

**ORIGINAL**

(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Eli D. Morgenstern 1149 South Hill Street Los Angeles, California 90015-2211 Telephone: (213)765-1334</p> <p>Bar # 195060</p>	<p>Case Number (s) 06-O-11011-RAH</p>	<p>(for Court's use)</p> <p align="center">FILED</p> <p align="center">DEC 26 2006</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>S. Callaghan Brickwood 38 East 58th Street, #5E New York, New York 10022 Telephone: none available</p> <p>Bar # 96324</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: S. Callaghan Brickwood</p> <p>Bar # 96324</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 22, 1980**.
- (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 consists of **13** pages, not including 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".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Do not write above this line.)

- (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.
- (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~~: **three 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
 - (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:

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension

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

Although the discipline herein is serious, Respondent has been a member of the State Bar since December 22, 1980, and no prior record of discipline.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law 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:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Calif. Rules of Ct.)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **ninety (90) 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.

(Do not write above this line.)

- (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. will mail

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.
- (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: **See page 10.**
- (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 type="checkbox"/> Law Office Management Conditions
<input type="checkbox"/> Medical Conditions	<input 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

(Do not write above this line.)

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 page 10.**

70163

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: S. CALLAGHAN BRICKWOOD

CASE NUMBER(S): 06-O-11011

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified Rules of Professional Conduct.

Facts

1. In or about 1987, Michael Valdez ("Valdez") employed Respondent to file a voluntary Chapter 7 Bankruptcy petition on his behalf. Respondent agreed to prepare the and file the Bankruptcy petition for \$1,200, plus the filing fee. At or about the time that Valdez employed Respondent, Valdez paid Respondent \$1,200 in advanced fees.

2. Immediately thereafter, Valdez decided that he wanted to postpone Respondent's preparation and filing of the Bankruptcy petition and advised Respondent not to work on the matter until further notice.

3. In or about April 2005, Valdez advised Respondent's employee, Richard Buchavich ("Buchavich"), that he was ready to proceed with the bankruptcy and instructed Respondent to prepare and file the Bankruptcy petition. At or about this time, Valdez also provided to Respondent all relevant information and documents necessary to prepare and file the Bankruptcy petition.

4. On or about April 20, 2005, Valdez provided Respondent with the \$209 filing fee for the Bankruptcy petition. At no time did Respondent maintain an attorney client trust account; consequently, at no time did Respondent deposit the \$209 into an attorney client trust account.

5. In or about April or May 2005, Valdez mailed to Respondent's office a completed and signed Chapter 7 Bankruptcy petition, with the understanding that Respondent would file said petition with the United States Bankruptcy Court, Northern District of California. Respondent received Valdez's Chapter 7 Bankruptcy petition.

6. At no time did Respondent file the Chapter 7 Bankruptcy petition on behalf of Valdez.

7. On or about May 23, 2005, Buchavich sent Valdez an e-mail telling him that the office was "just waiting for confirmation from the court of your filing."

8. On or about September 29, 2005, Respondent sent Valdez an e-mail telling him that she was closing her office. The e-mail also included a partial invoice which stated, among other things, that on or about April 20, 2005, Valdez paid Respondent the \$209 filing fee for the Bankruptcy petition, and that Respondent filed the Bankruptcy petition on behalf of Valdez on or about May 19, 2005. The e-mail also stated that Respondent would not be appearing in court on behalf of Valdez, that Valdez did not need to retain another attorney, and that he should just make the appearance in pro per.

9. On or about September 29, 2005, Respondent closed her law office and moved to New York. At the time that she closed her law office, Respondent terminated her representation of Valdez; however, she did not provide Valdez with a new address or telephone number.

10. On or about October 1, 2005, Valdez attempted to call Respondent; however, a recording indicated that Respondent had closed her office and instructed the caller not to leave a message as it would not be returned.

11. Thereafter, Respondent did not contact Valdez.

12. Respondent did not return the advanced fee or the filing fee until on or about December 4, 2006, after the State Bar commenced its investigation of the instant matter. On or about December 4, 2006, Respondent returned \$1,625.88 to Valdez. The sum represented the advanced fee plus the filing fee (\$1,200 +\$209), or \$1,409, plus interest at the rate of 10% per annum from May 23, 2005 through December 4, 2006, or \$216.88, for a total of \$1,625.88.

Legal Conclusions

By failing to file the voluntary Chapter 7 Bankruptcy petition on behalf of Valdez, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

By failing to provide Valdez with a new address and telephone number or take any other action on behalf of Valdez, Respondent improperly withdrew from employment with a client and failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in wilful violation of Rules of Professional Conduct, rule 3-700(A)(2).

