



ORIGINAL

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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar Erin McKeown Joyce Fumiko D. Kimura Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213)765-1380 Bar # 149946/208763	Case number(s) 00-0-14761 01-0-02226 01-0-04636 01-0-05327 04-0-10813 05-0-01347 (Inv.) 06-0-10721 (Inv.) 06-0-11577 (Inv.)	(for Court's use) <div style="text-align: center;"> PUBLIC MATTER FILED MAY 31 2006 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent Susan L. Margolis MARGOLIS & MARGOLIS, LLP 2000 Riverside Drive Los Angeles, CA 90039 Bar # 104629	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of Andrew Levy Bar # 153999 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 September 30, 1991
(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 22 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.

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(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 ~~XXXXXX~~ for the three (3) 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

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) ☐ **Prior record of discipline** [see standard 1.2(f)]

(a) ☐ State Bar Court case # of prior case _____

(b) ☐ Date prior discipline effective _____

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

(d) ☐ Degree of prior discipline _____

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

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

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

(4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

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- (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.

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- (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:

Respondent has no prior record of discipline and was admitted in 1991.

During the time period involved in Case Nos. 00-0-14761 and 01-0-02226, Respondent's first wife died unexpectedly, leaving him to care for three children under the age of five and two older step-children. Respondent and his children were severely impacted by his wife's death. As a result, at the time the Shaw matter occurred, Respondent was not attending as closely to the day-to-day running of his law practice, and relied heavily upon the assistance of his office staff, including Heredia and Salazar, who had worked for him for close to ten years without incident.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of Two (2) years
- I. ☒ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- II. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- III. ☐ and until Respondent does the following: _____
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of Two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Calif. Rules of Ct.)

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(3) ☒ Actual Suspension:

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of One (1) year
- 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:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" 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 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:** _____

(Do not write above this line.)

In the Matter of Andrew Levy	Case Number(s): 00-0-14761, et al.
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Law Office Management Conditions

- a. ☐ Within ___ days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☒ Within 0 days/ 8 months 0 years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 8 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ___ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

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Financial Conditions

a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF of the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Lilia Rodriguez	\$7,085.00	11/23/04

- ☐ Respondent must pay the above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than _____.

b. Installment Restitution Payments

- ☒ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Lilia Rodriguez	\$500.00	Monthly, commencing May 28, 2006 and the 28th day of each month thereafter until fully paid.

c. Client Funds Certificate

- ☒ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from ~~Respondent~~ a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Do not write above this line.)

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b. Respondent has kept and maintained the following:

- i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- ☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

In the Matter of Andrew Levy	Case Number(s): 00-0-14761, et al.
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NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)

RULE 133, Rules of Procedure of the State Bar of California STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

- (a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:
...

- (5) a statement that Respondent either

- (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
- (ii) pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:
 - (a) an acknowledgment that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and
 - (b) if requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter. (emphasis supplied)

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

5-24-6
Date


Signature

Andrew Levy
Print name

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ANDREW LEVY

CASE NUMBERS: 00-O-14761, 01-O-2226, 01-O-4636, 01-O-5327,
05-O-01347, 06-O-10721 and 06-O-11577

FACTS AND CONCLUSIONS OF LAW

Respondent pleads nolo contendere to the charges detailed below.

Respondent acknowledges that he completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his culpability of the statutes and Rule of Professional Conduct violations specified in the stipulation.

The State Bar asserts that the following factual stipulations are supported by evidence obtained in the State Bar investigation of the matters contained herein.

