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State Bar Court of California Hearing Department San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES			CONFIDENTIAL
Counsel For The State Bar Cydney Batchelor Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94106 Tele: 415/538-2204 Bar # 114637	Case Number (a) 04-O-10750-PEM FILED <i>[Signature]</i> NOV 10 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	(for Court's use) LODGED NOV 05 2007 <i>[Signature]</i> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	
Counsel For Respondent Rodney A. Mariani, Esq. A Professional Corp. 1325 High Street Alameda, CA 94501 Tele: 510/521-2230 Bar # 69918	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter Of: ELAINE J. HARRISON Bar # 168040 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 December 14, 1993.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 8 pages, excluding 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".

(Stipulation form approved by SBC Executive Committee 9/10/2002. Rev. 12/16/2004; 12/13/2006.)

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- (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 §§6080.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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:
- (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 wrongdoing or demonstrates a pattern of misconduct. See attached
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

None

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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. **See attached**
- (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 attached**
- (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. **See attached**
- (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. **See attached**
- (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:

See attached

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

IN THE MATTER OF: **ELAINE J. HARRISON**
CASE NUMBERS: **04-O-10750-PEM**

FACTS AND CONCLUSIONS OF LAW:

Respondent admits that the following facts are true and that she is culpable of violations of the State Bar Act and/or Rules of Professional Conduct:

Facts:

1. On October 14, 2002, John Wood ("Wood") employed respondent to represent him in his divorce proceeding.

2. In January 2003, Wood sold some property in Oakland and asked respondent to hold the money in her bank account for him. Wood informed respondent that she could pay her attorney's fees from the account.

3. In January 2003, respondent opened up Wells Fargo business checking account number 538-9733923 ("Wood Account") so that the Oakland property proceeds could be transferred into the account. The Wood Account was not labeled as a trust account and respondent knew or should have known at the time she opened the Wood Account that it was not labeled as a trust account.

4. The Wood Account should have been labeled a trust account since it was created to maintain funds Wood entrusted to respondent.

5. On January 3, 2003, the escrow agency wire transferred \$113,558 into the Wood Account. On or about January 29, 2003, respondent deposited \$1,300 that belonged to Wood in the Wood Account. On or about May 28, 2003, respondent deposited \$5,000 that belonged to Wood in the Wood Account. Respondent deposited a total of \$119,858.08 into the Wood Account that belonged to Wood.

6. According to respondent's February 9, 2004 invoice, respondent paid out a total \$39,220.17 from the Wood Account for Wood's benefit and provided Wood with \$20,400 in cashier's checks from respondent's own funds. Therefore, according to respondent's February 9, 2004 invoice, Wood received a total of \$59,620.17 from the Wood Account and in cashier's checks.

7. Attached to the February 9, 2004 final invoice was a list of the checks respondent issued from the Wood Account for Wood's benefit. The list did not include the checks respondent issued to herself. (Respondent incorrectly listed check number 1007 in the amount of \$800 as paid to Mike Holleran on Wood's behalf, when check number 1007 was issued to respondent. Therefore, the correct total should have been \$58,820.17.)

8. According to respondent's February 9, 2004 final invoice, respondent was entitled to collect \$52,479.73 in professional fees.

9. According to respondent's February 9, 2004 final invoice, respondent also advanced Wood \$16,682.26 from her business account for costs.

10. Respondent's February 9, 2004 final invoice contained the following calculation:

Total deposits to the Wood Account	\$119,858.08
Payments Wood received Wood Account and Cashier's Checks	\$ 59,620.26
Costs Advanced from Respondent's Business Account	\$ 16,682.26
Professional Fees	<u>\$ 52,479.73</u>
Total Wood Credit	\$128,782.16

11. Therefore, according to respondent's February 9, 2004 final invoice, respondent was owed \$8,924.08 in outstanding legal fees.

12. Respondent issued check number 102 from the Wood Account to her secretary Stacey Steinhoff in the amount of \$1,000 for Steinhoff's 2002 salary bonus. This check was issued for respondent's own use and benefit and not for Wood's benefit.

13. Respondent issued check number 104 from the Wood Account to Kantor's Furniture in the amount of \$3,597.14. This check was issued for respondent's own use and benefit and not for Wood's benefit.

14. On or about July 16, 2003, respondent deposited a settlement check from California State Automobile Insurance Company for client Annette Duarte in the amount of \$6,550 into the Wood Account.

