

**ORIGINAL**

(Do not write above this line.)

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 Bar # 212469	Case Number (s) 06-O-12964 06-O-15001 FILED FEB 24 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES	(for Court's use) LODGED JUL 02 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Kevin P. Gerry 1001 Olive Street Santa Barbara, CA 93101 (805) 899-2990 Bar # 129690	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: DAVID CRAIG STELZER Bar # 189836 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 **September 22, 1997**.
- (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 actions of~~ 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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID CRAIG STELZER

CASE NUMBERS: 06-o-12964; 06-O-15001

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.

Case No. 06-O-12964

Facts

1. At all times mentioned herein, Respondent maintained a client trust account at City National Bank, Account Number 411970361 ("Respondent's CTA").
2. On February 24, 2006, Respondent deposited \$5,036.83 into Respondent's CTA from State Farm Mutual Automobile Insurance Company on behalf of his client, Tarik Tyler ("Mr. Tyler"). The agreement between Respondent and Mr. Tyler was that Respondent was to receive \$2,000 in attorneys' fees and the remainder was to be disbursed by Respondent to Mr. Tyler's medical providers.
3. On February 24, 2006, Respondent disbursed the \$2,000 in attorneys' fees to himself.
4. On March 27, 2006, prior to payment being made to any of Mr. Tyler's medical providers or to anyone else on behalf of Mr. Tyler, the balance in Respondent's CTA fell to \$36.83.
5. Respondent dishonestly misappropriated \$3,000 of the funds received on behalf of Mr. Tyler.

Conclusions of Law

6. By not maintaining at least \$3,036.83 on behalf of Mr. Tyler in Respondent's CTA until payment was made to Mr. Tyler's medical providers, Respondent failed to maintain funds in trust in a client trust account, in wilful violation of Rules of Professional

conduct, rule 4-100(A).

7. By misappropriating at least \$3,000 of the funds received on behalf of Mr. Tyler, Respondent committed an act involving moral turpitude, dishonesty and/or corruption, in wilful violation of Business and Professions Code section 6106.

Case No. 06-O-15001

Facts

8. During the period of March 2006 through May 2006, Respondent left personal funds in Respondent's CTA for the payment of office and/or personal expenses as needed.
9. On May 15, 2006, Respondent issued check number 2002 to Karen Dodge as repayment of unearned attorneys' fees, in the amount of \$250 drawn on Respondent's CTA against insufficient funds. On June 21, 2006, the bank paid check number 2002, leaving a balance of -\$280 in Respondent's CTA.
10. During the same time period, Respondent repeatedly made personal deposits into Respondent's CTA for a total of \$7,881.61 as follows:

<u>Date of Deposit</u>	<u>Amount of Deposit</u>
03/21/06	\$ 100.00
03/25/06	25.00
04/17/06	1,837.20
04/17/06	267.00
05/01/06	1,837.20
05/01/06	100.00
05/04/06	267.00
05/16/06	1,077.00
05/16/06	267.00
05/18/06	1,837.21
05/18/06	267.00

11. During the same time period, Respondent repeatedly issued checks and authorized debits drawn upon Respondent's CTA to pay his office and/or personal expenses as follows:

<u>Check No.</u>	<u>Date Presented</u>	<u>Payee</u>	<u>Check Amount</u>
Debit	04/12/06	T-Mobile	\$1,159.82
Debit	04/12/06	SBC	81.47

065	04/17/06	Staples	108.24
064	04/20/06	David Goldstein Living Trust (Respondent's rent)	1,845.00
063	04/26/06	Happy Tails	400.00

Conclusions of Law

12. By leaving personal funds in and/or depositing personal funds into Respondent's CTA for withdrawal as needed to pay office and/or personal expenses, and by issuing checks and authorizing electronic debits as needed for personal and/or office expenses, Respondent improperly used Respondent's CTA as a personal account and commingled funds belonging to Respondent in a client trust account 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 February 14, 2008.

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 November 30, 2007, and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of another amended Notice of Disciplinary Charges relating to cases which are the subject matters of this stipulation.

In the Matter of DAVID CRAIG STELZER	Case number(s): 06-O-12964; 06-O-15001
---	---

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.

3-7-08
Date


Respondent's Signature

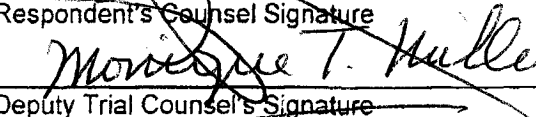
DAVID CRAIG SELTZER
Print Name

3-7-08
Date


Respondent's Counsel Signature

KEVIN P. GERRY
Print Name

3/10/08
Date


Deputy Trial Counsel's Signature

MONIQUE T. MILLER
Print Name

(Do not write above this line.)

In the Matter Of DAVID CRAIG STELZER	Case Number(s): 06-O-12964; 06-O-15001
--	--


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.)

June 26, 2008
Date



Judge of the State Bar Court
DONALD F. MILES