Case No. 00-O-14761 – Violation of Rule of Professional Conduct 3-110(A)

Facts

1. In November 1998, Robert Shaw employed Respondent to represent him in a personal injury matter. On November 24, 1998, Shaw and Respondent executed a retainer agreement which gave Respondent authority to sign documents related to his personal injury action on Shaw's behalf. Under the retainer agreement, Respondent was entitled to a contingency fee of 33 1/3% prior to the filing of a lawsuit and 40% after the filing of a lawsuit.
2. Respondent employed two individuals named Elvia Heredia ("Heredia") and Yolanda Salazar in his Montebello office.
3. Respondent maintained a client trust account at Wells Fargo Bank, account number 0221-979990 ("CTA") during the relevant time period.
4. In February 2000, Respondent received a settlement draft from State Farm dated February 7, 2000, in the amount of \$12,500.00 made payable to "Robert K. Shaw & Law Offices of Andrew Levy, His Attorney" for Shaw's personal injury claim. Shortly after receiving the draft, on February 7, 2000, Respondent deposited the \$12,500.00 State Farm draft into his CTA.
5. On February 8, 2000, Respondent issued three checks from his CTA to distribute the \$12,500.00 Shaw settlement proceeds. First, Respondent issued check number 1275 in the

amount of \$3,417.34 made payable to "Robert Shaw." Second, he issued CTA check number 1276 in the amount of \$3,500.00 made payable to Paramount Physicians, Shaw's sole medical provider. Third, Respondent issued CTA check number 1277 in the amount of \$4,666.66 to himself, for attorney's fees in the Shaw personal injury matter.

6. Unbeknownst to Respondent, Heredia and Salazar added the words "or Yolanda Salazar" to check number 1275.

7. According to Respondent, his office staff told Respondent that Shaw was coming to pick up his check. Instead, on February 11, 2000, Salazar negotiated the check without giving Shaw any portion of the personal injury settlement. Respondent did not check to see if Shaw had received his settlement funds and did not discover Salazar's misappropriation of the funds until a year later.

8. Respondent was grossly negligent in his handling of the Shaw personal injury settlement, which allowed Heredia and Salazar to access Shaw's funds and misappropriate those funds.

9. After Respondent was contacted by the State Bar about Shaw's complaint about not receiving his settlement funds, Respondent paid Shaw the settlement funds he was due.

Conclusions of Law

By failing to supervise his secretary and other support staff and failing to institute and follow adequate procedures and policies to ensure that settlement funds were properly distributed, Respondent acted in wilful violation of Rule of Professional Conduct 3-110(A).

Case No. 01-O-02226 – Violation of Rule of Professional Conduct 3-300(A)

Facts

10. In May 2000, Respondent met with Linda and Abe Fasheh for the purpose of negotiating a personal loan to his professional law corporation of funds belonging to Michael Qreitem (Linda Fasheh's brother). The Fashehs were former clients of Respondent.

11. The loan of \$80,000.00 was memorialized in a loan agreement dated May 4, 2000. The terms of the loan agreement were not fair and reasonable to Qreitem or the Fashehs because there was no security for the loan, and Respondent provided no personal guarantee.

12. The Fashehs attempted to collect full payment on the loan prematurely. This led to further negotiations between Respondent and the Fashehs in an attempt to change the terms of the repayment schedule. However, the parties could not agree on the new terms.

13. Respondent subsequently fell behind in his payments.

14. Later, the Fashehs received repayment for the loan from Respondent.

Conclusions of Law

By negotiating and taking a loan of Qreitem's funds from the Fashehs on terms that were not fair or reasonable to his clients, Respondent knowingly acquired a possessory and pecuniary interest adverse to a client without complying with the requirement that the transaction and its terms were fair and reasonable to the client in wilful violation of Rule of Professional Conduct 3-300(A).

Case Nos. 01-O-02226, 01-O-4636, 01-O-5327 and 06-O-10721 – Violation of Rule of Professional Conduct 4-100(A)

15. During the time period from May 5, 2000 through June 25, 2003, Respondent issued multiple checks to pay for his personal or business expenses from his CTA as follows:

