

**ORIGINAL**

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**State Bar Court of California
Hearing Department
San Francisco**

<p>Counsel For The State Bar</p> <p>AGUSTIN HERNANDEZ Office of the Chief Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1713</p> <p>Bar # 161625</p>	<p>Case Number (s) 06-O-12425-PEM</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>JD</i></p> <p>NOV 02 2009</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>RONALD WHITE 17625 South Central Ave., Ste. D Carson, CA 90746 (310) 632-8881</p> <p>Bar # 85723</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter Of: KEVIN JOSEPH FRANK</p> <p>Bar # 119102</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 October 4, 1985.
- (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 16 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".

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- (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.
- (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: (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 01-O-04912 (Cons. w/02-O-13984).
 - (b) Date prior discipline effective July 5, 2003.
 - (c) Rules of Professional Conduct/ State Bar Act violations: rules 3-110(A), 3-700(A)(2), and 3-700(D)(2), Rules of Professional Conduct, and sections 6068(m), 6106, and 6068(k), Business and Professions Code.
 - (d) Degree of prior discipline one year stayed suspension on the condition of six months of actual suspension and five years of probation.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court case no: 99-O-11645

Discipline effective April 13, 2001.

Violation of: section 6103, Business and Professions Code

Degree of discipline: one year stayed suspension on the condition of 30 days of actual suspension and two years of probation.

- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

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

Additional aggravating circumstances:

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

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

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- (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

Dorothy D. Thomas was Respondent's aunt, and Angela Lynch and Sondra Thomas were Respondent's cousins. Shortly before her death, Thomas asked Respondent to prepare the Trust at issue. At first, Respondent declined and informed Thomas that she should retain a specialist in estate planning. Thomas persisted and reminded Respondent that she and her deceased husband had assisted Respondent financially during law school and that he had an obligation to return the favor. Respondent acquiesced and prepared the Trust and its related documents and agreed to be the successor trustee.

At or about the time of the stipulated misconduct, Respondent had been suffering and recovering from alcoholism. Respondent sought professional assistance for alcoholism and has successfully recovered. Respondent has been sober since May 22, 2002. In May 2002, Respondent entered a sober living facility (Fred Brown Recovery in Carson, California) where he resided for 90 days. Thereafter, Respondent attended Alcoholics Anonymous meetings twice per day, which have now been reduced to a minimum of two times per week. Respondent served as the secretary of an Alcoholics Anonymous meeting for one year. Respondent has also acted as a sponsor for other alcoholics in his community. Respondent also attended meetings at the Other Bar for a period of time.

Respondent has also served as a coach for youth sports in his community. Respondent was also appointed and served on the Carson Parks and Recreation Commission.

At or about the time of the stipulated misconduct, Respondent was going through emotional difficulties as a result of divorce proceedings. During this time, Respondent's wife was being investigated by the FBI for political corruption.

D. Discipline:

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

Respondent must be placed on probation for a period of four years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of two years.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

(1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

(6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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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 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: .
- (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:
- Substance Abuse Conditions Law Office Management Conditions
- Medical Conditions 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, 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 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

Attachment language begins here (if any):

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

The parties waive any variance between the Notice of Disciplinary Charges filed on March 20, 2009, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

FACTS:

