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# State Bar Court of California

Hearing Department ☒ Los Angeles ☐ San Francisco

| | | |
|---|---|---|
| Counsel for the State Bar<br>Jean Cha<br>Deputy Trial Counsel<br>1149 South Hill Street<br>Los Angeles, California 90015<br>Telephone: (213) 765-1255<br>Bar # 228137 | Case number(s)<br>04-O-15318 | (for Court's use)<br>FILED<br>MAY -2 2006<br>STATE BAR COURT<br>CLERK'S OFFICE<br>LOS ANGELES<br>PUBLIC MATTER |
| ☐ Counsel for Respondent<br>☒ In Pro Per, Respondent<br>Sheldon G. Bardach<br>11319 1/4 Iowa Ave.<br>Los Angeles, CA 90025-4214<br>(310) 795-4168<br>Bar # 32057 | Submitted to ☐ assigned judge ☒ settlement judge | |
| In the Matter of<br>SHELDON G. BARDACH<br>Bar # 32057<br>A Member of the State Bar of California (Respondent) | STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING<br>**ACTUAL SUSPENSION**<br>☐ PREVIOUS STIPULATION REJECTED | |

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 January 19, 1962 (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 19 pages.

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

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

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

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

(Do not write above this line.)

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

- ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- ☒ costs to be paid in equal amounts prior to February 1 for the following membership years: two (2) billing cycles following the effective date of the Supreme Court Order. (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- ☐ costs entirely waived

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

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

(a) ☒ State Bar Court case # of prior case 03-O-02442, 04-O-13098, 04-H-14867

(b) ☒ Date prior discipline effective May 10, 2005

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 3-300(B); entering into a business transaction with a client and failing to advise the client, in writing, of his right to seek the advice of an independent lawyer of the client's choice regarding the business transaction. rule 1-110: failing to complete reproval conditions and pay restitution.

(d) ☒ Degree of prior discipline Public Reproval one year; Restitution $2,500.00

(e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
State Bar Court case #02-O-12806, effective July 31, 2003; in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2) for failing to refund unearned fees. Restitution of $2,500 by July 31, 2004. Private Reproval one year; Restitution $2,500.

(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.

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

**Additional aggravating circumstances:** See Aggravating Circumstances, infra, at page 13.

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

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

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

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

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

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

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

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

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

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

(Do not write above this line.)

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

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

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

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

**Additional mitigating circumstances:** See Mitigating Circumstance, infra, at page 14.

## D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of Five (5) 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 Five (5) years, which will commence upon the effective date of the Supreme Court order in this matter. (*See rule 953, Calif. Rules of Ct.*)

(Do not write above this line.)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of one (1) year

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following: _____

## E. Additional Conditions of Probation:

(1) ☒ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

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

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

(4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(6) ☒ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

(7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(Do not write above this line.)

(8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason: _____

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

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

☐ Substance Abuse Conditions ☒ Law Office Management Conditions

☐ *Medical Conditions* ☒ *Financial Conditions*

## F. Other Conditions Negotiated by the Parties:

(1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

☐ No MPRE recommended. Reason: _____

(2) ☒ **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(3) ☐ **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date *of commencement of interim suspension:* _____

(5) ☒ **Other Conditions:** See e. Continuing Legal Education, infra, at page 9.

(Do not write above this line.)

| In the Matter of | Case Number(s): |
|---|---|
| SHELDON G. BARDACH | 04-O-15318 |

## Law Office Management Conditions

a. ☐ Within ____ days/ _____months/ _____years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.

b. ☒ Within __0__ days/ __6__ months __0__ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than __6__ 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.

(Do not write above this line.)

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| SHELDON G. BARDACH | 04-O-15318 |

## Financial Conditions

### a. Restitution

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

| Payee | Principal Amount | Interest Accrues From |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

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

### b. Installment Restitution Payments

☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), 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 |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

### 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";

(Do not write above this line.)

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

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
   i. each item of security and property held;
   ii. the person on whose behalf the security or property is held;
   iii. the date of receipt of the security or property;
   iv. the date of distribution of the security or property; and,
   v. the person to whom the security or property was distributed.