Check No.	Posting Date	Payee	Amount
1306	May 5, 2000	CASH	\$600.00
1307	May 8, 2000	Andrew Levy	\$500.00
1309	May 9, 2000	United Legal Services	\$10,000.00
1310	May 11, 2000	Andrew Levy	\$15,000.00
1313	May 18, 2000	Elvia Heredia	\$1,000.00
1331	June 28, 2000	United Legal Services	\$15,000.00
1336	June 29, 2000	Andrew Levy	\$2,000.00
1337	July 3, 2000	Andrew Levy	\$3,600.00
1340	July 3, 2000	World	\$2,945.67
1338	July 8, 2000	Andrew Levy	\$2,000.00
1345	July 21, 2000	CASH	\$1,000.00
1354	August 2, 2000	Andrew Levy	\$1,333.33
1358	August 24, 2000	CASH	\$1,000.00
1272	February 3, 2000	Wells Fargo	\$5,400.00
1281	March 15, 2000	Andrew Levy – CASH	\$8,200.00
1283	March 17, 2000	United Legal Services – Levy – CASH	\$2,979.03

1285	March 17, 2000	World	\$2,945.67
1301	May 3, 2000	CASH	\$432.00
1297	May 4, 2000	CASH	\$500.00
1385	October 16, 2000	CASH	\$5,150.00
1387	October 27, 2000	Stan Levy	\$1,450.00
1431	December 15, 2000	CASH	\$3,200.00
1450	January 17, 2001	World	\$3,430.39
1459	February 9, 2001	CASH	\$5,000.00
1465	February 20, 2001	World	\$3,400.00
1561	October 1, 2001	CASH	\$7,000.00
1809	June 20, 2003	Andrew Levy	\$1,200.00
1812	June 25, 2003	Andrew Levy	\$1,901.00

16. United Legal Services was being paid from his CTA. Heredia was Respondent's secretary being paid out of his CTA.

17. World was the mortgage holder on a Simi Valley property owned by Respondent, which was being paid by Respondent out of his CTA.

18. During the same time period, Respondent deposited non-client funds in the form of cash and a check from United Legal Services to cover his personal and business expenses he was paying out of his CTA as follows:

Posting Date	Type of Deposit	Amount
March 29, 2000	CASH	\$6,500.00
March 30, 2000	CASH	\$4,0000.00
April 11, 2000	Check from United Legal Services	\$2,000.00
September 14, 2000	Check from Stan Levy noted "Loan profit plan"	\$5,000.00
October 6, 2000	Check from account of Elvia Heredia	\$2,318.00
February 23, 2001	CASH deposit	\$1,950.00

December 3, 2001	CASH deposit	\$8,500.00
December 4, 2001	CASH deposit	\$3,000.00

19. The cash deposits and the United Legal Service check were not client money, but instead comprised Respondent's personal funds he improperly deposited into his CTA.

20. The cash deposits and the checks from Respondent's secretary and from his father were not client funds, but instead comprised of Respondent's personal funds he improperly deposited into his CTA.

Conclusions of Law

By issuing checks from his CTA to pay for business or personal expenses, and by depositing non-client funds into his CTA, Respondent deposited and commingled non-client funds in his CTA, and improperly used his CTA as a personal account, in wilful violation of Rule of Professional Conduct 4-100(A).

Case No. 04-O-10813 – Violation of Rule of Professional Conduct 3-700(D)(2)

Facts

21. On December 2, 2003, Lilia Rodriguez employed Respondent to represent her husband, Felipe Rodriguez, in an immigration matter. Rodriguez paid Respondent a total of \$6,700.00 for attorney fees. The retainer agreement called for payment of \$10,000.00.

22. After the case was completed, Respondent's office demanded payment of the outstanding fees. Rodriguez refused to pay and instead demanded a refund of the \$6,700.00 she paid in attorney's fees.

23. Thereafter, in 2004, Rodriguez filed a request for fee arbitration with the Committee on Arbitration of the Los Angeles County Bar Association, Dispute Resolution Services. In her request, Rodriguez sought the refund of the \$6,700.00 she paid to Respondent.

24. Respondent received a copy of Rodriguez's request to the Committee. In response, he objected to the claim that any refund was owed and submitted documentation showing that the work had been performed.