1. In January of 1993, Dorothy D. Thomas ("Thomas") employed Respondent to prepare a trust on her behalf. The beneficiaries were Thomas's daughters, Angela Lynch Patterson ("Angela") and Sondra Thomas ("Sondra").
2. In January of 1993, Thomas executed the "Dorothy D. Thomas Trust" (the "Trust") prepared by Respondent, which stated, inter alia, that:
 - a) Thomas was the Trustee and Respondent was the "Successor Trustee."
 - b) "The trust shall be held for the benefit of grantor's daughters Angela Lynch and Sondra Thomas."
 - c) "The trust for the benefit of Angela and Sondra shall include the real property at 916 Brunswick, Daly City [the 'Daly City property'], and 18555 Glenwood Road, Hidden Valley, California [the 'Hidden Valley property']."
 - d) "The Trustees shall be authorized and directed to allow Angela and Sondra to live for as long as they may desire during her [sic] lifetime at the [Daly City property] and the [Hidden Valley property]."
 - e) The Trustees shall have the power "[t]o sell, subject to mutual agreement and request of Angela and Sondra, and convey any of the property of the trust, or to exchange it for other property, for such prices and upon such terms as in its discretion and judgment may be deemed for the best interests of the trust and the beneficiaries ..."
 - f) The Trustees will pay an "annual sum" to Angela and Sondra for "annual expenses" to maintain the Daly City and Hidden Valley properties, i.e., property insurance, property taxes, utilities and garbage, water assessments, and weed abatement.
 - g) The assets of the Trust will be distributed to Angela and Sondra when they reach the age of 40 years old.
3. On January 13, 1993, Thomas executed a "Declaration of Trust (Real Property)" prepared by Respondent, which stated that the Hidden Valley property was to be held in trust for the use and benefit of Sondra and Angela. On March 22, 1993, Respondent filed the Declaration with the County Recorder.
4. On January 13, 1993, Thomas executed another "Declaration of Trust (Real Property)" prepared by Respondent, which stated that the Daly City property was to be held in trust for the use and benefit of Sondra and Angela. On April 16, 2001, Angela filed the Declaration with the County Recorder.
5. On January 13, 1993, Thomas died.
6. On January 13, 1993, Respondent began serving as the Successor Trustee.

7. At all times relevant to the events alleged herein, Respondent maintained a client trust account at Wells Fargo Bank, account number xxxx-x0248 ("CTA").¹
8. Pursuant to the Probate Code, Respondent had a duty to keep the Trust property separate from other property, and to ensure that the Trust property is designated as property of the Trust.
9. At no time did Respondent maintain a separate trust account for the Trust's assets. At all times relevant to the events alleged herein, Respondent deposited and disbursed Trust funds to and from his CTA where he also maintained funds that did not belong to the Trust.
10. On July 8, 1993, and November 1, 1993, Respondent, as the Successor Trustee, deposited \$2,026.93 and \$17,508.17, respectively, into his CTA. These funds consisted entirely of Trust funds.
11. Between August 27, 1993, and February 9, 1996, Respondent, as the Successor Trustee, distributed funds from his CTA belonging to the Trust for non-Trust related purposes, including but not limited to:

DATE	PURPOSE OF PAYMENT	AMOUNT
8/27/93	Payment of attorney's fees for an attorney to represent Angela regarding an assault and battery by Sondra.	\$250
9/15/93	Payment on behalf of Sondra to replace slashed tire.	\$480
9/28/93	Payment to Sondra because of financial difficulties.	\$1,060.93
12/08/95	Payment on behalf of Sondra for costs incurred from her car being repossessed.	\$940
2/09/96	Angela's Telephone Bill.	\$111

12. On September 28, 1993, January 2, 1996, and February 9, 1996, Respondent, as the Successor Trustee, issued checks from his CTA for Trust related matters that exceeded the amount that he maintained in the CTA on behalf of the Trust. This resulted in negative balances of funds maintained on behalf of the Trust of -\$140, -\$782.08, and -\$882.08, on September 28, 1993, January 2, 1996, and February 9, 1996, respectively.
13. On May 31, 2001, Respondent signed a Quit Claim Deed, as the Successor Trustee, transferring the Daly City property from the Trust to Angela. On June 1, 2001, the County Clerk recorded the Quit Claim Deed.
14. On May 31, 2001, Respondent signed a Quit Claim Deed, as the Successor Trustee, transferring the Hidden Valley property from the Trust to Angela. On June 1, 2001, the County Clerk recorded the Quit Claim Deed.
15. After transferring the Daly City and Hidden Valley properties to Angela on May 31, 2001, Respondent resigned as the Successor Trustee for the Trust and ceased performing any services as the

¹ The complete account number has been omitted due to privacy concerns.

