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State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles		<input checked="" type="checkbox"/> San Francisco
Counsel for the State Bar Robin B. Brune Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 (415) 538-2218 Bar # 149481	Case number(s) 04-0-15478	(for Court's use) <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <i>JD</i> JUN 14 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per. Respondent Paul Vapnek Townsend & Townsend & Crew Two Embarcadero Center, 8th Fl. San Francisco, CA 94111 Bar # 36576	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of <div style="text-align: center; font-weight: bold;">PHIL MARTIN</div> Bar # 55100 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 January 29, 1973
(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 21 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

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

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years:
2007, 2008, 2009
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

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

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

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

(b) Date prior discipline effective _____

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

(d) Degree of prior discipline _____

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

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

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

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

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____
in restitution to _____ without the threat or force of disciplinary,
civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

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- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances:

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two (2) years
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of two (2) years which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) Actual Suspension:

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of thirty (30) days
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(Do not write above this line.)

- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: _____
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended. Reason: _____
- (2) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of Interim suspension: _____
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: J. Philip Martin
CASE NUMBER(S): 04-O-15478, *et al.*

FACTS AND CONCLUSIONS OF LAW.

Case No. 04-O-15478

At all times mentioned herein, Respondent maintained a client trust account at the Bank of America, account number 16646-03007 ("Trust Account"). Between in or around June through in or around September 2004, Respondent issued four checks and three electronic debits from the Trust Account against insufficient funds, in an aggregate amount of approximately \$4,000.00. Approximately \$1,600 of the shortfall was due to the fact that one of respondent's credit card holders debited the trust account without prior notification to respondent. ¹

On or about April 1, 2003, the Trust Account balance was \$127.83. From on or about April 1, 2003 to on or about May 12, 2003, no other deposits were made to the Trust Account. On or about May 12, 2003, Respondent issued check number 130 in the amount of \$770.00 to a client, Giovanni Ford ("Ford") as a refund of a client's advanced fee. There were insufficient funds in respondent's attorney-client trust account to cover this check. In addition, repayment should not have come from respondent's attorney-client trust account because the Ford advanced fee was not deposited into the attorney-client trust account.

On or about August 22, 2003, Respondent paid Behmke Reporting & Video in the amount of \$639.27 by Trust Account check number 180. The source of funds to pay Behmke Reporting was from funds other than those deposited on behalf of the client matter that involved Behmke Reporting.

During 2003, Respondent represented Rong Sheng Song ("Song") in a personal injury matter. Respondent and Song agreed that Respondent would be compensated by a contingency

¹ Respondent claims that the credit card issuer did not have authority to debit his attorney-client trust account. The State Bar notes that commingling is prohibited to protect client funds from the attorney's creditors, and prevent problems of this nature. (See *Arm v. State Bar* (1990) 50 Cal.3d 763; *Vaughn v. State Bar* (1992) 6 Cal.3d 847.)

fee of 33 1/3 percent. In or around December 2003, Respondent received \$1,500.00 as advanced costs from Song. Respondent did not deposit \$1,500.00 in his Trust Account.

During the period between in or about April 2003 and August 2004, Respondent repeatedly used his Trust Account for personal purposes by issuing over ninety checks (aggregate amount, approximately \$130,000) to satisfy his personal, non-client obligations, as follows:

Date	Check No.	Amount	Payee
05-07-03	128	\$3,500.00	Cash
05-19-03	131	\$5,000.00	Cash
05-24-03	134	\$2,000.00	Cash
05-21-03	N/A	\$1,000.00	Teller Transfer to Personal Account
05-02-03	126	\$2,441.50	Colin Dunn Construction ²
05-06-03	127	\$2,500.00	Michael Rabichev ³
05-07-03	2733	\$1,900.00	MBNA Consumer Services
05-22-03	133	\$314.18	Preferred Legal Services
06-02-03	135	\$500.00	Tara Kaady ⁴
06-03-03	137	\$90.44	California Water Service
06-04-03	136	\$1,025.89	USAA ⁵

² Construction for house remodel.

³ Architect for house remodel.

⁴ Repayment of loan.

⁵ Insurance Premium.

Date	Check No.	Amount	Payee
06-04-03	138	\$321.71	PG&E
06-06-03	129	\$325.00	North Point Appraisal
06-19-03	139	\$50.00	Cash
07-15-03	146	\$1,000.00	Colin Dunn Construction
07-18-03	151	\$1,000.00	Colin Dunn Construction
07-18-03	152	\$1,100.00	Scott Wilkholm ⁶
07-18-03	153	\$572.00	Tyrone Jamito ⁷
07-18-03	154	\$968.00	Phil Bowman ⁸
07-28-03	160	\$1,000.00	Colin Dunn Construction
07-28-03	163	\$968.00	Phil Bowman
07-29-03	161	\$1,088.65	Scott Wilkholm
07-28-03	166	\$200.00	Cash
07-31-03	170	\$50.00	Cash
08-05-03	172	\$700.00	Scott Wilkholm
08-08-03	174	\$500.00	Tyrone Jamito
08-08-03	162	\$455.00	Tyrone Jamito

⁶ Carpenter for house remodel.

