



ORIGINAL

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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar OFFICE OF THE CHIEF TRIAL COUNSEL RIZAMARI C. SITTON 1149 SOUTH HILL STREET LOS ANGELES, CALIFORNIA 90015 TELEPHONE: 213.765.1364 Bar # 138319	Case number(s) 05-O-00884	(for Court's use) <div style="text-align: center;"> FILED FEB -1 2006 <i>He</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES <div style="font-size: 2em; font-weight: bold; margin-top: 10px;">PUBLIC MATTER</div> </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent BARBARA E. DUNN. LACEY, DUNN & DO A PROFESSIONAL CORPORATION 315 W. Arden Avenue, Suite 11 Glendale, California 91203 Bar # 70712	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of PATRICIA G. GITTELSON Bar # 225843 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 June 7, 2003
(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):

- (a) ☐ costs added to membership fee for calendar year following effective date of discipline (public reproof)
- (b) ☐ case ineligible for costs (private reproof)
- (c) ☒ costs to be paid in equal amounts for the following membership years:
prior to February 1st for the following two (2) membership years.
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e) ☐ costs entirely waived

(9) The parties understand that:

- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 _____

(Do not write above this line.)

- (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.
- (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.

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- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☒ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances are involved.**

Additional mitigating circumstances:

(Do not write above this line.)

D. Discipline:

- (1) ☐ Private reproof (check applicable conditions, if any, below)
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☒ Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of two (2) years.
- (2) ☒ During the condition period attached to the reproof, 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 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 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (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 conditions attached to the reproof.
- (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 of the Ethics School and passage of the test given at the end of that session.
- ☒ No Ethics School ordered. Reason: Ethics School Client Trust Accounting School ordered.
- (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 required to be filed with the Office of Probation.
- (10) ☒ 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 within one year of the effective date of the reproof.
- ☐ No MPRE ordered. Reason: _____
- (11) ☒ 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:

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In the Matter of Patricia G. Gittelson	Case Number(s): 05-0-00884
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Law Office Management Conditions

- a. ☐ Within ___ days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☒ Within ___ days/ 12 months ___ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 9 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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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.)

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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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PATRICIA G. GITTELSON

CASE NUMBER(S): 05-O-00884

DISMISSALS (as referred to on page 1, paragraph A.(3)).

For purposes of reaching an agreement as to full disposition herein, the parties agree and stipulate to dismiss the following charges in Case no. 05-O-00884, with prejudice and in the interests of justice:

1. Violation of Business and Professions Code section 6106; and,
2. Violation of Rules of Professional Conduct, rule 3-110(A).

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PATRICIA G. GITTELSON
CASE NUMBER(S): 05-O-00884

FACTS AND CONCLUSIONS OF LAW (as referred to on page 1, paragraph A.(4) and A.(5)).

BACKGROUND FACTS

1. In May 2004, Respondent was hired by Hugo Muraco to represent him in certain immigration matters, including the conclusion of Mr. Muraco's naturalization of United States citizenship and filing an I-130 "Petition for Alien Relative" ("I-130 Petition"). At the time Respondent was hired, Mr. Muraco was engaged to be married to Norma Barresi. Ms. Barresi had entered the United States in May 1999 on a visitor's visa which had long since expired. Respondent was hired to prepare and file the I-130 Petition for Mr. Muraco with Ms. Barresi as the designated beneficiary.
2. At the time he retained Respondent, Mr. Muraco also was scheduled to have heart surgery on May 24, 2004 and he and Ms. Barresi planned to marry prior to the surgery.
3. Mr. Muraco and Ms. Barresi were married on May 19, 2004. Because of Mr. Muraco's sense of urgency regarding Ms. Barresi's immigration status and his own impending surgery, Respondent agreed to start work on his immigration matters immediately, even though Mr.

Muraco said he was only able to give Respondent a small initial partial payment of \$250.00 toward Respondent's fees in the matter.

4. Mr. Muraco died shortly after his heart surgery, on May 27, 2004. Respondent's representation of Mr. Muraco was effectively terminated.

5. Respondent has not been able to find a written agreement executed by Mr. Muraco. Between the time she was retained by Mr. Muraco and his death, Respondent performed legal services at Mr. Muraco's request regarding both his citizenship and the I-130 Petition, including at least three face to face conferences and several telephone conversations with Mr. Muraco to obtain background information, review of documents, correspondence on his behalf to immigration authorities, analysis of his prior criminal record, and preparation of a draft I-130 Petition with Mr. Muraco as the petitioner and Ms. Barresi as the beneficiary.

6. After Respondent performed the above described legal services, Mr. Muraco's \$250.00 check was returned by the bank for insufficient funds. As of that time, no other fees had been received by Respondent for services performed.

7. When Mr. Muraco died on May 27, 2004, Respondent was not able to proceed with the I-130 Petition or proceed with Mr. Muraco's application for citizenship.

