State Bar Court of the State Bar of California
Hearing Department ☒ Los Angeles ☐ San Francisco

ORIGINAL

Counsel for the State Bar	Case number(s)	(for Court's use)
The State Bar of California Office of the Chief Trial Counsel Erin M. Joyce, #149946 1149 South Hill Street Los Angeles, CA 90015-2299 213/765-1000	02-H-15963, 02-O-14315, 02-O-14444, 02-O-14567, 02-O-14656, 02-O-15105, 02-O-15306, 02-O-15361, 02-O-15593, 02-O-15806, 03-O-01835 kwiktag ® 031 974 560	PUBLIC MATTER FILED JUL 30 2003 STATE BAR COURT CLERKS OFFICE LOS ANGELES
Counsel for Respondent Brian Saunders 25422 Trabuco Road, #105-444 Lake Forest, CA 92630-2791 IN PRO PER		
In the Matter of BRIAN SAUNDERS Bar #176100 A Member of the State Bar of California (Respondent)	Submitted to ☐ assigned judge ☒ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION ☐ PREVIOUS STIPULATION REJECTED	

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted April 18, 1995 (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 12 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) 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.

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

☐ costs added to membership fee for calendar year following effective date of discipline

☒ costs to be paid in equal amounts prior to February 1 for the following membership years: 2004, 2005, 2006
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

☐ costs waived in part as set forth under "Partial Waiver of Costs"

☐ costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

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 99-O-12501 and 99-O-12502

(b) ☒ date prior discipline effective December 6, 2001

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

Rule of Professional Conduct 3-110(A)

Business & Professions Code section 6068(m)

(d) ☒ degree of prior discipline private reproval

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

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

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

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

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

(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 wrong-doing 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 to 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) ☐ 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.

(10) ☐ 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.

(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 shall be suspended from the practice of law 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 to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____, and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel

☐ iii. and until Respondent does the following: _____.

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of two (2) years, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

E. Additional Conditions of Probation:

(1) ☒ During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(3) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. If the first report would cover less than 30 days, that report shall 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.

(4) ☐ Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.

(5) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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.

(6) ☐ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit 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. Already completed Ethics School in May, 2003.

(7) ☐ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.

(8) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☒ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

(9) ☒ Other conditions negotiated by the parties:

See Stipulation attached.

☐ Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year. 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. Respondent passed the MPRE in 2003.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Brian Saunders

CASE NUMBERS: 02-H-15963, 02-O-14315, 02-O-14444, 02-O-14567, 02-O-14656, 02-O-15105, 02-O-15306, 02-O-15361, 02-O-15593, 02-O-15806, 03-O-1835

FACTS AND CONCLUSIONS OF LAW

The parties to this stipulation, Respondent Brian Saunders and the State Bar of California, through deputy Trial Counsel Erin Joyce, stipulate and agree to the following facts and conclusions of law:

Jurisdiction

Respondent Brian Saunders was admitted to the practice of law in the State of California on April 18, 1995, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Case No. 02-H-15963
Rule of Professional Conduct 1-110
[Failure to Comply with Conditions of Private Reproval]

Respondent wilfully violated rule 1-110 of the Rules of Professional Conduct by failing to comply with conditions attached to a private reproval, as follows:

On November 5, 2001, Respondent entered into a Stipulation as to Facts, Conclusions of Law and Disposition with the State Bar in case nos. 99-O-12501 and 99-O-12502.

On November 16, 2001, the Hearing Department of the State Bar Court field an order approving the stipulation and imposing a private reproval with conditions.

The order and private reproval became effective December 6, 2001.

Pursuant to the order, Respondent was required to comply with certain terms and conditions attached to the private reproval, including the following conditions:

a. to comply with the State Bar Act and the Rules of Professional Conduct during the condition period attached to the private reproval;

b. to attend and complete State Bar Ethics School within one years of the effective date of the private reproval;

c. to take and pass the Multistate Professional Responsibility Examination ("MPRE") and provide satisfactory proof of passage within one year of the effective date of the private reproval;

On February 19, 2002, Probation Deputy Eddie Esqueda of the Probation Unit of the State Bar of California wrote a letter to Respondent in which he reminded Respondent of the terms and conditions of the private reproval imposed on Respondent pursuant to the order. In his letter, Mr. Esqueda specifically advised Respondent that he was required to take and pass the MPRE by December 6, 2002, and that he was required to attend State Bar Ethics School and provide proof of compliance to the Probation Unit by December 6, 2002.

The February 19, 2002 letter was properly mailed via regular mail, and was deposited in the United States mail, first class postage prepaid, in a sealed envelope addressed to Respondent at his membership records address. Respondent received the letter.