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

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

**d. Client Trust Accounting School**

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

**e. Continuing Legal Education**

☒ Within one (1) year of the effective date of the discipline herein, Respondent shall attend six (6) credit hours of continuing legal education course work in the area of client trust accounting in addition to State Bar CTA School and provide the Office of Probation satisfactory proof of attendance. Upon termination of actual suspension, Respondent shall provide written notification to the probation monitor and to the Office of Probation within 30 days of the opening of any CTA. Respondent must conform to the specific financial conditions and other requirements as provided above. Respondent shall not maintain an automated teller machine card in relation to any CTA.

## ATTACHMENT TO

## STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: **SHELDON GILBERT BARDACH**

CASE NUMBER: **04-O-15318-RMT**

### JURISDICTION

Sheldon Gilbert Bardach (Respondent) was admitted to the practice of law in the State of California on January 9, 1962, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

### GENERAL BACKGROUND

Respondent maintained a Client Trust Account (CTA) and general account at Wells Fargo. In November 2002, then 79-year-old Elizabeth Nash (Nash) retained the Law Offices of Larry H. Parker (the Parker firm) on a written one-third contingency fee basis regarding a personal injury matter stemming from a car accident. Jeffrey R. Billings (Billings), a Parker firm associate, was assigned to represent Nash in her personal injury matter.

On December 10, 2002, Billings signed a medical lien in favor of Dr. Scott W. Martin (Dr. Martin), wherein Billings agreed to withhold funds from Nash's settlement sufficient to compensate Dr. Martin. On April 16, 2003, Dr. Martin issued a medical report to Billings regarding Nash's injuries. On April 30, 2003, Billings submitted Nash's medical bills to Ranger Insurance for evaluation.

On June 20, 2003, Ranger Insurance offered to settle the personal injury matter for $11,420, but Nash, by and through Billings, rejected the settlement offer. On August 13, 2003, Ranger Insurance offered to settle the personal injury matter for $12,000, but Nash, again, rejected it.

### FACTS AND CONCLUSIONS OF LAW

In September 2003, Nash fired Billings and employed Respondent. Respondent and Nash entered into a written one-third contingency fee agreement.

On September 29, 2003, the Parker firm wrote Ranger Insurance to inform them that the Parker firm had been fired by Nash and maintained a lien on any settlement funds and to list The Law Offices of Larry H. Parker as a payee in addition to any other payees on any drafts issued to

Nash. On November 10, 2003, Ranger offered $13,290 to Respondent and that offer was rejected by Nash.

On November 21, 2003, the matter was settled for $14,400. At the time of settlement, Dr. Martin's lien was $4,550. Respondent knew of the lien's existence. Although Respondent did not sign the lien he took responsibility for resolving the lien and negotiating a lesser amount on behalf of Nash.

On December 5, 2003, Ranger Insurance issued a check for $14,400 made payable to Nash and the Law Office of Larry H. Parker. Even though Respondent was not a named payee, Ranger sent Respondent the check.

On December 12, 2003, Respondent received the draft for $14,400 on Nash's behalf.

On December 13, 2003, Respondent wrote the Parker firm to request authorization to endorse the settlement draft on behalf of the Parker firm. On December 16, 2003, the Parker firm agreed that Respondent could endorse the settlement draft on behalf of the Parker firm and deposit the draft. Thereafter, Nash endorsed the draft.

On December 16, 2003, although Respondent properly endorsed the draft with the correct account number of his CTA, the draft was deposited into his general account. He used an automatic teller and an ATM card which the bank had provided on his CTA. On December 19, 2003, the funds were transferred from Respondent's general account to his CTA when the bank caught the error.

To date, Respondent has failed to negotiate and resolve Dr. Martin's medical lien on Nash's behalf. Further, Dr. Martin obtained a small claims judgment entitled, *Dr. Scott W. Martin v. Sheldon G. Bardach*, in the sum of $4,550 plus costs. By failing to negotiate and pay the medical lien on behalf of his client, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), Rules of Professional Conduct.