By not depositing and maintaining the \$209 filing fee in a client trust account, Respondent commingled and failed to deposit and maintain client funds in trust, in wilful violation of Rules of Professional Conduct, rule 4-100(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was December 6, 2006.

DISMISSALS.

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
06-O-11011	ONE	Business & Professions Code § 6106 (Misrepresentation to a Client)
06-O-11011	FIVE	Business & Professions Code § 6106 (Misappropriation)

OTHER FACTORS IN CONSIDERATION.

Respondent did not intend to mislead Valdez when she stated to him in the September 29, 2005 e-mail that the Chapter 7 Bankruptcy petition was filed on his behalf on May 19, 2005. At the time that she made the statement to him, Respondent relied on her office's computer records, which were maintained by Richard Buchavich, an employee. The records indicated that the office had received the petition from Valdez, as well as the filing fee, and that the petition had been filed with the Bankruptcy Court.

Respondent acknowledges that she did not receive a conformed copy of the Chapter 7 Bankruptcy petition from the court or notice of the meeting of creditors pursuant to 11 U.S.C. § 341(a) of the Bankruptcy Code, which should have alerted her to the fact that Mr. Valdez's Bankruptcy petition was not filed.

Valdez filed a voluntary Chapter 7 Bankruptcy petition on his own behalf on October 11, 2005; and the bankruptcy was discharged in or about January 2006.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 6, 2006, the estimated prosecution costs in this matter are approximately \$2,296.

STATE BAR ETHICS SCHOOL EXCLUSION

Respondent resides outside California and is unable to attend the State Bar's Ethics and Client Trust Account Schools. As an alternative to attending State Bar's Ethics and Client Trust Account Schools, the parties agree that Respondent must submit to the Office of Probation satisfactory evidence of completion of nine (9) hours of MCLE approved courses in legal ethics within one year of the effective date of the discipline herein. The classes must be participatory, and Respondent shall receive MCLE credit for her attendance at the courses.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards

Standard 2.2(b) of the Standards For Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure ("Standards") provides that:

"Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances."

Standard 2.4(b) provides that:

"Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client."

Standard 2.10 applies to the instant matter, because there is no specified standard for a violation of rule 3-700(A)(2) of the Rules of Professional Conduct. Standard 2.10 provides in relevant part that:

"Culpability of a member of a . . . wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in Standard 1.3."

Standard 1.6(a) provides that ". . . if two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Case Law

The Supreme Court has stated that the State Bar Court should follow the guidance of the Standards whenever possible. (*In Re Young* (1989) 49 Cal.3d 257, 267, fn. 11; see also *In re Silverton* (2005) 36 Cal.4th 81, 92.)

This is because "adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, imposition of similar attorney discipline for similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) In fact, the Supreme Court has held that the Standards are to be given *great weight* in determining the appropriate discipline to be imposed. (*In re Silverton*, supra, 36 Cal.4th at 92 (emphasis added).)

Further, the Supreme Court will not reject a recommendation arising from the Standards unless it has grave doubts as to the propriety of the recommended discipline. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1366.) Consequently, the Supreme Court has held that the State Bar Court should depart from the Standards only when it finds a compelling reason to do so. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419.) Any reason for deviating from the Standards should be set forth clearly. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 534.) Moreover, the burden is on Respondent to demonstrate the existence of extraordinary circumstances justifying a lesser sanction. (*In re Silverton*, supra, 36 Cal.4th at 92. (*In re Silverton*, supra, 36 Cal.4th at 92.)

(Do not write above this line.)

In the Matter of S. Callaghan Brickwood	Case number(s): 06-0-11011-RAH
--	-----------------------------------

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.

12/13/06  S. Callaghan Brickwood
Date Respondent's signature Print name

12/18/06  Eli D. Morgenstern
Date Deputy Trial Counsel's signature Print name

(Do not write above this line.)

In the Matter of S. Callaghan Brickwood	Case number(s): 06-O-11011-RAH
--	-----------------------------------

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 "x" in the box at paragraph B (3) is removed. The aggravating circumstance is included as part of the charged misconduct.

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.)**

12-21-06
Date


RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court 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 December 26, 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:

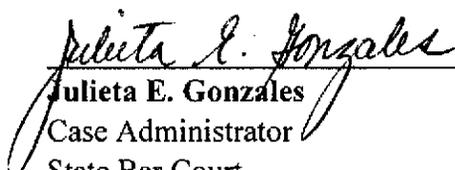
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

S CALLAGHAN BRICKWOOD ATTORNEY AT LAW
331 W 57TH ST # 216
NEW YORK, NY 10019

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 26, 2006**.



Julieta E. Gonzales
Case Administrator
State Bar Court