

ORIGINAL

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State Bar Court of California  
Hearing Department  
**PUBLIC MATTER**

<p>Counsel For The State Bar</p> <p><b>Shari Sveningson</b> Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 Telephone: (213) 765-1004</p> <p>Bar # 195298</p>	<p>Case Number (s) 03-O-01735 (inv.) 04-O-11883 04-O-15067</p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>DEC 19 2006</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> 
<p>Counsel For Respondent</p> <p><b>JoAnne Earls Robbins</b> 9200 Sunset Boulevard, Penthouse 7 Los Angeles, California 90067 Telephone: (310) 887-3900</p> <p>Bar # 82352</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: <b>Richard G. Tarlow</b></p> <p>Bar # 72889</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 22, 1976.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of <sup>23</sup>24 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension



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- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- 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: **the next three (3) membership billing periods 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 **04-O-11880**
  - (b)  Date prior discipline effective **May 18, 2006**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct Rules 3-110(A) [Failure to Perform Competently] Business and Professional Code sections 6068(i) [Failure to Cooperate with State Bar] and 6068(m) [Failure to Communicate]**
  - (d)  Degree of prior discipline **one(1) year suspension, stayed, 30 days actual suspension and until the State Bar Court grants a motion under Rule 205 to terminate his actual suspension.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (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. See page 16
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See page 16.
- (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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension

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- (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. See page 16.
- (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.
- (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**

**No other mitigation, but see pages 16-17.**

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension

## 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 **four (4) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Calif. Rules of Ct.)

(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **six (6) months and see pages 17-18 "Other Conditions Negotiated by the Parties"**.
- 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.
- (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  
See page 22.

Medical Conditions

Financial Conditions

See pages 19, 20-21.

#### 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:

**Respondent is already obligated to take the MPRE in case no. 04-O-11880.**

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- (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: See page 21 (Client Trust Accounting School).**

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(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension

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

IN THE MATTER OF:        RICHARD G. TARLOW

CASE NUMBER(S):        03-O- 01735, 04-O-11883, 04-O-15067

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct:

**Case No. 03-O-01735**

1. On April 19, 2001, Claudia Leibert-Acevedo ("Acevedo") employed Respondent to represent her in a personal injury matter. Respondent agreed to represent her on a contingency basis. Respondent was to receive 33 1/3 percent of any settlement if the case settled prior to a complaint being filed and 40% of any settlement after a complaint was filed.

2. On October 30, 2001, Respondent filed a complaint on behalf of Acevedo, entitled *Claudia Leibert-Acevedo v. Henry Blan, Kerr Trucking, et al.*, case number SC031003 in Ventura Superior Court.

3. In July 2002, Acevedo's matter settled for \$17,500. On July 30, 2002, Respondent deposited the settlement check into his client trust account.

4. On October 29, 2002, Respondent sent Acevedo her portion of the settlement funds, \$6050 and a disbursement sheet listing the disbursements of the entire settlement amount. Respondent had been in the process of negotiating the medical payments in Acevedo's matter until this time. The disbursement sheet listed Respondent's attorney fees as \$7000, his costs as \$750, payment to Kaiser Permanente of \$1400 and payment to Allstate Insurance of \$2300. Shortly after receiving the disbursement sheet Acevedo requested an accounting of the \$750 in costs, but otherwise agreed with the disbursements.

5. On March 11, 2003, Respondent sent payment to Allstate in the amount of \$2000 (Respondent negotiated the lien from \$2,300 to \$2,000) on behalf of Acevedo. Allstate accepted the payment as full and final payment on behalf of Acevedo. Respondent did not inform Acevedo that he had reduced the Allstate lien by \$300 and failed to disburse the \$300 to Acevedo.

6. On March 28, 2003, Respondent sent payment to Kaiser Permanente in the amount of \$1400 on behalf of Acevedo. Kaiser Permanente accepted the payment as full and final payment on behalf of Acevedo.

7. At no time did Respondent provide Acevedo with an accounting of the \$750 costs listed on the disbursement sheet.

## LEGAL CONCLUSIONS

By failing to pay Avecedo the \$300, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client or others on behalf of the client are entitled to receive in wilful violation of rule 4-100(B)(4).

By failing to provide an accounting of the \$750 in costs to Acevedo, Respondent failed to render appropriate accounts to a client regarding all funds of the client coming into Respondent's possession in wilful violation of rule 4-100(B)(3).