COUNT ONE

Case No. 05-O-00884

Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

8. In early June 2004, Respondent informed Ms. Barresi that Mr. Muraco's I-130 Petition could not go forward because of his death. Respondent also advised Ms. Barresi that she could

try filing an I-360 "Petition for Amerasian, Widower or Special Immigrant" ("I-360 Widow's Petition").

9. Relying on Respondent's advice, on June 17, 2004, Ms. Barresi (hereinafter "Client") hired Respondent to "represent Client regarding adjustment of status under VAWA" and specifically to file and pursue an I-360 Widow's Petition.

10. The written "Legal Services Contract" executed by Client on June 17, 2005, provided that Client would pay a total retainer fee of \$2,500 plus costs. The contract states that the fee would be paid in installments of \$500 at the signing of the contract: "1c. ... deposit of \$500, \$500 due June 30, 2004, \$500 July 15, 2004, and \$1000 August 15, 2004." The contract also stated that Respondent's "hourly fee is \$200." The contract also provided, "1a. Client's *retainer deposit* shall be paid in full prior to Attorney commencing legal services. Client understands that in exchange for said retainer Attorney has provided valuable legal advice concerning the subject matter of this case, and that said retainer is non-refundable under any circumstances." (Emphasis added.)

11. Client paid to Respondent the following installments: \$500 on June 17, 2004; \$700 on July 14, 2004; \$400 on August 18, 2004; and \$400 on September 14, 2004. The legal services provided by Respondent prior to payment of all of the agreed upon fees included multiple office conferences and telephone conferences with Client and preparation of an I-360 Widow's Petition which Respondent filed on Client's behalf on September 17, 2004.

12. On November 3, 2004, Client received written notification from Immigration Services that her I-360 Widow's Petition was rejected because, at the time of Mr. Muraco's death, she had

not been married to him for the minimum requirement of two (2) years.

13. On Thursday, November 11, 2004, which was the Veteran's Day holiday, Client telephoned Respondent and left a message requesting a refund of unearned fees she had paid. Respondent did not personally return that call or otherwise respond to Client's request. No one from Respondent's staff returned that call or otherwise respond to Client's request.

14. On Monday, November 15, 2004, Client telephoned Respondent and spoke with a member of Respondent's office staff. In that conversation, Client again requested a refund of unearned fees, and was told that a refund would be forthcoming.

15. On Tuesday, November 22, 2004, Client telephoned Respondent's office and again left a message requesting a refund of unearned fees. Respondent did not personally return that call or otherwise respond to Client's request. No one from Respondent's staff returned that call or otherwise respond to Client's request.

16. On Tuesday, November 23, 2004, Client telephoned Respondent's office and spoke with a member of Respondent's office staff, who informed Client that a refund of unearned fees would be sent to Client in December 2004. Client did not receive any refund from Respondent in December 2004.

17. On January 21, 2005, the State Bar of California received a complaint from Client regarding Respondent's failure to refund unearned fees in Client's matter, and Client thereafter made no further attempts to directly contact Respondent's office regarding such a refund.

18. On June 13, 2005, the State Bar sent a letter to Respondent requesting a response to the Client's complaint about Respondent's failure to refund unearned fees to Client.

19. Respondent responded to the State Bar by letter dated June 22, 2005, which was accompanied by copies of documents from Respondent's file in Client's matters. Respondent indicated her willingness to refund the unearned fees to Client at that time, and requested instructions from the State Bar regarding how the refund should be accomplished.

20. On August 8, 2005, the State Bar sent a letter to Respondent requesting that she send a refund of unearned fees to Client in the form of a cashier's check, and that Respondent also provide Client with a cover letter and detailed accounting to a specified address, with copies thereof to be sent to the State Bar.

21. On August 29, 2005, Respondent sent a refund check in the amount of \$1600 and cover letter with an accounting to Client, with a copy to the State Bar.

22. By not refunding any amount of the unearned fees for over nine (9) months after her employment terminated, Respondent failed to promptly refund any part of a fee paid in advance that had not been earned, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

COUNT TWO

Case No. 05-O-00884

Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds]

23. The allegations in Paragraphs 1 through 16 are incorporated herein by reference.

24. As of November 26, 2004, Respondent had not received fees for the services she performed for Mr. Muraco pursuant to the May 2004 retainer agreement between Mr. Muraco and Respondent, including services related to the I-130 Petition wherein Ms. Barresi was the designated beneficiary.

25. Respondent did not deposit in a client trust account any of the fee installments paid to her by Ms. Barresi between June 17, 2004 and September 14, 2004, inclusive.

26. On November 26, 2004, Respondent applied Ms. Barresi's client funds as Respondent's fees for services performed on behalf of Mr. Muraco, without Ms. Barresi's prior actual knowledge or consent.

27. By failing to deposit into a client trust account the fee installments paid by Ms. Barresi for future legal services, and by applying said installments as payment of Respondent's fees incurred in the representation of Mr. Muraco without proper authorization, Respondent failed to maintain funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation of Rules of Professional Conduct, rule 4-100(A).