Respondent failed to take and pass the MPRE or to provide evidence of attendance at State Bar Ethics School before December 6, 2002. In fact, Respondent did not attend State Bar Ethics School or take and pass the MPRE until after the Notice of Disciplinary Charges was filed in this case.

By failing to timely take and pass the MPRE and attend State Bar Ethics School, Respondent failed to comply with the conditions of his private reproval in violation of Rule of Professional Conduct 1-110.

Case Nos. 02-O-14315, 02-O-14444, 02-O-14567,
02-O-14656, 02-O-15105, 02-O-15593
Multiple Violations of Rule of Professional Conduct 4-100(A)
[Commingling]

Respondent wilfully violated Rule of Professional Conduct 4-100(A) by depositing or commingling funds belonging to Respondent in his client trust account, as follows:

At all times relevant herein, Respondent maintained a client trust account at California Federal Bank, account number 283-421-0995.

Between July 27, 2002 and August 29, 2002, Respondent repeatedly issued checks drawn on his client trust account to pay for Respondent's personal or business expenses, as follows:

Check No.	Payee	Date of Check	Amount
1058	Wireless Retail	July 27, 2002	$59.10
1062	Household Credit Services	August 6, 2002	$150.00
1067	The Gas Company	August 16, 2002	$99.41
1068	Albertsons	August 17, 2002	$74.90
1070	Sam's Club	August 23, 2002	$174.53
1071	So. Cal. Edison	August 29, 2002	$197.21

On August 23, 2002, Respondent issued a check drawn on his client trust account to pay for Respondent's personal or business expenses, as follows:

Check No.	Payee	Date of Check	Amount
1070	Sam's Club	August 23, 2002	$174.53

On August 29, 2002, Respondent issued a check drawn on his client trust account to pay for Respondent's personal or business expenses, as follows:

Check No.	Payee	Date of Check	Amount
1071	So. Cal. Edison	August 29, 2002	$197.21

On September 15, 2002, Respondent issued a check drawn on his client trust account to pay for Respondent's personal or business expenses, as follows:

Check No.	Payee	Date of Check	Amount
1074	Albertsons	September 15, 2002	$89.03

On October 1, 2002, Respondent issued a check drawn on his client trust account to pay for Respondent's personal or business expenses, as follows:

Check No.	Payee	Date of Check	Amount
1079	Western Exterminator	October 1, 2002	$65.00

On October 1, 2002, Respondent issued a check drawn on his client trust account to pay for Respondent's personal or business expenses, as follows:

Check No.	Payee	Date of Check	Amount
1080	Sam's Club	October 30, 2002	$139.27

Respondent maintained earned fees and personal funds in his client trust account to issue checks to pay for his personal and business expenses.

By maintaining personal funds in his client trust account and issuing payment of a personal or business debt from client trust funds, Respondent deposited or commingled funds belonging to Respondent in an client trust account in violation of Rule of Professional Conduct 4-100(A).

Case Nos. 02-O-15806 and 03-O-1835
Business and Professions Code section 6068(a)
[Unauthorized Practice of Law]

Respondent wilfully violated Business and Professions Code section 6068(a), by failing to support the Constitution and the laws of the United States and of this state, by violating Business and Professions Code section 6125, which provides that no person shall practice law in California unless the person is an active member of the State Bar, and violating Business and Professions Code section 6126(b), which provides that any person who has been involuntarily enrolled as an inactive member of the State Bar or suspended from practice, and thereafter advertises or holds himself out as practicing or otherwise entitled to practice law, is guilty of a crime, as follows:

Respondent failed to timely comply with the MCLE requirements set forth in the State Bar's MCLE Rules and Regulations by January 31, 2002. Respondent was a member of Compliance Group 3, and was required to provide the compliance card certifying that he completed 61 hours of MCLE on or before March 15, 2002.

On June 12, 2002, Dina DiLoreto of the Office of Certification of the State Bar mailed Respondent a MCLE Non-Compliance 60-Day Notice by enclosing the notice in a sealed envelope addressed to Respondent at his membership records address, 25422 Trabuco Road, #105-444, Lake Forest, California 92630-2791 via United States mail first class postage prepaid. On the reverse side of the notice the State Bar submitted to Respondent the pertinent sections of the Rules and of California Rule of Court 958. The notice was never returned to the State Bar as undeliverable as addressed.

On August 6, 2002, Dina DiLoreto sent a MCLE Non-Compliance Final Notice to Respondent by enclosing the notice in a sealed envelope addressed to Respondent at his membership records address, 25422 Trabuco Road, #105-444, Lake Forest, California 92630-2791 via United States mail first class postage prepaid. The final notice was never returned to the State Bar as undeliverable as addressed.