### Case No. 04-O-11883

1. In May 2002, Caroline M. Muse ("Muse") hired Respondent to pursue a personal injury claim on her behalf. Respondent and Muse agreed that Respondent would be compensated by a contingency fee of 33 1/3 percent before a lawsuit was filed or 40% after a lawsuit was filed.

2. On May 14, 2002, Respondent filed a personal injury lawsuit on behalf of Muse ("Muse lawsuit").

3. In February 2003, Respondent settled the Muse lawsuit for \$25,000. Muse signed the settlement agreement on or about February 21, 2003.

4. Between approximately February 24, 2003 and March 6, 2003, Respondent received a settlement check dated February 14, 2003 from Interinsurance Exchange of the Automobile Club, in the amount of \$25,000, and jointly payable to Muse and Respondent.

5. On March 6, 2003, Respondent deposited the \$25,000 settlement check ("settlement funds") he had received on behalf of Muse into Respondent's client trust account, no. 062-9094798, at Wells Fargo Bank ("Respondent's CTA").

6. On March 19, 2003, Respondent filed a request for dismissal of the Muse lawsuit, which was then dismissed.

7. Respondent's contingency fees for the services he provided for Muse were \$10,000 (40 % of \$25,000). Respondent had incurred \$1135 in costs during his representation of Muse.

8. On March 6, 2003, Respondent withdrew \$10,000 from his CTA, as payment of his fees on the Muse matter.

9. Between approximately March 2003 and April 2004, inclusive, Muse repeatedly telephoned and asked Respondent for a disbursement of the settlement funds.

10. On December 23, 2003, Muse sent Respondent a letter requesting her share of the settlement funds. Respondent did not disburse Muse's share of the settlement funds, and he did not otherwise respond to the letter.

11. In January 2004, Muse sent a letter, by certified mail, to Respondent inquiring about the status of her settlement funds. The letter was returned by the postal service with a notation, "Forwarding Order Expired."

12. On June 23, 2004, Respondent withdrew \$1135.00 from his CTA, as reimbursement for the legal costs in the Muse lawsuit.

13. After subtracting attorney's fees and legal costs in the Muse matter, Respondent was required to maintain in the CTA the sum of \$13,865 (\$25,000 minus \$10,000 minus \$1135), between approximately June 23, 2004 and September 6, 2004.

14. On September 6, 2004, Respondent issued CTA check number 3462 in the amount of \$472 to Daniel Freeman Hospital as partial payment for medical services provided to Muse.

15. After subtracting the partial medical payment to Daniel Freeman Hospital, Respondent was required to maintain at least \$13,393 (\$13,865 less \$472) in his CTA as of approximately September 6, 2004.

16. On October 19, 2004, the balance in Respondent's CTA fell below \$13,393 on the following repeated dates, and thereafter continued to contain a balance insufficient to account for Muse's settlement funds:

<u>DATE</u>	<u>BALANCE</u>
10/19/04	\$ 12,667.42
10/26/04	12,367.42
10/27/04	10,935.42
12/21/04	9,446.32
12/28/04	8,829.32
12/29/04	8,119.32
1/11/05	7,252.32
1/21/05	5,930.32
1/24/05	5,085.32
3/7/05	9,615.32

3/11/05	5,615.32
4/7/05	5,615.32
5/6/05	5,615.32

17. The balance in Respondent's CTA fell as low as \$5,085.32 on January 24, 2005.

18. Respondent misappropriated \$8,308 (\$13,393 - \$5,085) of Muse's settlement funds.

19. On August 16, 2005, Muse sent Respondent a letter requesting an accounting of the settlement funds, and informing Respondent that her medical bills have not been paid in full. The letter was not returned. Respondent did not respond to the letter, and he did not provide an accounting.

20. On April 28, 2004, the State Bar opened an investigation, case no. 04-O-11883, pursuant to a complaint filed by Caroline M. Muse ("the Muse matter").

21. On June 23, 2004, State Bar Investigator Rose Melissa sent a letter to Respondent advising him of the allegations against him in the Muse matter. On July 7, 2004, Investigator Melissa sent another letter to Respondent regarding the Muse matter. Respondent received each of these letters.

22. Each of Investigator Melissa's letters requested that Respondent respond in writing, by a certain date, to specified allegations of misconduct being investigated by the State Bar in the Muse matter.