15. On or about July 16, 2003, respondent issued check number 1013 from the Wood Account to Annette Duarte in the amount of \$3,109 as her portion of the settlement proceeds.

16. On or about July 31, 2003, respondent issued check number 1014 from the Wood Account to herself as payment of her fees and costs from the settlement of Annette Duarte's matter.

17. When calculating the amount she was owed on her February 4, 2004 final invoice, respondent gave Wood a credit for the total amount she received in the Wood Account and did not account for all of the deductions from the Wood Account as being made for Wood's benefit. She characterized the Wood Account as funds she received from Wood, rather than funds she maintained on Wood's behalf.

18. Respondent used the Wood Account as a general business account and not did not handle it as a trust account.

19. In July 2003, respondent deposited \$6,550 in settlement proceeds for client Annette Duarte into the Wood Account. Respondent distributed \$3,109 to Annette Duarte and \$3,000 to respondent for her fees and costs.

20. Respondent received Duarte's settlement proceeds for the benefit of Duarte.

21. Respondent deposited Duarte's settlement proceeds into the Wood Account, which was not a trust account and which was created to maintain Wood's funds exclusively.

22. Respondent failed to deposit Duarte's settlement proceeds into a bank account labeled "trust account."

Conclusions of Law: By depositing Wood's funds into a non-trust account, respondent failed to deposit funds she was holding for the benefit of her client into an account labeled "trust account," in violation of Rule of Professional Conduct 4-100(A). By issuing checks for her own use and benefit from the Wood Account and by treating the Wood Account as a general business account and not as a trust account, respondent commingled her personal funds with Wood's trust account funds, in violation of Rule of Professional Conduct 4-100(A). By depositing Duarte's settlement funds into the Wood Account, respondent failed to deposit funds into an identifiable bank accounts labeled "trust account" or words of similar import, in violation of Rule of Professional Conduct, rule 4-100(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was August 30, 2007.

AGGRAVATING FACTOR.

Multiple Acts of Misconduct: By the misconduct stipulated to herein, respondent committed multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has no prior record of discipline since being admitted to practice in 1993, approximately fourteen years ago.

Candor and Cooperation: Through counsel, respondent has been completely candid and cooperative with the State Bar in resolving this case.

Family Problems: During the period of time of the misconduct, respondent's mentally ill son lived with her, resulting in respondent's attention being diverted to caring for him.

Financial Problems: Beginning before the misconduct and extending until 2004, respondent had severe financial difficulties, which resulted in her not being able to obtain prescription psychiatric medicine.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Participation in California Lawyer's Assistance Program: In January 2007, respondent contacted the State Bar Lawyer Assistance Program (LAP) and signed a pre-enrollment evaluation plan. After being evaluated for a period of time, respondent signed her long-term participation plan with LAP on June 6, 2007.

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In the Matter of ELAINE J. HARRISON	Case number(s): 04-O-10750-PEM
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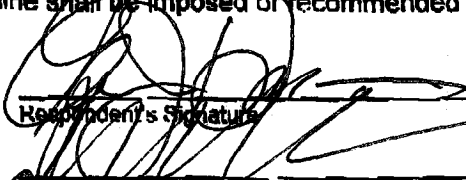

SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date <u>8/8/07</u>		Elaine J. Harrison Print Name
Date <u>8/8/07</u>	Respondent's Counsel Signature	Rodney A. Mariani Print Name
Date <u>8/30/07</u>		Cydney Ratchelor Print Name

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In the Matter Of ELAINE J. HARRISON	Case Number(s): 04-O-10750-PEM
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

Nov 5, 2007
Date

Pat McElroy
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. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 5, 2007, I deposited a true copy of the following document(s):

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR
COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

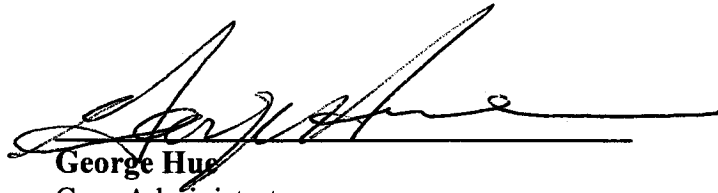
**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND
ORDERS**

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

by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

**CYDNEY BATCHELOR
RODNEY MARIANI
ELAINE J. HARRISON**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 5, 2007**



George Hue
Case Administrator
State Bar Court