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

Successor Trustee. Respondent did not seek permission from the Superior Court or beneficiaries to resign, or communicate his resignation to Sondra or the next Successor Trustee.

16. Respondent breached his fiduciary duties as Successor Trustee by: (1) distributing Trust funds to Angela and Sondra for purposes that were not authorized by the Trust; (2) depositing Trust funds into his client trust account, thereby failing to keep Trust property separate from other property; and (3) issuing checks for payments on behalf of the Trust in excess of the funds that he had in his possession.

17. On February 1, 1994, February 2, 1994, and May 12, 1995, Respondent issued checks in the amounts of \$1,500, \$5,000, and \$1,700 (\$8,200 total), respectively, from his CTA using Trust funds that he was maintaining to pay himself attorney fees purportedly earned as Successor Trustee.

18. Pursuant to the Probate Code, Respondent was required to petition the court for an order approving the payment of attorney fees and to obtain a court order approving the payment of attorney fees.

19. At no time did Respondent petition the court for an order approving the payment of attorney fees or obtain a court order approving the payments of attorney fees.

20. Prior to May 1, 2002, Sondra employed attorney Louise M. Quintard ("Quintard") to represent her in legal issues arising from the Trust.

21. On May 1, 2002, Quintard called and spoke with Respondent about the Trust. During their conversation, Quintard told Respondent that: she represented Sondra; Sondra demanded an accounting of all Trust property and funds; and Sondra demanded immediate disbursement of all funds and property that were owed to her pursuant to the terms of the Trust.

22. On May 1, 2002, after their telephone conversation, Quintard faxed and mailed a letter to Respondent stating that: she represented Sondra; Sondra demanded an accounting of all Trust property and funds; and Sondra demanded immediate disbursement of all funds and property that were owed to her pursuant to the terms of the Trust. Respondent received the letter.

23. Thereafter, Respondent did not provide an accounting to Sondra or Quintard, or otherwise communicate with Sondra or Quintard.

24. On May 29, 2002, Angela mailed a letter to Sondra stating that Angela intended to place the Daly City property for sale on June 17, 2002, and that the property needed to be ready for viewing by June 23, 2002. Sondra received the letter.

25. On June 19, 2002, Quintard filed on behalf of Sondra a verified Petition for Relief Under the Probate Code ("Petition for Relief") in the Superior Court of California, County of San Mateo, titled In re the Dorothy D. Thomas Trust, Petitioner, Sondra D. Thomson v. Kevin Frank, Trustee, and Angela Lynch Patterson. The Petition for Relief was scheduled for a hearing date of August 22, 2002. The Petition for Relief requested that the court:

a) Remove Respondent as the Successor Trustee because he had failed to provide an accounting and transferred the Daly City property to Angela without Sondra's consent;

- b) Compel Respondent and Angela to provide an accounting; and
- c) Cancel the transfer of the Daly City property to Angela.

The Petition for Relief and notice of the August 22, 2002 hearing were served upon Respondent by mail. Respondent received the Petition for Relief and notice of hearing.

26. On or before July 17, 2002, Angela employed attorney John Boessenecker ("Boessenecker") to represent her interests in the Petition for Relief and in the Trust.

27. On August 22, 2002, Respondent failed to appear at the hearing on the Petition for Relief. On this date, the Superior Court ordered that Respondent be removed as trustee effective August 22, 2002, and to immediately provide an account of the Trust's assets from January 13, 1993 through August 22, 2002. On this date, the Superior Court continued the hearing on the Petition for Relief to November 13, 2002.

28. On October 21, 2002, the Superior Court issued an OSC re Contempt for Respondent's failure to provide an account of the Trust's assets from January 13, 1993 through August 22, 2002. The hearing on the OSC re Contempt was set for November 13, 2002.