23. Respondent did not respond to the investigator's letters and he did not otherwise communicate with the investigator.

## LEGAL CONCLUSIONS

By not maintaining in his CTA for the benefit of Muse at least \$13,393 on and after approximately October 19, 2004, Respondent wilfully failed to maintain client funds in a trust account in violation of Rules of Professional Conduct, rule 4-100(A) [Failure to Maintain Client Funds in a Trust Account].

By not providing Muse with an accounting of the settlement funds, Respondent failed to render appropriate accounts to his client regarding all funds received on that client's behalf in violation of Rules of Professional Conduct, rule 4-100(B)(3) [Failure to Render Accounts of Client Funds].

By not responding to the State Bar Investigator, Respondent violated Business and Professions Code, section 6068(i) [Failure to Cooperate in State Bar investigation].

**Case No. 04-O-15067**

1. On October 30, 2002, Johanna Fernandez hired Respondent to represent her in pursuing personal injury claims arising out of an automobile accident that occurred on June 6, 2002. Respondent and Fernandez agreed that Respondent would be compensated with a 15% contingency fee.

2. In May 2003, Respondent settled Fernandez' personal injury claim with the adverse driver's insurance carrier, Safeco Insurance Company of America ("Safeco"), for the sum of \$25,000.

3. In May 2003, Respondent received a settlement check from Safeco jointly payable to Respondent and Fernandez in the sum of \$25,000 ("\$25,000 settlement check").

4. On May 22, 2003, Respondent deposited the \$25,000 settlement check received on behalf of Fernandez into Respondent's CTA.

5. On May 23, 2003, Fernandez received \$10,000 from Respondent as partial disbursement of Fernandez's share of the settlement proceeds. The \$10,000 disbursement was in the form of a check #4003 drawn against Respondent's CTA.

6. On August 18, 2003, Respondent settled with Fernandez' under-insured motorist claim with her own insurance carrier, Liberty Mutual Insurance Company ("Liberty Mutual") in the amount of \$52,500.

7. On September 2, 2003, Respondent deposited the \$52,500 settlement check into Respondent's CTA.

8. On September 3, 2003, Respondent disbursed \$6,500 from the CTA to Fernandez as additional partial disbursement of her share of the settlement funds, in the form of check no. 4046.

9. On December 3, 2003, Respondent disbursed \$7,500 from the CTA to Fernandez as additional partial disbursement of her share of the settlement funds, in the form of check no. 4085.

10. In November 2003, Fernandez telephoned Respondent and asked when she would be receiving her settlement funds. Respondent told her that he was waiting for certain information relating to a subrogation claim ("subrogation claim") asserted by Fernandez' employer, Western Growers Association ("Western Growers"), against the settlement proceeds.

11. On December 30, 2003, Western Growers received a letter from Respondent inquiring whether Western Growers had paid any benefits on behalf of Fernandez.

12. On January 12, 2004, Western Growers responded to Respondent and provided him with an itemization of benefits paid and a demand for subrogation payment.

13. In January 2004, Fernandez again contacted Respondent inquiring about the status of the subrogation claim.

14. In February 2004, Fernandez telephoned Respondent regarding her settlement funds, and Respondent told her he would get to it "when he had time."

15. Between approximately April 2004 and July 2004, inclusive, on several different dates, Fernandez telephoned Respondent and left numerous messages on his office answering machine inquiring as to the status of her settlement funds, and inquiring when she would receive her share of the settlement. On several other occasions during that time period when Fernandez telephoned Respondent's office, Respondent was not accessible and Fernandez was unable to leave messages because Respondent's answering machine was full. Respondent received the messages that Fernandez did transmit; however, Respondent did not return any of her calls and did not otherwise respond to her requests.

16. To date, Respondent has not paid any portion of the subrogation claim against Fernandez' settlement proceeds.

17. To date, Fernandez has not received any additional disbursements from Respondent.

18. Beginning December 3, 2003, Respondent should have maintained at least \$41,875 (total \$77,500 minus \$24,000 paid to Fernandez minus Respondent's 15% fee of \$11,625) in Respondent's CTA for the benefit of Fernandez.