⁷ Carpenter for house remodel.

⁸ Carpenter for house remodel.

Date	Check No.	Amount	Payee
08-11-03	176	\$103.33	PG&E ⁹
08-18-03	183	\$836.00	Phil Bowman
08-19-03	184	\$442.00	Tyrone Jamito
08-25-03	185	\$5,000.00	Michael Rabichev
08-25-03	186	\$500.00	Phil Bowman
08-26-03	187	\$1,000.00	Scott Wilkholm
09-15-03	188	\$1,000.00	Colin Dunn Construction
09-19-03	197	\$330.00	Cash
09-26-03	201	\$450.00	Cash
09-29-03	202	\$125.00	Cash
10-17-03	213	\$650.00	Cash
10-17-03	212	\$3,878.66	Wells Fargo Home Mortgage
03-22-04	219	\$200.00	Tara Kaady
05-07-04	228	\$120.00	California Water Service
05-07-04	229	\$19.00	DMV
05-18-04	235	\$100.00	Cash
05-18-04	240	\$1,300.00	Cash
05-19-04	238	\$189.04	Beronio Lumber
05-19-04	243	\$491.08	Excel Plumbing supply

⁹ Home utilities payment.

Date	Check No.	Amount	Payee
05-19-04	244	\$100.00	Cash
05-20-04	242	\$324.63	Beronio Lumber
05-21-04	245	\$700.00	Dan Keene ¹⁰
05-24-04	247	\$1,000.00	Grgich Electric
05-24-04	250	\$1,000.00	Cash
05-25-04	248	\$750.00	Calegar Plumbing
05-26-04	253	\$150.00	Cash
05-27-04	252	\$25.06	Beronio Lumber
05-28-04	241	\$750.00	Leiro Electric
05-28-04	257	\$500.00	Dan Keene
06-01-04	Electronic	\$291.83	USAA
06-09-04	261	\$500.00	Dan Keene
06-09-04	263	\$97.11	Central Builders' Supply
06-09-04	266	\$13.02	Central Builders' Supply
06-09-04	270	\$250.00	Cash
06-10-04	232	\$215.00	Peter Fazio ¹¹
06-11-04	267	\$85.61	Central Builders' Supply
06-10-04	273	\$400.00	Cash
06-14-04	278	\$150.00	Cash

¹⁰ Home painter.

¹¹ Construction Lender.

Date	Check No.	Amount	Payee
06-15-04	275	\$500.00	Dan Keene
06-15-04	287	\$100.00	Cash
06-16-04	280	\$48.88	Central Builders' Supply
06-16-04	289	\$500.00	Cash
06-18-04	293	\$200.00	Cash
06-21-04	294	\$1,500.00	Cash
06-23-04	283	\$1,000.00	Golden State Flooring
06-23-04	298	\$75.00	Cash
06-25-04	284	\$1,451.25	Peter Fazio
06-25-04	285	\$215.00	Peter Fazio
06-25-04	623	\$100.00	Cash
06-28-04	299	\$75.00	Cash
06-28-04	300	\$150.00	Cash
07-07-04	302	\$167.74	Divisadero Lock & Hardware
07-08-04	315	\$6,700.00	Down Town Tile
07-08-04	317	\$2,800.00	Cash
07-12-04	314	\$1,500.00	GGI Stone/Global Granite
07-12-04	320	\$1,550.00	Cash
07-14-04	324	\$300.00	Cash
08-03-04	347	\$30.00	City Cabinets
08-09-04	350	\$965.00	DMV

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Date	Check No.	Amount	Payee
08-17-04	353	\$250.00	North Point Appraisal
08-19-04	358	\$1,790.00	Peter Fazio
08-20-04	356	\$5,000.00	Grgich Electric
08-20-04	359	\$500.00	Discount Builders
08-20-04	370	\$1,500.00	GGI Stone/Global Granite
08-23-04	373	\$550.00	Dan Keene
08-24-04	369	\$2,000.00	Bay Area Garage Door
08-25-04	355	\$3,853.66	Wells Fargo Home Mortgage
08-26-04	374	\$1,225.05	Household Mortgage Service
08-30-04	376	\$400.00	Cash
08-30-04	377	\$450.00	Cash
08-31-04	375	\$41,500.00	Leiro Electric

In addition, Respondent repeatedly deposited personal funds into his Trust Account, as follows:

Date of Deposit	Amount	Payor
07-08-03	\$30,000.00	Respondent
09-19-03	\$500.00	Donna Martin
05-17-04	\$300.00	Donna Martin
06-07-04	\$500.00	Donna Martin

07-02-04	\$750.00	Donna Martin
07-02-04	\$1,000.00	Donna Martin

Conclusions of Law.