On December 29, 2003, Respondent issued CTA check no. 1174 to Nash in the sum of $7,006, which included a portion of the funds due and owing to Dr. Martin. The balance held for Nash for payment to Dr. Martin was $2,594. On February 20, 2004, the balance of Respondent's CTA fell to $25.25.

Thereafter, Respondent did not disburse any funds to Dr. Martin.

By failing to maintain the full $2,594 of Nash's funds held on behalf of the medical provider, Respondent failed to maintain the balance of funds received for the benefit of a client and

deposited in a CTA in willful violation of rule 4-100(A), Rules of Professional Conduct.

By failing to maintain the full $2,594 in his CTA and by converting $2,568.75 ($2,594 - $25.25) of settlement funds to his own use and purpose, Respondent misappropriated client funds in willful violation of Business and Professions Code section 6106.

**DISMISSALS**

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

| Case No. | Count | Alleged Violation |
|---|---|---|
| 04-O-15318 | Four | Business and Professions Code section 6103 |
| 04-O-15318 | Five | Rules of Professional Conduct rule 1-110 |
| 04-O-15318 | Six | Business and Professions Code section 6068(i) |

**PENDING PROCEEDINGS**

The disclosure date referred to, on page one, paragraph A.(7), was April 27, 2006.

**COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 27, 2006, the estimated prosecution costs in this matter are approximately $3,654.00. Respondent acknowledges that this figure is an estimate only and that it does not include incidental expenses (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)) which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**AUTHORITIES SUPPORTING DISCIPLINE**

The primary purposes of the disciplinary proceedings are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession.[1] Respondent had a discipline-free history with the State Bar from 1962 through 2002. During the time of the present misconduct, Respondent experienced serious financial difficulties and significant changes in his sole-practice.

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[1]Std 1.3; *In re Morse* (1995) 11 Cal.4th 184, 205, Std. 1.3; *Tarver v. State Bar* (1984) 37 Cal.3d 122, 133, 207 Cal.Rptr. 302, 688 P.2d 911; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.

Respondent's wife who was his office manager of thirteen years (1989-2003) left both Respondent and his office which set the stage for accounting and administrative errors within his office.

Respondent assumed the fiduciary responsibility to hold and disburse funds on behalf of Nash to Dr. Martin. The failure by Respondent to pay the balance of the medical lien, $2,594, to Nash, or in the alternative, to Dr. Martin resulted in a misappropriation in that sum.

Standard 2.2 of the Standards for Attorney Sanctions for Professional Misconduct (Rules Proc. of State Bar, tit. IV, (Std. or Stds.[2]) provides:

> Culpability of a member of willful 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.

Mitigation will not immunize Respondent from the disciplinary measure necessary to protect the public in the future,[3] but compelling significant mitigating circumstances carry sufficient weight to not warrant disbarment in this case.[4] By balancing the aggravating facts with the mitigating factors a result which protects the public is achieved with a one-year actual suspension and a five-year probationary period.[5] We compare whether discipline is consistent with or disproportional to prior decisions while balancing aggravating and mitigating circumstances.[6]

AGGRAVATING CIRCUMSTANCES

State Bar Court Case No. 02-O-12806:
Respondent was privately reproved for a willful violation of Rules of Professional Conduct, rule 3-700(D)(2) for failing to refund a $2,500 flat fee for legal services to a client. The one-year private reproval included conditions for financial restitution of the principal amount of $2,500.

State Bar Court Case Nos. 03-O-02442; 04-O-13098; & 04-H-14867:

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[2]Future references to standard or Std. are to the Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.

[3]*Coppock v. State Bar* (1988) 44 Cal.3d 665, 686.

[4]See, e.g. *Frazer v. State Bar* (1987) 43 Cal.3d 564, 579-80.

[5]Std. 1.2(b).Std. 1.2(e).

[6]Std. 1.6(b); *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-11.