29. On October 31, 2002, the Superior Court continued the hearing on the Petition for Relief to December 10, 2002.

30. On November 16, 2002, Quintard caused the following pleadings and notices of hearing to be personally served on an adult co-tenant, Marie Thomas, at Respondent's residence: (a) Petition for Relief; (b) OSC re Contempt; (c) Notice of Continuance of Hearing on Petition for Relief Under the Probate Code [set for December 10, 2002]; (d) Order Removing Trustee and for Related Relief; (e) Petition for Appointment of Successor Trustee and for Authority to Sell Real Property; and (f) Order Appointing Successor Trustee. On November 18, Quintard also caused copies of all of these documents to be served upon Respondent by mail. Respondent received the documents and notice.

31. At no time did Respondent file a response to the Petition for Relief, provide an accounting of the Trust's assets, or otherwise communicate with Sondra, Quintard, Angela, or Boessenecker.

32. On December 10, 2002, Respondent failed to appear at the OSC re Contempt hearing. The Superior Court continued the OSC re Contempt hearing to January 14, 2003.

33. On January 14, 2003, Respondent failed to appear at the OSC re Contempt hearing. On this date, the Superior Court ordered a bench warrant against Respondent.

34. On June 6, 2003, Quintard filed a Request for Entry of Default against Respondent on behalf of Thomas, which the Superior Court granted. These documents were served on Respondent. Respondent received the documents.

35. On December 29, 2003 and January 14, 2004, a State Bar Investigator ("Investigator") wrote letters to Respondent regarding Respondent's failure to provide an accounting of the Trust's assets and his continued violation of the Superior Court's order with respect to the bench warrant. The Investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being

investigated by the State Bar with respect to his failure to provide an accounting of the Trust's assets and his continued violation of the Superior Court's order with respect to the bench warrant. Respondent received the letters.

36. On February 2, 2004, Respondent prepared and mailed a letter to the Investigator stating that he would prepare an accounting and remit any funds owed to Sondra and/or Angela by February 9, 2004. The Investigator received the letter.

37. On March 10, 2004, the Investigator mailed a letter to Respondent requesting the accounting as indicated in Respondent's letter of February 2, 2004. Respondent received the letter.

38. On March 10, 2004, Respondent prepared and mailed a letter to the Investigator and attached an accounting of a portion, but not all, of the Trust assets that he had received as the Successor Trustee. The Investigator received the letter.

39. On July 30, 2004, Respondent prepared and mailed a letter to the Investigator and attached a proposed First and Final Accounting and Report. The Investigator received the letter and accounting.

40. On September 14, 2004, Respondent prepared and mailed a letter to Quintard and Boessenecker and attached a proposed First and Final Accounting and Report. Quintard and Boessenecker received the letter and accounting.

41. Respondent never filed the proposed First and Final Accounting and Report or any other type of accounting with the Superior Court.

42. On January 31, 2006, Boessenecker filed a Request for Entry of Default, Notice of Hearing for Default Judgment, and Declaration of Counsel in Support of Request for Default Judgment. The pleadings were served on Respondent. Respondent received the pleadings.

43. On February 3, 2006, the Superior Court heard and granted the Request for Default Judgment. The Court granted Angela a total judgment of \$41,903.46, consisting of \$15,000 that Angela paid Sondra to settle the Petition for Relief matter, plus \$26,903.46 in attorney fees and costs incurred by Angela.

44. On October 26, 2000, Respondent entered into a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension pertaining to State Bar Court Case No. 99-O-11645. In this matter, Respondent stipulated to a one year stayed suspension, on the condition that he be actually suspended for 30 days and be placed on probation for two years. Respondent also stipulated that he would comply with the all of the provisions of the State Bar Act and Rules of Professional Conduct during the period of the disciplinary probation.

45. On March 14, 2001, the California Supreme Court filed Order No. S094267 in this matter imposing a one year stayed suspension, on the condition that Respondent be actually suspended for 30 days and be placed on probation for two years, and that he comply with the provisions of the State Bar Act and Rules of Professional Conduct during the period of the disciplinary probation (the "Frank I Order").