On September 3, 2002, the State Bar's Office of Certification, pursuant to Rule 13.1 of the MCLE Rules, enrolled Respondent on a **not entitled** status effective September 3, 2002.

On September 16, 2002, Dina DiLoreto sent a MCLE Non-Compliance Notice of Enrollment on Not Entitled Status to Respondent by enclosing the notice in a sealed envelope addressed to Respondent at his membership records address, 25422 Trabuco Road, #105-444, Lake Forest, California 92630-2791 via United States mail first class postage prepaid. The notice specifically provided:

> If you practice law during the period when you are on Not Entitled status, you will be subject to disciplinary action by the State Bar.

The notice was never returned to the State Bar as undeliverable as addressed.

While enrolled on a not entitled status due to his MCLE non-compliance, Respondent practiced law in the State of California by sending fax letters to opposing counsel Ken Roush, attorney for Rancho Santa Fe Thrift and Loan Association, on behalf of clients James E. Nelson and Deborah Nelson on October 2, 2002 and October 24, 2002.

Respondent had previously been hired to represent Will McCain in a minor misdemeanor action filed by the Riverside County District Attorney's Office on May 17, 2002. On September 23, 2002, Respondent and Mr. McCain executed a second addendum to the original retainer agreement with Mr. McCain, since the case had been refiled as a felony third strike case.

In November 2002, Mr. McCain notified Respondent that he was placed on in-active status as reflected by the State Bar's web site.

On November 12, 2002, Respondent moved to be relieved as counsel for McCain since he was on in-active status. The court relieved Respondent as counsel and appointed the Riverside Public Defenders' Office to represent Mr. McCain.

Respondent was not returned to active status by the Office of Certification of the State Bar until January 10, 2003, once he submitted proof of completion of 61 hours of MCLE and paid the required fines to the State Bar.

By representing the Nelsons in a lawsuit brought against them by Rancho Santa Fe Thrift and Loan Association in October 2002, and representing Mr. McCain from September 3, 2002 to November 12, 2002, while enrolled on a not entitled status due to his non-compliance with the MCLE requirements, Respondent violated Business and Professions Code sections 6125 and 6126(b), and

accordingly failed to support the Constitution and the laws of the United States and of this state in violation of Business and Professions Code section 6068(a).

AUTHORITIES SUPPORTING DISCIPLINE

STANDARDS FOR ATTORNEY SANCTIONS

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

> 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 protection of public confidence in the legal profession.

Pursuant to Standard 2.2(b) of the Standards for Attorney Sanctions for Professional Misconduct:

> Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

While the Standard seems to require the imposition of actual suspension for a violation of Rule 4-100(A), case law and the facts of this case militate against such a harsh penalty. First of all, no client monies were involved. Respondent took steps to address the problems with his CTA, and voluntarily agreed to the imposition of interim financial conditions pursuant to Business and Professions Code section 6007(h). He has not held client monies since before the commencement of these proceedings.

Business and Professions Code section 6068(a) requires that an attorney must uphold the laws of the State, the Unites States and the Constitution. Section 6068(a) provides that:

> It is the duty of an attorney to do all of the following: (a) To support the Constitution and the laws of the United States and this state.

Sections 6125 and 6126 of the Business and Professions Code prohibit the practice of law or holding oneself out as entitled to practice law by anyone other than an active member of the State Bar. Respondent's unauthorized practice of law in the Roush and McCain matters violated his duty to uphold the laws, a violation of Section 6068(a). *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES

Respondent shall successfully complete six (6) hours of live instruction continuing legal education courses in attorney/client relations above those required for his license and provide proof of completion within one (1) year of the effective date of the order approving this stipulation re facts, conclusions of law and disposition to the Probation Unit of the State Bar of California.

DISMISSALS

Case Nos. 02-O-15306 and 02-O-15361 are being dismissed with prejudice in the interests of justice.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was June 19, 2003.

6-6-03		BRIAN SAUNDERS
Date	Respondent's signature	print name
Date	Respondent's Counsel's signature	print name
7/24/03		ERIN McKEOWN JOYCE
Date	Deputy Trial Counsel's signature	print name

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.

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.)

7/29/03
Date

Judge of the State Bar Court
RICHARD A. HONN

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 July 30, 2003, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING, filed July 30, 2003

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

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

BRIAN SAUNDERS, ESQ.
25422 TRABUCO RD #105-444
LAKE FOREST CA 92630-2791

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

ERIN JOYCE, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **July 30, 2003**.

Rose M. Luthi

Rose M. Luthi
Case Administrator
State Bar Court