Respondent was publicly reproved for a willful violation of Rules of Professional Conduct rule 3-300(B) for entering into a business transaction with a client who had been friends with Respondent for 35 years at the time of the transaction to help him with a real estate investment. Respondent failed to advise the client, in writing, of his right to seek the advice of an independent lawyer of the client's choice regarding the business transaction and rule 1-110 for failing to comply with reproval conditions related to State Bar Court Case No. 02-O-12806. Respondent failed to complete Ethics School and pay restitution because Respondent did not have the financial resources necessary to pay for Ethics School or the court ordered restitution. The one-year public reproval included conditions for Ethics School and restitution.

MITIGATING CIRCUMSTANCES

Candor and Cooperation:
An attorney has a legal and ethical duty to cooperate with the State Bar's disciplinary investigation, and that cooperation, in and of itself, is not entitled to great weight as a mitigating factor.[7] Mitigating weight is afforded, however, because of Respondent's cooperation with the State Bar in entering into a factual stipulation regarding background facts and because Respondent willingly admits his culpability.[8]

Severe Financial Stress:
Respondent's financial stress is causally related or is directly responsible for the misappropriation and merits some weight in mitigation.[9] Respondent was unskilled at balancing the expenses and costs associated with his small practice. He had relied upon his wife as office manager. Respondent anticipated receipt of approximately $24,000 in attorney's fees owed to Respondent for work performed on another client matter. By anticipating payment of this receivable, Respondent permitted his trust account to dip and the resulting misappropriation occurred. Respondent understands that his sole reliance on his wife and on a speculative recovery of funds does not excuse his conduct.

Family Problems:
From 2003 to 2005, Respondent experienced emotional and health problems emanating from his marital problems and physical health issues. Respondent was not able to handle additional clients to increase his practice and income due to his cardiac complications. Currently, Respondent's medical condition has improved with prescription medications and continuing medical supervision. Respondent limits his present practice by taking fewer cases

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[7] *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511.

[8] *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.

[9] *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.

ANALYSIS

In almost 36 years of practice, Respondent had no discipline with the State Bar.[10] Then, on April 15, 2005, Respondent stipulated to a public reproval regarding October 5, 1997 misconduct and reproval condition violations including failure to pay restitution (where Respondent stipulated on July 8, 2003 to a private reproval for misconduct occurring on December 2, 2002 and restitution).

Standard 1.7(b) provides in pertinent part the following:

> If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Standards for Attorney Sanctions for Professional Misconduct provide are guidelines in determining the appropriate degree of discipline to be recommended,[11] are not mandatory sentencing guidelines, are applied in a non-talismanic fashion, from which the Supreme Court will generally not depart unless there is a compelling reason.[12]

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. Here, Respondent has two prior records of discipline. While the standards are entitled to great weight, they are not binding.[13] Mitigating evidence based on the surrounding circumstances is sufficient to avert Respondent's disbarment for prior misconduct.[14]

A literal application of Standard 1.7(b) would call for disbarment of any attorney who is found culpable in a third disciplinary proceeding, unless compelling mitigating circumstances predominate. This standard must be applied in light of the nature and extent of the prior record.

In order to properly fulfill the purposes of lawyer discipline, we must review the nature and

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[10]Std. 1.2(e)(i).

[11]*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.

[12]*In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.

[13]*In re Silverton* (2005) 36 Cal.4th 81, 92.

[14]*In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593.

chronology of Respondent's record of discipline in balanced consideration of the relevant factors.[15] The mere fact that Respondent has two impositions of discipline without further analysis, may not justify disbarment.[16] In *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217, an attorney's prior record of two reprovals involved inattention to the needs of clients, misconduct of different nature than the drunk driving convictions involved in Anderson's third proceeding, Anderson's prior disciplinary record did not warrant disbarment, but did constitute a proper aggravating factor.