46. On April 13, 2001, the Frank I Order became effective. Respondent was properly served with the Frank I Order. Respondent received the order.
47. On April 4, 2001, a Probation Deputy from the Office of Probation mailed a letter to Respondent informing him that the Frank I Order required Respondent to: (a) comply with the terms and conditions of probation; (b) comply with the provisions of the State Bar Act and Rules of Professional conduct; and (c) file quarterly reports. The letter enclosed a copy of the disciplinary order, probation conditions from the Stipulation, and a Quarterly Report form for Respondent to use to submit his Quarterly Reports to the Office of Probation. Respondent received the letter and enclosures.
48. On January 27, 2003, Respondent entered into a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension pertaining to State Bar Court Case No. 01-O-04912 (consolidated with 02-O-13984). In this matter, Respondent stipulated to a one year stayed suspension, on the condition that he be actually suspended for six months and be placed on probation for five years. Respondent also stipulated that he would comply with the all of the provisions of the State Bar Act and Rules of Professional Conduct during the period of the disciplinary probation.
49. On June 5, 2003, the California Supreme Court filed Order No. S114230 in this matter imposing a one year stayed suspension, on the condition that Respondent be actually suspended for six months and be placed on probation for five years, and that he comply with the provisions of the State Bar Act and Rules of Professional Conduct during the period of the disciplinary probation (the "Frank II Order").
50. On July 5, 2003, the Frank II Order became effective. Respondent was properly served with the Frank II Order. Respondent received the order.
51. On June 26, 2003, a Probation Deputy from the Office of Probation mailed a letter to Respondent informing him that the Frank II Order required Respondent to: (a) comply with the terms and conditions of probation; (b) comply with the provisions of the State Bar Act and Rules of Professional conduct; and (c) file quarterly reports. The letter enclosed a copy of the disciplinary order, probation conditions from the Stipulation, and a Quarterly Report form for Respondent to use to submit his Quarterly Reports to the Office of Probation. Respondent received the letter and enclosures.

CONCLUSIONS OF LAW:

52. By breaching his fiduciary duties as Successor Trustee, Respondent willfully committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.
53. By paying himself \$8,200 in attorney fees without petitioning the court for an order approving the payment of attorney fees or without obtaining a court order, Respondent willfully charged and collected an illegal fee in violation of Rules of Professional Conduct, rule 4-200(A).
54. By resigning as the Successor Trustee without communicating his resignation to Sondra or to the next Successor Trustee, and without taking reasonable steps to avoid reasonably foreseeable prejudice to Angela or Sondra, Respondent willfully failed, upon termination of employment, to give notice to the

beneficiary and take reasonable steps to avoid reasonably foreseeable prejudice to a beneficiary in violation of Rules of Professional Conduct, rule 3-700(A)(2).

55. By failing to provide an accounting of the assets of the Trust to Sondra and/or Quintard upon oral and written demand, Respondent willfully failed to render appropriate accounts to a client regarding all funds, securities and other properties of the client coming into Respondent's possession in violation of Rules of Professional Conduct, rule 4-100(B)(3).

56. By failing to prepare and file an accounting of the Trust's assets pursuant to the order of the Superior Court, Respondent willfully disobeyed and violated orders of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear in violation of Business and Professions Code section 6103.

57. By failing to provide an accounting after receiving an oral and written demand for an accounting on May 1, 2002, and by resigning as the Successor Trustee without communicating his resignation to Sondra or to the next Successor Trustee while he was on probation pursuant to the Frank I Order, Respondent failed to comply with the provisions of the State Bar Act and Rules of Professional Conduct, and thereby, willfully failed to comply with all conditions attached to any disciplinary probation in violation of Business and Professions Code section 6068(k).

58. By failing to file an accounting pursuant to the order of the Superior Court while he was on probation pursuant to the Frank II Order, Respondent failed to comply with the provisions of the State Bar Act and Rules of Professional Conduct, and thereby, willfully failed to comply with all conditions attached to any disciplinary probation in violation of Business and Professions Code section 6068(k).