25. A hearing was subsequently scheduled but Respondent did not appear. The hearing proceeded by default.

26. On November 23, 2004, the Committee on Arbitration ordered that Respondent refund to Rodriguez the full amount of the fees she paid to Respondent, \$6,700.00, plus an additional \$385.00 for the arbitration filing fee and costs.

27. Respondent took no action to challenge the arbitration award before it became final and binding.

28. Respondent has not yet paid the award.

29. Respondent agreed to begin making \$500.00 per month payments on the arbitration award to the Rodriguezes after the NDC was filed in this matter and after he learned that the time had expired for him to successfully challenge the arbitration award. Respondent began making payments of \$500.00 per month in May 2006.

Conclusions of Law

By failing to timely pay the arbitration award, Respondent acted in wilful violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 05-O-01347 – Violation of Rule of Professional Conduct 3-110(A)

Facts

30. After learning of the misconduct in the *Shaw* case of Heredia, who had been Respondent's employee in his Montebello office, Respondent fired Heredia in February 2001.

31. Later, Respondent rehired Heredia and continued to work with her throughout 2002 and into 2003 without instituting procedures to ensure that Heredia would not engage in further misconduct as his employee.

32. According to the State Bar, on January 11, 2003, Heredia and an associate, Maria Elena Alderete, met with undercover agents from the Department of Homeland Security Immigration and Customs Enforcement ("ICE") in El Paso, Texas, as part of a money laundering operation which was being investigated in Texas.

33. The previous November, 2002, \$45,000.00 of ostensible drug money was given by the undercover ICE agents to Alderete. The purpose of the January 2003 meeting was for Alderete to return some of the laundered funds in the form of official checks made out to fictitious names provided by the agents.

34. At the January 2003 meeting, Heredia presented several official checks to the agents and explained that she could launder even larger amounts of funds in California. She claimed to work with an attorney named "Andrew." One of the official checks Heredia presented to the agents was an official check issued on January 11, 2003 by Wells Fargo Bank in the amount of \$7,500.00. The official check was made payable to one of the fictitious names provided by the agents, Victor Carrillo.

35. The official check had been purchased by Heredia's employer, Respondent, who paid cash for the check and referenced his CTA to avoid paying the service fee of \$8.00.

36. Respondent purchased the official check and arranged for the check to be made out to the fictitious name, based on representations of Heredia that she owed "Victor Carrillo" money and needed Respondent to purchase the official check for her. The State Bar has no evidence that Respondent was aware of Heredia's money laundering scheme at the time he purchased the official check.

37. At the time he purchased the official check, Respondent was aware of the fraud Heredia had perpetrated in the *Shaw* case. Nevertheless, Respondent acted on Heredia's representations to purchase the official check.

Conclusions of Law

By failing to supervise his employee and purchasing an official check based on his employee's representations, when he was on notice of her misconduct in the *Shaw* case, Respondent acted in wilful violation of Rule of Professional Conduct 3-110(A).

Case No. 06-O-11577 – Violation of Rule of Professional Conduct 3-110(A)

Facts

38. On January 4, 2002, Respondent was retained by Jovita Morales, Cesar Morales' mother, to represent Cesar Morales in a criminal appeal. Morales paid Respondent \$21,000.00 of a \$25,000.00 retainer to prepare the briefs on behalf of Morales for his appeal.

39. On September 30, 2002, Respondent filed Appellant's Opening Brief in *People v. Morales*, case no. BA179633, the California Court of Appeal, Second Appellate District, Division Three on behalf of Cesar Morales.

40. In the Opening Brief, Respondent, among other things, raised a claim that the trial court erred by denying Morales' new trial motion. In fact, Morales never filed a new trial motion or orally argued a new trial motion on any ground. Respondent lifted the inapplicable argument from a brief filed by one of Morales' co-defendants.

41. In the Opening Brief filed by Respondent on behalf of Morales, Respondent also made reference to Morales' trial counsel's alleged failure to call Officer Eric Valdez during the criminal trial. However, there was never any Officer Valdez involved in Morales' case. Respondent lifted this inapplicable argument from an unrelated appellate brief.