19. On December 15, 2003, the balance in Respondent's CTA fell below \$41,875 on the following dates, and thereafter continued to contain a balance insufficient to account for Fernandez's settlement funds:

<u>DATE</u>	<u>BALANCE</u>
12/15/03	\$33,286.65
12/16/03	\$23,830.77
1/8/04	\$22,745.77
2/2/04	\$31,745.77
2/6/04	\$28,745.77
2/9/04	\$22,745.77
3/3/04	\$22,745.77
3/17/04	\$20,495.77
3/22/04	\$23,995.77
3/31/04	\$13,680.79
4/7/04	\$13,680.79
5/7/04	\$13,680.79

6/29/04	\$27,020.26
8/6/04	\$24,536.12
10/27/04	\$10,935.42
12/10/04	\$10,883.82
12/21/04	\$9,446.32
12/29/04	\$8,119.32
1/11/04	\$7,252.32
1/21/04	\$5,930.32
1/24/05	\$5,085.32
3/7/05	\$9,615.32
3/11/05	\$5,615.32
5/6/05	\$5,615.32

20. The balance in Respondent's CTA fell as low as \$5,085.32 on January 24, 2005.

21. Respondent misappropriated \$36,790 (\$41,875 - \$5,085) of Fernandez' settlement funds.

22. In June 2004, Fernandez left a message for Respondent on his office answering machine requesting that he provide her with an accounting of the settlement proceeds. Although Respondent received the message, he did not return the call and did not otherwise respond to the request.

23. To date, Respondent has not provided any accounting to Fernandez of the settlement proceeds.

24. On October 28, 2004, the State Bar opened an investigation, case no. 04-O-15067, pursuant to a complaint filed by Johanna Fernandez ("the Fernandez matter").

25. On February 2, 2005, State Bar Investigator Rose Melissa sent a letter to Respondent advising him of the allegations against him in the Fernandez matter. On March 10, 2005, Investigator Melissa sent another letter to Respondent regarding the Fernandez matter. Respondent received each of the letters.

26. Each of Investigator Melissa's letters requested that Respondent respond in writing, by a certain date, to specified allegations of misconduct being investigated by the State Bar in the Fernandez matter.

27. Respondent did not respond to Investigator Melissa's letters, he did not respond to the allegations in the Fernandez matter, and he did not otherwise communicate with the investigator.

## **LEGAL CONCLUSIONS**

By not maintaining in his CTA for the benefit of Fernandez at least \$41,875, on and after December 3, 2003, Respondent wilfully failed to maintain client funds in a trust account in violation of Rules of Professional Conduct, rule 4-100(A) [Failure to Maintain Client Funds in a Trust Account].

By not rendering an accounting to Fernandez of the settlement proceeds, Respondent has failed to render an appropriate accounting to a client regarding all funds in violation of Rules of Professional Conduct, rule 4-100(B)(3)[Failure to Render Accounts of Client Funds].

By not responding to Fernandez' status inquiries beginning approximately April 2004 and continuing through approximately July 2004, Respondent failed to respond promptly to reasonable status inquiries of a client in violation of Business and Professions Code, section 6068(m) [Failure to Respond to Client Inquiries].

By not responding to the State Bar Investigator, Respondent violated Business and Professions Code, section 6068(i) [Failure to Cooperate in State Bar investigation].

## **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 March 20, 2006 and the facts and/or 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.

## **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was by letter dated November 14, 2006.

**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>
04-O-11883	TWO	Business and Professions Code Section 6106 [Moral Turpitude - Misappropriation]
04-O-11883	THREE	Business and Professions Code Section 6106 [Moral Turpitude-Misrepresentation]
04-O-11883	FOUR	Business and Professions Code Section 6068(m) [Failure to Respond to Client Inquiries]
04-O-15067	SIX	Rules of Professional Conduct, Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]
04-O-15067	EIGHT	Business and Professions Code Section 6106 [Moral Turpitude - Misappropriation]
04-O-15067	ELEVEN	Rules of Professional Conduct, Rule 4-200(A)[Unconscionable Fee]

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of **November 14, 2006** the estimated prosecution costs in this matter are approximately **\$4,894** 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.**

Standard 1.2(b) provides that the following factors are considered aggravating circumstances: the existence of a prior record of discipline; if trust funds were involved, the refusal or inability to account to clients.