DISMISSALS:

The parties agree to dismiss Counts Six and Nine alleged in the NDC.

SUPPORTING AUTHORITY:

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

Recently, the Supreme Court emphasized the importance of the standards and held that great weight should be given to the application of the standards in determining the appropriate level of discipline. The Court indicated that unless it has "grave doubts as to the propriety of the recommended discipline," it will uphold the application of the standards. In re Silvertown (2005) 36 Cal. 4th 81, 91-92.

Standard 1.7(a) provides that if a member has a prior imposition of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

Standard 1.7(b), Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that “[i]f a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.”

Standard 2.3 provides that “[c]ulpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to the court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

Standard 2.2(b) states that “[c]ulpability 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 2.6(b) also provides that Respondent’s violation of Business and Professions Code, section 6103 shall result in suspension or disbarment depending on the gravity of the offense and the harm to the victim.

Standard 2.7 provides that Respondent’s violation of rule 4-200, Rules of Professional Conduct shall result in “at least a six-month actual suspension from the practice of law, irrespective of mitigating circumstances.”

Standard 2.6(a) provides that Respondent’s violation of Business and Professions Code, section 6068 shall result in suspension or disbarment “depending on 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.”

In light of Respondent's two prior impositions of discipline, Standard 1.7(b), would seem to mandate that Respondent be disbarred unless there is compelling mitigating circumstances. Respondent has presented sufficiently compelling mitigating circumstances to deviate from the standards and to avoid disbarment. As indicated in Section C, page 4 above, Respondent undertook this representation against his better judgment because of the familial obligation insisted upon by his terminally ill aunt. Additionally, Respondent had been experiencing emotional difficulties as a result of his divorce wherein his spouse was being investigated by the FBI for political corruption. Lastly, Respondent had been suffering from alcoholism and has been sober since May 22, 2002, thus reducing the probability that similar misconduct will occur in the future.

By deviating from the standards and imposing a three-year stayed suspension, upon the condition of a two-year actual suspension and four years of probation, the purposes of the disciplinary process are well served, and the public, courts and legal profession are adequately protected.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, section A.(7), was on October 14, 2009.

In the Matter of
KEVIN JOSEPH FRANK

Case number(s):
06-O-12425-PEM

Substance Abuse Conditions

- a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least **8** meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

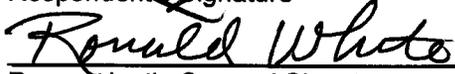
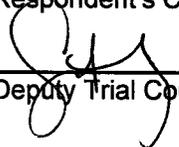
- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

(Do not write above this line.)

In the Matter of KEVIN JOSEPH FRANK	Case number(s): 06-O-12425-PEM
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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>10-15-09</u> Date	 Respondent's Signature	<u>KEVIN J. FRANK</u> Print Name
<u>10-15-09</u> Date	 Respondent's Counsel Signature	<u>Ronald White</u> Print Name
<u>10/15/09</u> Date	 Deputy Trial Counsel's Signature	<u>AGUSTIN HERNANDEZ</u> Print Name

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DECLARATION OF SERVICE BY REGULAR MAIL

CASE NUMBER: 06-O-12425-PEM

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

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

in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below, addressed to:

**Ronald White
17625 South Central Ave., Ste. D
Carson, CA 90746**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: October 15, 2009

Signed: 
Lupe Pacheco-Granados
Declarant

(Do not write above this line.)

In the Matter Of KEVIN JOSEPH FRANK	Case Number(s): 06-O-12425-PEM
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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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

10/27/09
Date


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 San Francisco, on November 2, 2009, I deposited a true copy of the following document(s):

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

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

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

**RONALD WHITE
ATTORNEY AT LAW
17625 S CENTRAL AVE STE D
CARSON, CA 90746**

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

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 2, 2009.



Laurette Cramer
Case Administrator
State Bar Court