1. By issuing NSF checks from his trust account, Respondent failed to maintain client funds in trust, in wilful violation of Rules of Professional Conduct, rule 4-100(A).

2. By refunding Ford at least \$770.00 from the Trust Account, from funds other than those deposited on behalf of Ford, and by paying Bemke Reporting from funds other than those deposited on behalf of the client matter that involved Bemke Reporting, Respondent failed to maintain client funds in trust, in wilful violation of Rules of Professional Conduct, rule 4-100(A).

3. By failing to deposit the \$1,500.00 in his Trust Account in the *Song* matter, Respondent wilfully failed to deposit funds received for the benefit of a client in trust, in wilful violation of Rules of Professional Conduct, rule 4-100(A).

4. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by commingling personal funds in a client trust account by issuing checks to pay personal expenses and depositing personal funds into the Trust Account.

PENDING PROCEEDINGS.

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

DISMISSALS.

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

<u>Case No.</u>	<u>Violation</u>	<u>Count</u>
04-O-15478	4-100(A)(2)	Two
04-O-15478	B&P 6106	Four
04-O-15478	4-100(A)	Five
04-O-15478	6106	Six

The parties waive any variance between the basis for this stipulation and the Notice of Disciplinary Charges.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 24, 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 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.

Palomo v. State Bar (1984) 36 Cal.3d 785

Vaugh v. State Bar (1972) 6 Cal.3d 847

Fitzsimmons v. State Bar (1983) 34 Cal.3d 327

AGGRAVATING CIRCUMSTANCES.

Standard 1.2(b)(ii) – multiple acts of wrongdoing

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Respondent's commingling covered a one-year period and included over ninety transactions, indicating multiple acts of wrongdoing. He also had multiple NSF transactions.

MITIGATING CIRCUMSTANCES.

Standard 1.2(e)(iii)

Standard 1.2(e)(v)

Standard 1.2(e)(vi)

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

No client has complained about Respondent's conduct in handling of client funds. In fact, numerous clients, whose funds were involved in these transactions, have written letters on Respondent's behalf.

Respondent has been candid and cooperative in stipulating to these matters.

Respondent has provided character references from 4 clients, 1 retired judge of the California Court of Appeal, 1 attorney, and 1 friend/member of his community attesting to volunteer activities.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Respondent was undergoing a renovation/remodel of his home. The project went way over budget. Respondent's stress and financial mismanagement contributed to his misconduct in this matter.

If Respondent were called to testify, he would testify that at least approximately \$1,600.00 of the NSF transactions was due to a bank error.

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation. Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

(Do not write above this line.)

In the Matter of PHIL MARTIN	Case Number(s): 04-0-15478
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Financial Conditions

a. Restitution

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

Payee	Principal Amount	Interest Accrues From

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

b. Installment Restitution Payments

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

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

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 PHIL MARTIN	Case Number(s): 04-0-15478
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b. Respondent has kept and maintained the following:

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

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

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

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

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

d. Client Trust Accounting School

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

(Do not write above this line.)

In the Matter of PHIL MARTIN	Case Number(s): 04-0-15478
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Law Office Management Conditions

- a. Within 90 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/ ___ 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 ___ 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.)

In the Matter of PHIL MARTIN	Case number(s): 04-0-15478
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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.

<u>6/1/06</u> Date	 Respondent's signature	<u>PHIL MARTIN</u> Print name
<u>June 1, 2006</u> Date	 Respondent's Counsel's signature	<u>PAUL VAPNEK</u> Print name
<u>6/2/06</u> Date	 Deputy Trial Counsel's signature	<u>ROBIN B. BRUNE</u> Print name

(Do not write above this line.)

In the Matter of

PHIL MARTIN

Case number(s):

04-0-15478

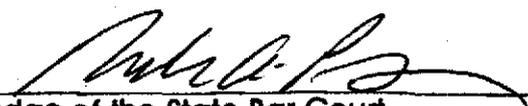
ORDER

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.)

6-09-06
Date


Judge of the State Bar Court

RICHARD A. PLATEL

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 San Francisco, on June 14, 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 San Francisco, California, addressed as follows:

**PAUL W. VAPNEK
TOWNSEND & TOWNSEND & CREW
2 EMBARCADERO CTR 8FL
SAN FRANCISCO, CA 94111 - 3834**

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **June 14, 2006**.


Laretta Cramer
Case Administrator
State Bar Court