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State Bar Court of California
Hearing Department
Los Angeles

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

Counsel For The State Bar Monique T. Miller Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1486	Case Number (s) 06-O-12100 <div align="center">PUBLIC MATTER</div>	(for Court's use) <div align="center">FILED</div> <div align="center"> JUL 29 2008  STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Bar # 212469 Counsel For Respondent Arthur L. Margolis 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
Bar # 90039 In the Matter Of: EDWARD A. QUESADA Bar # 152910 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 6, 1991**.
- (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 **7** 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".

- (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:

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 \$ o n i n 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. **See Page 6.**
- (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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: EDWARD A. QUESADA

CASE NUMBER(S): 06-O-12100

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

Respondent Edward A. Quesada ("Respondent") and the State Bar hereby waive any variance in the facts and conclusions of law as set forth in the Notice of Disciplinary Charges ("NDC") filed on December 17, 20007, 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.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

FACTS

1. On March 8, 2001, Jenny Lopez Sanchez (Sanchez) employed Respondent on a contingency basis to represent her in connection with personal injuries she sustained when she was struck by an automobile on March 8, 2001. The Contingency Fee Retainer Agreement between Sanchez and Respondent provided for 40% attorney fees if suit was filed.
2. On March 4, 2002, Respondent filed a lawsuit on behalf of Sanchez in Los Angeles Superior Court entitled *Jenny Lopez Sanchez v. Anna Maria Gonzalez, et. al.*, Case No. EC 033845.
3. Sanchez suffered personal injuries as a result of the accident that occurred on March 8, 2001, and she incurred medical bills relating to the treatment of her injuries. Medicare claimed a recovery lien in the amount of \$24,912.87.
4. On March 19, 2003, Respondent settled Sanchez's claim for \$100,000.00. On April 7, 2003, Kemper Insurance Company issued a draft payable to Sanchez and to Respondent

in the amount of \$100,000.00. At about that time, Respondent prepared a document entitled "Medical Specials" in which he itemized Sanchez's medical bills. Respondent's calculation of Sanchez's medical bills as set forth in that document was \$24,525.60.

5. On April 21, 2003, Respondent deposited the settlement proceeds in the amount of \$100,000.00 into his client trust account at Wells Fargo Bank, account no. 929010569 ("CTA").

6. On April 21, 2003, Respondent disbursed \$32,300 to Sanchez as a portion of her share of the recovery. From the \$100,000.00 settlement proceeds, Respondent disbursed \$47,500 to himself in payment of his attorney's fees and reimbursement of litigation costs. Respondent retained a balance of \$20,200 to resolve Sanchez's Medicare lien.

7. Subsequent to April 2003, Sanchez, who was opposed to reimburse Medicare, directed Respondent to hold off disbursing the settlement funds to Medicare.

8. On October 19, 2004, February 11, 2005, April 22, 2005, June 10, 2005, September 12, 2005, and March 23, 2006, the Centers for Medicare and Medicaid Services ("CMS") mailed Respondent letters in which they advised him of Medicare's lien on Sanchez's settlement proceeds. In its letter dated June 10, 2005, CMC informed Respondent that Medicare had paid \$24,912.87 on Sanchez's behalf. Respondent received the letters.

9. In September 2005, Respondent negotiated with Medicare to lower its lien. On May 18, 2006, Respondent resolved Sanchez's lien with Medicare by payment of CTA check #2864 for \$13,079.26.

10. On May 18, 2006, Respondent sent Sanchez CTA check #2865 for \$7,120.74.

11. Respondent failed to maintain the sum of \$20,200 in trust for the benefit of Sanchez at all times between April 21, 2003 and May 18, 2006, when he disbursed the balance of the funds to Medicare and to Sanchez, as follows:

<u>Date:</u>	<u>Balance:</u>
2/20/04	\$7,329.84
5/03/04	\$2,186.13
5/16/05	\$500.26
8/01/05	\$31.61
2/14/06	-\$1,409.53

12. By February 14, 2006, Respondent, with gross negligence, misappropriated

\$20,200 of Sanchez's funds.

13. When Respondent disbursed funds to Medicare in May 2006, the funds Respondent disbursed were not funds he had been holding for the benefit of Sanchez as Respondent had not maintained Sanchez's funds in the account until their full, final and appropriate disbursement.

CONCLUSIONS OF LAW

14. By not maintaining at least \$20,200 received on behalf of Sanchez in his CTA, Respondent failed to maintain client funds in a trust account, in wilful violation of rule 4-100(A), Rules of Professional Conduct.

15. By misappropriating \$20,200 of Sanchez's settlement funds, Respondent committed acts involving moral turpitude, dishonesty, in wilful violation of Business and Professions Code section 6106.

MITIGATING CIRCUMSTANCES.

Family Problems: Intense marital discord in 2003 resulted in contentious divorce proceedings from January 2004 to April 2006.

PENDING PROCEEDINGS.

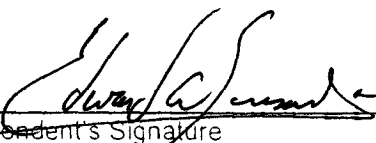

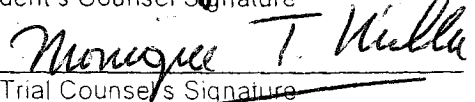
The disclosure date referred to, on page one, paragraph A.(7), was March 20, 2008.

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In the Matter of EDWARD A. QUESADA	Case number(s): 06-O-12100
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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 Fact, Conclusions of Law and Disposition.

<u>3/28/08</u> Date	 Respondent's Signature	Edward A. Quesada Print Name
<u>3/28/8</u> Date	 Respondent's Counsel Signature	Arthur L. Margolis Print Name
<u>3/28/08</u> Date	 Deputy Trial Counsel's Signature	Monique T. Miller Print Name

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In the Matter Of EDWARD A. QUESADA	Case Number(s): 06-O-12100
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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.)

Date

7/29/08

Judge of the State Bar Court


RICHARD A. HONN

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 4, 2008, I deposited a true copy of the following document(s):

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:

**ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039**

- ☒ 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 4, 2008.**



Cristina Potter
Case Administrator
State Bar Court