Discipline less than that recommended by the applicable standard is appropriate for the protection of the public.[17] A one-year period of actual suspension provides Respondent an opportunity for rehabilitation to prepare a practice with utmost regard for client interests and office management. The lengthy period of stayed suspension subject to probation conditions atop the actual suspension is an adequate additional measure to protect the public, courts and legal profession.[18]

In *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, the public was sufficiently protected where an attorney was suspended from the pratice of law for five years with the suspension stayed and the attorney placed on probation for five years on several conditions including two years actual suspension for two instances of misappropriation totaling approximately $5,700 held to pay medical liens. In one instance the attorney deposited a settlement draft in his trust account, disbursed to his client the appropriate funds and retained $2,271 to cover a medical lien to a doctor who was the complaining witness and paid the doctor about fifteen months after settlement funds were received.[19] In *Mapps*, the attorney had no prior record of discipline. Here, Respondent is culpable of one instance of misappropriation and less actual suspension than *Mapps* is appropriate.

Misappropriation is serious and willful even in the absence of deliberate wrongdoing, dishonest intent, or presence of gross negligence.[20] Deviation from the minimum of one-year actual suspension would not be appropriate, here. In *Edwards v. State Bar* (1990) 52 Cal.3d 28, 38-39, an attorney charged with misappropriating funds of one client for a short period of time, writing a check drawn on insufficient funds, which was repaid within three months, the absence of deliberate wrongdoing, an 18-year clean discipline record, full restitution and voluntary steps to

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[15]*Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 904; *Bernstein v. State Bar* (1972) 6 Cal.3d 909, 919.

[16]*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

[17]Std 1.3; Std. 1.7(b); *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490; *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245.

[18]*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

[19]*In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 8.

[20]*In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 714.

improve his management of trust funds, the Supreme Court ordered a one-year actual suspension.

Here, Respondent had problems with his trust account balance because his office manager who was his wife left the country. For the first time in Respondent's career, Respondent was without support staff. Respondent has since learned the seriousness and responsibility associated with managing his practice and has agreed to six (6) credit hours of continuing legal education in Law Office Management and six (6) credit hours in client trust accounting as a condition of his probation. Respondent has reorganized his practice and filing system.

Here, all relevant facts have been considered, including the purposes of imposing discipline, which include: protection of the public, courts, and legal profession; maintenance of high professional standards; and maintenance of integrity of and public confidence in the legal profession.[21] Though none of these aforementioned circumstances excuse the misappropriation, the nature and chronology of Respondent's record of discipline weighed against Respondent's mitigating circumstances substantiate departure from disbarment.[22] Thus, a one-year actual suspension with a five-year stayed suspension, and five-year probation is appropriate.

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[21] *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583; e.g. *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367; see also *Snyder v. State Bar, supra*, 49 Cal.3d at 1308.

[22] Std. 1.3; see *Sands v. State Bar* (1989) 49 Cal.3d 919, 928; *Porter v. State Bar* (1991) 52 Cal.3d 518, 528.

(Do not write above this line.)

| In the Matter of | Case number(s): |
|---|---|
| SHELDON G. BARDACH | 04-O-15318 |

## 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.

| | | |
|---|---|---|
| April 28, 2006 | | SHELDON G. BARDACH |
| Date | Respondent's signature | Print name |
| | | |
| Date | Respondent's Counsel's signature | Print name |
| April 28, 2006 | | JEAN CHA |
| Date | Deputy Trial Counsel's signature | Print name |

(Do not write above this line.)

| In the Matter of | Case number(s): |
|---|---|
| SHELDON G. BARDACH | 04-O-15318 |

## 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.)**

May 1, 2006
Date

Judge of the State Bar Court
THE HONORABLE 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 of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 2, 2006, I deposited a true copy of the following document(s):

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

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

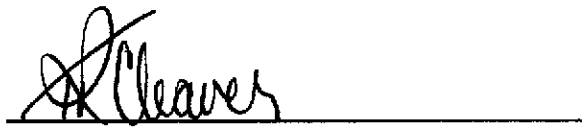
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**SHELDON GILBERT BARDACH**
**LAW OFC SHELDON G BARDACH**
**11319 1/4 IOWA AVE**
**LOS ANGELES, CA 90025 - 4214**

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

**JEAN CHA, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **May 2, 2006**.



**Tammy R. Cleaver**
Case Administrator
State Bar Court