Standard 2.2(a) provides that culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

In *Edwards v. State Bar* (1990) 52 Cal. 3d 28, the Supreme Court recommended a one year actual suspension. The attorney commingled personal and client funds in a trust account and

misappropriated \$3000 of client funds. The State Bar recommended a two year actual suspension but the Court found that a one year actual was sufficient. The Court noted that the attorney had not been disciplined before, engaged in no acts of deceit and that he was candid and cooperative throughout the disciplinary proceeding.

In *Murray v. State Bar* (1985) 40 Cal. 3d 57, the California Supreme Court suspended an attorney for 2 years, placing the attorney on 2 years probation with a 2 year stayed suspension and 1 year actual suspension. The attorney commingled and misappropriated about \$5,700 in client funds, unilaterally determined and withdrew fees, made disbursements without court approval and refused to account to the executors of the estate. The court considered, in mitigation, that the attorney had no prior record of discipline.

In *the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, the Review Department affirmed the Hearing Department's recommendation of one year actual suspension where the attorney stipulated to culpability on six counts of grossly negligent misappropriation of trust funds totaling over \$20,000 in medical liens. Although, the misconduct spanned over a period of six - seven years, the Review Department determined that the attorney had no dishonest intent and found compelling mitigation, such as the attorney had extreme physical disabilities, he was candid and cooperative, he made belated restitution, he evinced sincere remorse.

In *the Matter of Sklar* (1993) 2 Cal. State Bar Ct. Rptr. 602, the Review Department determined the aggravating force of a prior discipline is diminished if the misconduct occurred during the same period as the misconduct in the prior matter.  
See Other Circumstances on pages 16 - 17.

In *the Matter of Raymond E. Mapps* (1990) 1 Cal. State Bar Ct. Rptr 1:  
The respondent's multiple instances of misconduct occurred during the same period of time and the respondent attributed them to the same circumstances he was in at that time. The court found this to be properly considered in mitigation.

#### **AGGRAVATING CIRCUMSTANCES.**

Respondent's failure to maintain client funds in his trust account and his failure to render an accounting caused harm to his clients in that they suffered financial and psychological distress.

#### **MITIGATING CIRCUMSTANCES**

Respondent displayed candor with the State Bar and fully cooperated in stipulating to the misconduct. Respondent also displayed remorse.

#### **OTHER CIRCUMSTANCES.**

1) Respondent was admitted to practice in December 1976. The misconduct in Respondent's one prior instance of discipline occurred during the time period of May 2003 through July 2004. The misconduct in the present matters occurred from May 2002 through April 2006. Consequently, from 1976 through May 2002, Respondent had a blemish free record of practice for approximately 26 years.

2) In February 2001, Respondent's home was destroyed by a fire. Respondent suffered from smoke poisoning and respiratory problems. Respondent and his family of five were forced to move to a rental house for the next two years. During this time, life was chaotic for Respondent and he was forced to reduce his caseload and reduce his staff to one part-time secretary. Respondent and his family were able to move back into their re-built home in March 2003, but by this time Respondent was no longer was able to afford rent on the law office he had occupied for 18 years. Consequently, Respondent moved his office files and records into his re-built home. Because room was limited in his home, Respondent was forced to move some files to storage units. It was during this process of moving his law office and placing files in storage that Respondent's life became even more disorganized and he lost several client files, including parts of the Muse and Fernandez files.

As reflected in the stipulation of facts, the balance of funds in Respondent's client trust account dropped slowly over a year period of time. Respondent is deeply remorseful and wants to make restitution. Respondent has already paid Fernandez \$125,000 to settle the civil action she had brought in connection with the misconduct in her complaint, case no. 04-O-15067.

3) One of Respondent's children has had longstanding personal and medical problems, which occurred during the time of Respondent's misconduct and which resulted in financial and psychological strain for Respondent.

#### **OTHER CONDITIONS NEGOTIATED BY THE PARTIES.**

Respondent has been on actual suspension since May 18, 2006, pursuant to case no. S140846 (State Bar Court case no. 04-O-11880). In that case, the Supreme Court suspended Respondent for thirty (30) days and until he files and the State Bar Court grants a motion to terminate the actual suspension under Rule 205 of the Rules of Procedure.

It is the parties intent to make the period of actual suspension in this matter consecutive to the period of actual suspension in case no. S140846. The misconduct in case no. S140846 took place within the time period of misconduct in the instant matter. Consequently, the parties have filed a Rule 205 Stipulation which provides that Respondent's actual suspension in case no. S140846 .

will remain in effect until the effective date of discipline in this matter. In other words, Respondent will serve a continual period of actual suspension for both matters and that period of actual suspension will most likely be greater than one year of actual suspension.