42. Throughout the Opening Brief, Respondent cited to pages allegedly in the Reporter's Transcript which did not exist, again using portions of some other brief.

Conclusions of Law

By raising arguments in the Opening Brief in Morales' criminal appeal which clearly did not apply to Morales' case, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rule of Professional Conduct 3-110(A).

AUTHORITIES SUPPORTING DISCIPLINE

Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California ("Standard")

Standard 1.3 states that the primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's 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. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Standard 1.6(a) provides that the appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

Standard 2.2(b) provides for a minimum actual suspension of 90 days, irrespective of mitigating circumstances, for commingling of entrusted funds or another violation of rule 4-100, Rules of Professional Conduct.

Standard 2.4(b) provides that culpability 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.

Standard 2.8 provides that culpability of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

Standard 2.10 provides that culpability of a member of a violation of any provision of the Business and Professions Code or Rules of Professional Conduct not specified in the Standards shall result in reproof or suspension according to the gravity of the offense or harm to the victim, with due regard to the purposes of the imposition of discipline outlined in Standard 1.3.

Case Law

In *McKnight v. State Bar*, 53 Cal.3d 1025 (1991), the respondent was actually suspended for one year for a variety of violations of the Rules of Professional Conduct, including the current 3-300 (improperly entering into a business transaction with a client), commingling and other serious trust account violations.

In *The Matter of Lantz*, 4 Cal. Bar Ct. Rptr. 126 (2000), the respondent was actually suspended for one year for several violations over a period of years, including misappropriation through gross neglect, recklessly incompetent performance of services, failing to return unearned fees promptly and failure to provide an accounting.

While neither of these cases is directly on point, pursuant to Standard 1.6(a), they provide guidance that the one year actual suspension for the variety of violations in which Respondent engaged is appropriate.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges filed on October 7, 2005 and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

DISMISSALS

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
00-O-14761	One	B&PC 6106
00-O-14761	Two	B&PC 6106
00-O-14761	Three	B&PC 6106
00-O-14761	Five	B&PC 6068(m)
00-O-14761	Six	B&PC 4-100(A)
00-O-14761	Seven	B&PC 4-100(B)(1)
00-O-14761	Eight	RPC 4-100(B)(4)
00-O-14761	Nine	B&PC 6106
01-O-02226	Ten	B&PC 6106
01-O-02226	Fourteen	B&PC 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 23, 2006, the estimated prosecution costs in this matter are approximately \$12,047.44. 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.

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A (7), was May 24, 2006.

(Do not write above this line.)

In the Matter of Andrew Levy	Case number(s): 00-0-14761, et al.
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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.

5-24-06
Date

Andrew Levy
Respondent's signature

Andrew Levy
Print name

5-24-06
Date

Susan L. Margolis
Respondent's Counsel's signature

Susan L. Margolis
Print name

5-24-06
Date

Erin McKeown Joyce
Deputy Trial Counsel's signature

Erin McKeown Joyce
Fumiko D. Kimura
Print name

(Do not write above this line.)

In the Matter of ANDREW LEVY	Case number(s): 00-O-14761, et al.
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ORDER

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

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

Page 11 - Case Numbers: Add - 04-O-10813

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.)**

MAY 26, 2006
Date


RICHARD A. PLATEL
Judge of the State Bar Court

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 May 31, 2006, I deposited a true copy of the following document(s):

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

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

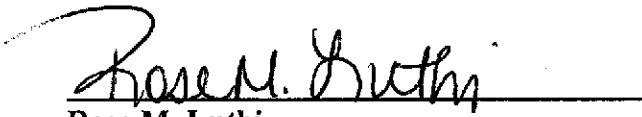
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**SUSAN MARGOLIS, ESQ.
MARGOLIS & MARGOLIS
2000 RIVERSIDE DRIVE
LOS ANGELES CA 90039**

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

ERIN JOYCE & FUMIKO KIMURA, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **May 31, 2006**.



Rose M. Luthi
Case Administrator
State Bar Court