

ORIGINAL

State Bar Court of California

Hearing Department

Los Angeles

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

Counsel For The State Bar
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Case Number (s)
05-O-01211-RAP

(for Court's use)

PUBLIC MATTER

FILED

SEP 15 2010

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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CLERK'S OFFICE
LOS ANGELES~~

~~CONFIDENTIAL~~

Bar # 213039

Counsel For Respondent

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Submitted to: Program Judge

Bar # 67900

In the Matter Of:
DANIEL MARTORELLA

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

Bar # 128700

PREVIOUS STIPULATION REJECTED

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 17, 1987**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **8** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



(Do not write above this line.)

- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

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.
- (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:

Respondent has no prior record of discipline since his admission to the practice of law in California on June 17, 1987.

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: DANIEL MARTORELLA

CASE NUMBER: 05-O-01211

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violating the specified statutes and the California Rules of Professional Conduct, which constitute cause for discipline in these matters.

I. Facts.

1. Respondent Daniel Martorella (Respondent) was admitted to the practice of law in the State of California on June 17, 1987, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2. On May 17, 2002, Cheryl Annette Morse (Cheryl) was involved in a automobile accident with Richard Cummings II in San Diego, California. Cheryl's children: Brielle Morse, age 8 (Brielle), and Devin Morse, age 10 (Devin), were passengers in her vehicle.

3. On January 6, 2003, Cheryl hired Respondent to represent her, Brielle, and Devin with regard to their claims for personal injury resulting from the May 17, 2002 accident.

4. On January 6, 2003, Cheryl and Respondent signed a Legal Services Agreement which provided that Respondent's attorney's fees would be 20 percent of the proceeds, if the matter was settled "pre-filing"; 33 percent of the proceeds, if the matter was settled "up to 45 days before the first trial date"; and 40 percent of the proceeds, if the matter was settled "after 45 days before first trial date."

5. On April 8, 2003, Respondent filed a complaint on behalf of Cheryl, Brielle, and Devin in the San Diego Superior Court (Superior Court or SDSC) titled *Cheryl Morse, Rosa Morse, Guardian for Brielle and Devin Morse v. Richard Cummings II*, SDSC Case Number GIC 808700 (*Morse v. Cummings*). *Morse v. Cummings* was subsequently assigned SDSC Case Number GIE 017237.

6. On May 22, 2003, US Spine & Sport Medical Center (Spine & Sport) mailed a letter to Respondent informing him that it had provided health care worth \$1,490 to Cheryl related to the May 17, 2002 accident and requesting that he sign the attached medical lien. Spine & Sport attached an invoice listing the health care provided to Cheryl from March 4, 2003, to April 8, 2003, and the medical lien. Respondent received that May 22, 2003 letter and its attachments.

7. On May 27, 2003, Respondent faxed the May 22, 2003 letter from Spine & Sport back to Spine & Sport with his signature on the bottom of the letter.

8. On July 12, 2003, Spine & Sport mailed a letter to Respondent requesting confirmation that Respondent had signed a medical lien guaranteeing payment of the health care that Spine & Sport had provided to Cheryl. Respondent received that July 12, 2003 letter.

9. On July 22, 2003, Respondent faxed the July 12, 2003 letter he received from Spine & Sport back to Spine & Sport, confirming that he had signed a medical lien guaranteeing payment of the health care that Spine & Sport had provided to Cheryl.

10. On September 26, 2003, the Superior Court set the trial of *Morse v. Cummings* for April 16, 2004.

11. On October 16, 2003, Respondent settled the personal injury claims of Cheryl, Brielle, and Devin, during a confidential mediation in *Morse v. Cummings*. Respondent settled the claim of Cheryl for \$8,000 and the claims of Brielle and Devin for \$1,000 per each minor.

12. On October 24, 2003, Respondent received three checks from the insurance carrier for Richard Cummings III: a check for \$8,000 regarding Cheryl; a check for \$1,000 regarding Brielle; and a check for \$1,000 regarding Devin.

13. On December 1, 2003, Respondent deposited the three settlement checks totaling \$10,000 into his client trust account at Union Bank, account number 0820025830 (CTA).

14. On September 21, 2004, Spine & Sport mailed a letter to Respondent, with a copy to Cheryl, confirming Respondent's conversations with Sport & Spine that there was no money to pay the medical liens. The letter stated that Cheryl had incurred \$6,050 in health care and that a medical lien had been signed by Respondent and Cheryl. The letter requested that Respondent inform Spine & Sport if there was any money to settle the lien and, if not, for a payment plan acceptable to Cheryl.

15. On February 4, 2005, the State Bar opened an investigation, case number 05-O-01211, based on a complaint filed by Cheryl (the Morse matter).

16. On April 26, 2005, an investigator for the State Bar (the investigator) prepared and mailed a letter to Respondent regarding the Morse matter. The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Morse matter. Respondent received that April 26, 2005 letter.

17. On May 2, 2005, Respondent faxed and mailed a letter to the investigator requesting a 30-day extension to respond to the April 26, 2005 letter.

18. On May 4, 2005, Respondent contacted Spine & Sport and discussed its lien for health care provided to Cheryl.

19. On May 5, 2005, Respondent and Spine & Sport agreed that it would accept \$3,932 in settlement for the health care which it had provided to Cheryl.

20. On May 6, 2005, Respondent paid Cheryl \$5,800 in cash to settle the claims of Cheryl, Brielle, and Devin, relating to the May 17, 2002 accident. The \$5,800 included the sums to be paid to Brielle and Devin, which Cheryl stated in writing would be used for their benefit.