#### **RESTRICTIONS WHILE ON ACTUAL SUSPENSION.**

1. During the period of actual suspension, respondent shall not:

- (1) Render legal consultation or advice to a client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of a client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of a client with third parties;
- (5) Receive, disburse, or otherwise handle a client's funds; or
- (6) Engage in activities which constitute the practice of law.

2. Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the Probation Unit, pertaining to periods in which the respondent was actually suspended from the practice of law.

**1) FINANCIAL CONDITIONS, RESTITUTION.**

Within six (6) months from the effective date of discipline in this matter, respondent must make restitution to Claudia Leibert-Acevedo or the Client Security Fund if it has paid, in the principal amount of \$1,050 plus interest at the rate of 10% per annum from August 11, 2003 and furnish satisfactory evidence of restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him or her during that reporting period. Respondent shall not pay less than \$750 quarterly until this amount is paid in full.

This amount represents the \$750 in costs that Respondent failed to account for and the \$300 that Respondent negotiated down from the Allstate lien.

**2) FINANCIAL CONDITIONS, RESTITUTION.**

Within three (3) years from the effective date of discipline in this matter, respondent must make restitution to Michelle Muse or the Client Security Fund if it has paid, in the principal amount of \$13,393 plus interest at the rate of 10% per annum from December 23, 2003 and furnish satisfactory evidence of restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him or her during that reporting period. Respondent shall not pay less than \$1,700 quarterly until this amount is paid in full.

**3) FINANCIAL CONDITIONS, RESTITUTION.**

On August 25, 2006, Respondent paid Fernandez \$125,000 to settle the civil action she had brought in connection with the misconduct in her complaint, case no. 04-O-15067.

In the Matter of  
Richard G. Tarlow

Case number(s):  
03-O-01735; 04-O-11883; 04-O-15067

A Member of the State Bar

### 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 in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
1. Claudia Liebert-Avecedo	\$ 1,050	August 11, 2003
2. Michelle Muse	\$13,393	December 23, 2003

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than 1) **six (6) months after the effective date of discipline to Liebert-Avecedo;** 2) **Three (3) years after the effective date of discipline to Muse.**

#### 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
1. Liebert-Avecedo	\$ 750	Quarterly
2. Muse	\$1,700	Quarterly

#### 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 and/or 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";

- 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.

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In the Matter of  
Richard G. Tarlow

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A Member of the State Bar

### 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        days/12 months/        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 12 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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In the Matter of  Richard G. Tarlow	Case number(s):  03-0-01735; 04-0-11883; 04-0-15067
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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.

11-21-06      Richard G. Tarlow      Richard G. Tarlow  
Date                      Respondent's signature                      Print name

November 21, 2006      JoAnne Earls Robbins      JoAnne Earls Robbins  
Date                      Respondent's Counsel's signature                      Print name

11/22/06      Shari M. Sveningson      Shari Sveningson  
Date                      Deputy Trial Counsel's signature                      Print name

(Do not write above this line.)

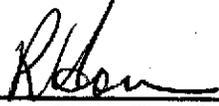
In the Matter Of Richard G. Tarlow	Case Number(s): 03-O-01735; 04-O-11883; 04-O-15067
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ORDER

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.

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.)**

Date 12/8/00 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 December 19, 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:

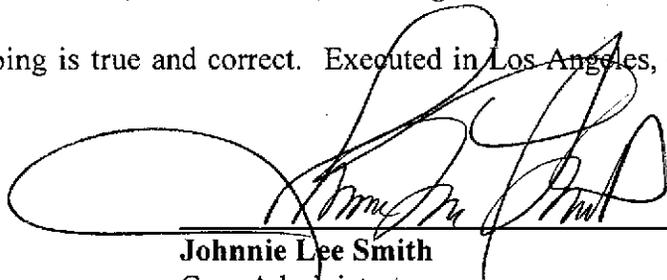
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOANNE EARLS ROBBINS  
KARPMAN & ASSOCIATES  
9200 SUNSET BLVD PH #7  
LOS ANGELES, CA 90069**

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

**SHARI SVENINGSON , Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 19, 2006.

  
\_\_\_\_\_  
**Johnnie Lee Smith**  
Case Administrator  
State Bar Court