COUNT THREE

Case No. 05-O-00884

Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

24. The allegations of paragraphs 1 through 21 are incorporated herein by reference.

25. Ms. Barresi did not receive an accounting regarding the fee installments she paid to Respondent until August 2005, after Respondent was contacted by the State Bar.

26. By not providing any accounting to Ms. Barresi until August 2004 regarding the advanced fees paid to Respondent by Ms. Barresi, Respondent failed to timely render appropriate accounts to a client regarding all funds of the client coming into Respondent's possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PATRICIA G. GITTELSON

CASE NUMBER(S): 05-O-00884

ADDITIONAL FACTS SUPPORTING MITIGATING CIRCUMSTANCE OF GOOD FAITH:

The Barresi contract referred to under "Facts and Conclusions of Law" was prepared by Respondent utilizing a form agreement prepared and distributed by the American Immigration Lawyers Association (AILA), for use by California immigration lawyers. Among other things, the AILA form included the provision regarding the retainer deposit being "non-refundable under any circumstances", as set forth in paragraph 1a of the contract signed by Ms. Barresi.

At the time she and Ms. Barresi signed the June 17, 2004 retainer agreement, Respondent believed that the AILA form upon which the agreement was based was in compliance with California law, including the characterization of the fees paid by Ms. Barresi to Respondent as "non-refundable," and that such fees therefore did not need to be deposited in Respondent's client trust account or otherwise treated as client trust funds.

Respondent did not deposit the funds paid to her by Ms. Barresi in a client trust account because Respondent did not believe that she was ethically required to do so. This belief on Respondent's part was based on Respondent's interpretation that the June 17, 2004 written fee agreement with Ms. Barresi provided that fees paid by Ms. Barresi were "non-refundable" and respondent did not at that time understand the difference between a "non-refundable" advance fee and a "true retainer." Respondent believed that her representation of Ms. Barresi was a continuation of the legal services she had already provided for both Mr. Muraco and Ms. Barresi prior to Mr. Muraco's death and for which Respondent had not yet been paid; and at the time Ms. Barresi paid fee installments to Respondent, Respondent was continuing to provide Ms. Barresi with immigration legal services on an ongoing basis.

Respondent had been practicing as an attorney for only one year when she was retained by Mr. Muraco and Ms. Barresi. While Respondent had some experience as an immigration law paralegal prior to her admission to practice as an attorney, she did not have experience administering a law practice prior to establishing her solo law practice in 2003, and looked to other immigration lawyers and immigration law organizations for guidance regarding the business side of her law practice, including fee arrangements with her clients.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

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CASE NUMBER(S): 05-O-00884

AUTHORITIES SUPPORTING DISCIPLINE (as referred to on page 1, paragraph A. (6)).

Respondent's improper withdrawal of funds in violation of 4-100(A) does not rise to the level of an act of moral turpitude. See, *Crooks v. State Bar* (1970) 3 Cal.3d 346; *Guzzetta v. State Bar* (1987) 43 Cal.3d 962; *Sternlieb v. State Bar* (1990) 52 Cal.3d 317. The court has found that where the mismanagement of client funds was not dishonest and payment to the client was delayed as a result, the misconduct is "technically wilful" misappropriation and characterized for purposes of determining the degree of discipline as "falling between wilful misappropriation and simple commingling." *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357.

In *Crooks vs. State Bar, supra*, 3 Cal.3d 346, the Supreme Court ordered public reproof of an attorney for unauthorized removal of funds from escrow to pay disbursements coupled with unilateral withholding of \$790 as unauthorized attorneys fees.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

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PENDING PROCEEDINGS.


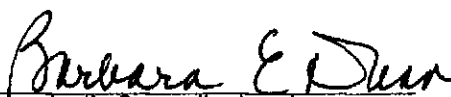
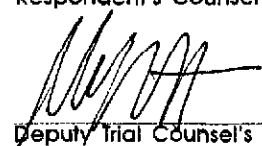
The disclosure date referred to, on page one, paragraph A.(7), was November 30, 2005. The disclosure was again made on December 22, 2005.

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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>12-30-05</u> Date	 Respondent's signature	<u>Patricia G. Gittelson</u> Print name
<u>1/09/06</u> Date	 Respondent's Counsel's signature	<u>Barbara E. Dunn</u> Print name
<u>1/19/06</u> Date	 Deputy Trial Counsel's signature	<u>Rizamari C. Sitton</u> Print name

(Do not write above this line.)

In the Matter of Patricia G. Gittelson	Case number(s): 05-0-00884
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ 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. (See rule 125(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

2-1-06
Date


Judge of the State Bar Court
ROBERT M. TALCOTT

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 February 1, 2006, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL

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:

**BARBARA E. DUNN
LACEY, DUNN & DO
315 W. ARDEN AVE., SUITE 11
GLENDALE, CA 91203**

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

RIZAMARI C. SITTON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 1, 2006.**



Tammy Cleaver
Case Administrator
State Bar Court