(Citation Omitted.)'"

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."

Despite the need to examine cases on an individual basis, it is also a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been largely achieved through the application of the Standards of Attorney Sanctions for Professional Misconduct. In the Matter of Marsh (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291.

Standard 2.2(a) provides that a member who wilfully misappropriates entrusted funds shall be disbarred.

Standard 2.2(b) provides that a member commingling entrusted funds or property with personal property or the commission of another violation of rule 4-100 shall result in at least a three month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment.

Standard 2.4(a) provides that a member's pattern of willful failure to perform services demonstrating abandonment of the causes in which he was retained shall result in disbarment. Under standard 2.4(b), where such failure to perform services involves an individual matter or matters not amounting to a pattern, the discipline shall be reproval or suspension, depending on the gravity of the harm and the extent of such misconduct.

Standard 2.8 provides that culpability of a member of a wilful violation of rule 3-300 shall result in suspension.

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE.

The Respondent has a previous discipline. On September 5, 2000 the Supreme Court filed an order suspending the Respondent for one year, stayed, with two years probation after the Respondent signed a stipulation with the State Bar, stipulating to four violations of the Rules of Professional Conduct, involving three different complainants. The stipulated violations included three violations of 4-100(A) and one violation of 3-110(A)

ADDITIONAL AGGRAVATING CIRCUMSTANCES.

The instant case provides substantial aggravating factors, both in number and seriousness.

A. Multiple Acts of Misconduct

Standard 1.2(b)(ii) provides that circumstances shall be considered aggravating when the current misconduct by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. For instance, the abandonment of two clients, encompassing five rule and statutory violations, constitute multiple acts of wrong doing. (*Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267,277.)

In the instant matter, the Respondent is charged with seventeen (17) counts of professional misconduct, involving five former clients, as set forth above.

B. A Pattern of Misconduct

Standard 1.2(b)(ii) provides that circumstances shall be considered aggravating when the current misconduct by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. A pattern of misconduct will be found where there are serious instances of misconduct over a prolonged period of time. (Matter of Crane and DePew (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 157.) A pattern of misconduct may be found even where the acts or misconduct encompass a wide range of improper behavior. (*Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 686.)

In the instant matter, the Respondent is charged with seventeen (17) counts of professional misconduct, involving five former clients, as set forth above.

C. Harm to Client

Standard 1.2(b)(iv) provides, in part, that circumstances shall be considered aggravating where the member's misconduct harmed significantly a client. The loss of a cause of action constitutes harm to the client. (*Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646.)

In the instant case, the harm to each of the clients was significant. Settlement funds were misappropriated, both medical and attorney liens were not honored, and clients and cases were abandoned, as set forth above.

MITIGATING CIRCUMSTANCES.

Standard 1.2(e)(ix) provides that circumstances shall be considered mitigating include excessive delay in conducting disciplinary proceedings, which delay is not attributable to the member and which delay prejudiced the member. In the instant case, the professional misconduct is occurred from and between January 1995 and October 11, 2000.

Standard 1.2(e)(vii) provides that circumstances shall be considered mitigating include objectives steps promply taken by the member spontaneously demonstrating remorse, recognition of the wrongdoing found or acknowledged which steps are designed to timely atone for any consequences of the member's misconduct. In the instant case, the respondent has agreed to make restitution in the amount of $38,500 to cover client losses.

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

SUSPENSION NOTIFICATION REQUIREMENTS.

1. Within the first thirty days following commencement of probation, Respondent shall provide written notifications concerning the suspension by registered or certified mail, return receipt requested, to:

   a. all clients being represented in pending matters;

   b. any co-counsel;

   c. any opposing counsel or unrepresented opposing parties; and

   d. the court, agency or tribunal in which any active litigation is pending.

2. The notification shall state the following:

   a. that the Respondent has been suspended from the practice of law;

   b. the effective date of the suspension;

   c. the length of the suspension;

   d. the Respondent's consequent ineligibility to render legal services during the period of the suspension; and

   e. in notifications to clients, any urgency in seeking the substitution of other legal counsel.

3. Within the first forty days following commencement of probation, Respondent shall file an affidavit (or declaration in conformity with the requirements of California Code of Civil Procedure section 2015.5) with the Probation Unit showing that Respondent has fully complied with these provisions.

4. Respondent shall maintain complete records of the notifications and the certified or registered mailings and shall provide such records upon the request of the Office of the Chief Trial Counsel.

[Do not write above this line.]

In the Matter of	Case number(s):
Kelechi Emezieu	00-O-10357 et al.

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.

8/19/2005		KELECHI CHARLES EMEZIEU
Date	Respondent's signature	Print name
8/22/05		Doron Weinberg
Date	Respondent's Counsel's signature	Print name
8/31/05		Manuel Jimenez
Date	Deputy Trial Counsel's signature	Print name

(Do not write above this line.)

In the Matter of Kelechi Charles Emeziem	Case number(s): 00-O-10357, et al.

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.

1. On page 1, in the caption, an "x" is inserted in the box indicating that a previous stipulation was rejected.

2. On page 1, paragraph A(1), respondent was admitted on July 31, 1992.

3. On page 6, paragraph E(10), respondent must satisfy his law office management condition as follows: Within one year of the effective date of the discipline herein, respondent must develop a law office management plan which must be approved by the Office of Probation of the State Bar. This plan must include, at a minimum, procedures to send periodic reports to clients, the documentation of telephone messages received and sent, file maintenance, the meeting of deadlines, the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located, and for the training and supervision of support personnel.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)**

9-29-05
Date

JoAnn M. Remke
JOANN M. REMKE
Judge of the State Bar Court

DECLARATION OF SERVICE BY MAIL

CASE NUMBERS: 00-O-10357 [00-O-11255; 00-O-11726; 00-O-12631; 00-O-13953]

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit. That in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

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

in a sealed envelope placed for collection and mailing at San Francisco, on the date shown below, addressed to:

Doron Weinberg
Weinberg & Wilder
523 Octavia St.
San Francisco, CA 94102

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: September 1, 2005

SIGNED: Paula H. D'Oyen
Paula H. D'Oyen
Declarant

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 San Francisco, on September 29, 2005, 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 San Francisco, California, addressed as follows:

DORON WEINBERG
523 OCTAVIA ST
SAN FRANCISCO CA 94102

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 29, 2005.**

Bernadette C. O. Molina
Case Administrator
State Bar Court