21. On June 22, 2005, Respondent paid Spine & Sport \$3,932.

22. Between December 1, 2003, and May 6, 2005, Respondent did not pay any of the settlement funds he received on behalf of Cheryl, Brielle, and Devin, to Cheryl, Brielle, Devin, or Spine & Sport as requested by Cheryl, pursuant to the lien that she and Respondent executed.

23. After subtracting his contingency fee from the \$10,000 settlement being held on behalf of Cheryl, Brielle, and Devin, Respondent was required to maintain the approximate sum of \$6,666.66 in the CTA, i.e., \$10,000 less Respondent's attorney's fees of 33 percent of the proceeds, as the matter was settled more than 45 days before the first trial date.

24. Between December 1, 2003, and May 5, 2005, Respondent did not pay out any of the settlement funds he received on behalf of Cheryl, Brielle or Devin.

25. Between December 1, 2003, and February 9, 2004, the balance in Respondent's CTA fell to or below one cent (1¢). Activities related to said CTA during that period is herein summarized as follows:

Date	Transaction	Deposit	Withdrawal	Balance
11/29/03				\$26,900.01
12/1/03	Deposit of Morse settlement checks	\$10,000		\$36,900.01
12/2/03	Cash Withdrawal		\$5,000	\$31,900.01
12/2/03	CTA check 3084 payable to "Daniel Martorella"		\$5,000	\$26,900.01
12/11/03	CTA check 3166 payable to "Mike Dungea"		\$15,000	\$11,900.01
12/24/03	CTA check 3085 payable to "Nihan Kurlmel"		\$15,000	- \$3,099.99
12/26/03	Reversal of CTA check 3085	\$15,000		\$11,900.01
12/31/03	NSF Item returned fee		\$16	\$11,884.01
1/26/04	CTA check 3087 payable to "Nihan Kurlmel"		\$15,000	- \$3,115.99
1/27/04	Reversal of CTA check 3087	\$15,000		\$11,884.01
1/27/04	NSF Item returned fee		\$16	\$11,868.01
1/29/04	Deposit from Respondent's General Account	\$2,000		\$13,868.01
2/6/04	Deposit of checks for "Galynne Ahmadpoor & [Respondent]" & "Scymac Ahmadpoor & [Respondent]"	\$2,000		\$15,868.01
2/6/04	Withdrawal		\$15,050	\$818.01
2/9/04	Withdrawal		\$818	\$.01

26. Respondent dishonestly or with gross negligence misappropriated the settlement funds he received on behalf of Cheryl, Brielle, and Devin.

27. On December 24, 2003, and January 26, 2004, Respondent issued CTA check numbers 3085 and 3087, each was made payable to Nihan Kurlmel in the amount of \$15,000 and drawn against insufficient funds.

28. Respondent issued his CTA check numbers 3085 and 3087 when he knew or was grossly negligent in not knowing that there were insufficient funds in his CTA to pay those checks.

II. Conclusions of Law.

Count One

29. By not paying any of the settlement funds Respondent received on behalf of Cheryl, Brielle, and Devin, to Cheryl, Brielle, Devin, or their medical providers as requested by Cheryl pursuant to the lien, Respondent failed to promptly pay client funds as requested by his clients, in willful violation of rule 4-100(B)(4) of the California Rules of Professional Conduct.

Count Two

30. By not maintaining at least \$6,666.66 Respondent received on behalf of Cheryl, Brielle, and Devin, in his client trust account, Respondent failed to maintain client funds in a trust account, in willful violation of rule 4-100(A) of the California Rules of Professional Conduct.

Count Three

31. By misappropriating at least \$6,666.66 of the settlement funds belonging to Cheryl, Brielle, and Devin, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of California Business and Professions Code section 6106.

Count Four

32. By repeatedly issuing checks drawn against his client trust account when Respondent knew or was grossly negligent in not knowing that there were insufficient funds to pay those checks, Respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of California Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page two, paragraph A(6), was August 2, 2007.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on December 13, 2006, and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to the case which is the subject matter of this stipulation.

(Do not write above this line.)

In the Matter of DANIEL MARTORELLA	Case number(s): 05-O-01211-RAP
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

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

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

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

<u>9-4-07</u> Date	<u></u> Respondent's Signature	<u>Daniel Martorella</u> Print Name
<u>8/20/2007</u> Date	<u></u> Respondent's Counsel Signature	<u>Paul J. Virgo</u> Print Name
<u>Sept. 11, 2007</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Eric H. Hsu</u> Print Name

(Do not write above this line.)

In the Matter Of DANIEL MARTORELLA	Case Number(s): 05-O-01211-RAP
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

12/06/07
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 Los Angeles, on August 17, 2010, I deposited a true copy of the following document(s):

CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS

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

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

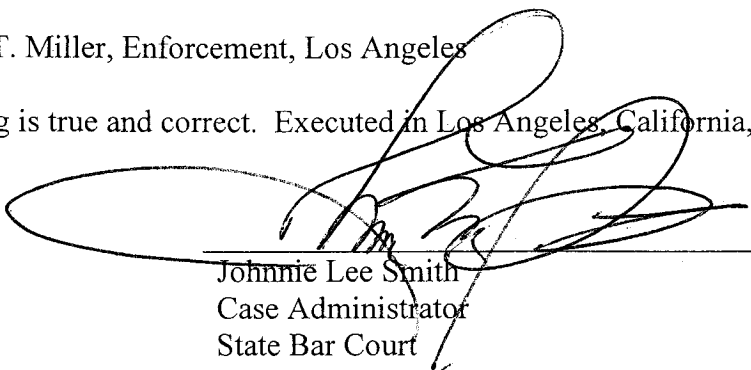
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PAUL JEAN VIRGO
PO BOX 67682
LOS ANGELES, CA 90067 - 0682

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

Monique T. Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 17, 2010.



Johnnie Lee Smith
Case Administrator
State Bar Court