

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles		
PUBLIC MATTER		
Counsel For The State Bar Dane C. Dauphine Supervising Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1293 Bar # 146853	Case Number (s) 06-O-13573	(for Court's use) <div style="text-align: center;"> FILED JUN 30 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Vivian McPayah-Obiamalu Obiamalu Law Firm 15322 Central Avenue, Suite B Chino, CA 91710 (909) 597-3229 Bar # 159598	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Vivian McPayah-Obiamalu Bar # 159598 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 29, 1992**.
- (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 **8** 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."



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- (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):
- costs added to membership fee for calendar year following effective date of discipline.
 - 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
 - (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 or a separate attachment entitled "Prior Discipline."
- (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.

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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. **Although Respondent's misconduct involves her client trust account, the misconduct involved errors in accounting practices caused, in part, by medical problems and therefore, 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. **Respondent paid all of the funds due to the complaining witness in Case No. 06-O-13573 (Lopez) prior to that complaining witness's complaint to the State Bar. Respondent was extremely candid during meetings with the State Bar and cooperated with the State Bar during the investigation and in entering into this Stipulation.**
- (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. **The misconduct occurred in 2006 and the delay in prosecution was not attributable to Respondent. The delay has prejudiced Respondent by making it more difficult for her to provide financial records.**
- (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. **Respondent gave birth to children in or about December 2001, in or about October 2003, and in or about July 2006. The pregnancies were high risk and Respondent was out of the office frequently for medical appointments and due to being placed on bed rest. Thereafter, she was out of the office to care for her children. Although Respondent attempted to work from her home during her pregnancies, she was unable to devote a sufficient time to the client trust accounts, because of her medical condition and because she spent the time that she had communicating with her clients and supervising their matters.**
- (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. **Between in or about February 2006 and in or about November 2006, Respondent was experiencing significant marital difficulties with her husband - who was her law partner in their two-attorney law firm. They split their law firm and**

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its client trust account, which contributed to Respondent's errors in accounting. They have since reconciled and reestablish their marriage and law practice.

- (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. Respondent devotes significant time to representing pro bono clients. Respondent has served as an arbitrator with the the Los Angeles Superior Court Alternative Dispute Resolution Program since 2000.
- (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

D. Discipline:

- (1) **Stayed Suspension:**
 - (a) Respondent must be suspended from the practice of law for a period of **six (6) months**.
 - 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:

The above-referenced suspension is stayed.

- (2) **Probation:**
Respondent is 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 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.

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- (4) 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.

- (5) 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.

- (6) 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.

- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason:

- (8) 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.

- (9) 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 within one year. **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) **Other Conditions:**

Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: **VIVIAN MCPAYAH-OBIAMALU**

CASE NUMBER(S): **06-O-13573**

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

FACTS AND CONCLUSIONS OF LAW.

FACTS:

1. On or about September 17, 2000, David C. Lopez ("Lopez") was a passenger in an automobile driven by Bethany Harper ("Harper") that was involved in a single vehicle accident. Lopez was severely injured and the three other passengers in Harper's automobile were killed in the accident.
2. On or about October 9, 2000, Lopez hired Respondent's law firm to represent him regarding the accident on September 17, 2000. On or about September 13, 2001, Respondent filed a civil action obo Lopez in the Orange County Superior Court, case no. 01CC11725, entitled *Lopez v. Harper*. Although Lopez had incurred significant medical expenses, the defendant did not have assets to pay a judgment and had insurance with low policy limits. Lopez incurred medical liens of approximately \$200,000 from three providers, including the County Medical Center, with approximately \$190,000
3. In or about November 2001, Harper's automobile insurance carrier paid Harper's policy limits of \$15,000 to Respondent to settle Lopez's claims from the accident on September 17, 2000. Respondent deposited the check into the firm's client trust account at Bank of America, account no. *****2599 ("B^{of}A CTA").¹
4. On April 30, 2002, at the client's direction, Respondent paid \$1,300 of the settlement funds to another attorney employed by the client to file bankruptcy to address the outstanding medical bills. The client filed a bankruptcy petition and obtained a discharge of debts on January 13, 2003. On October 10, 2003, Respondent issued check no. 1059 drawn upon the B^{of}A CTA in the sum of \$5,000 and payable to the client trust account of the attorneys for County USC with instructions to disburse only upon reaching a pro rata settlement agreement with the other lien holders. Respondent almost immediately thereafter went on maternity leave and had a baby on October 16, 2003. In October 2003 and January 2004, Respondent disbursed a total of \$5,000 from the settlement funds to pay her law firm's legal fees. On January 9, 2004, Respondent disbursed \$3,700 from the settlement funds to Adela Hogan, Lopez's mother, intending to disburse the remaining settlement funds to the client.
5. Respondent failed to maintain client trust account ledger cards, written trust account journals and monthly reconciliations of the B^{of}A CTA. As a result, she was unaware that check no. 1059 issued to the attorney for the county was never deposited.

¹ The account numbers have been redacted to protect the accounts.

6. In or about May 2006, Respondent and her husband began having marital difficulties and subsequently split their practice. Respondent opened a separate client trust account at Wells Fargo Bank ("Wells Fargo CTA"). Due to Respondent's failure to maintain appropriate records concerning the law firm's trust accounts, she failed to distinguish which trust account contained which client's funds.

7. In or about December 2005, Lopez visited Respondent's law offices and requested his client file because he needed information to present to the Victim's Compensation Board following the criminal conviction of Harper. Respondent's firm was in the process of moving, and after the move, Respondent was unable to locate Lopez's client file. At this time, Lopez also requested an accounting. Respondent believed that all funds had been disbursed and so informed Lopez.

8. Thereafter, Lopez complained to the State Bar, and an investigator wrote to Respondent in August 2006. Respondent sought to recreate the client file and wrote to the Victim's Compensation Fund on behalf of Lopez on September 2006 to provide the information requested by the Board. Respondent also determined that her law firm was unable to confirm that check no. 1059 drawn upon the B^{of}A CTA and payable to the attorney for the county had been presented for payment, and calls to that law firm were not returned. On October 17, 2006, Respondent issued a check drawn upon her Wells Fargo CTA and payable to Lopez in the sum of \$5,000.

CONCLUSIONS OF LAW:

9. By failing to maintain client trust account records and render appropriate accounting to Lopez, Respondent failed to maintain complete records of all funds received on behalf of the client and render appropriate accounts to the client regarding them in willful violation of rule 4-100(B)(3), Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was June 11, 2010.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide, at Standard 2.2(b), for a minimum actual suspension of three months irrespective of mitigating circumstances for the commission of a violation of rule 4-100, Rules of Professional Conduct, which does not result in the willful misappropriation of entrusted funds or property. Under case law, a failure to render appropriate accountings for client funds has resulted in stayed suspension and actual suspension of less than 90 days. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 751 [60-day actual suspension for failure to account for fees and conflicts in two client matters where attorney had 25 years with no discipline]; *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128 [six-month stayed suspension for failure to render a proper accounting of settlement funds and failing to communicate, where attorney had prior public reproof]; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387 [two-month stayed suspension for failure to notify client of receipt of settlement funds and failure to render an accounting of settlement funds].) Considering the mitigation set forth in Section C, the parties submit that the intent and goals of Standards are met in this matter by the imposition of a stayed suspension with 1 year probation.

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In the Matter of Vivian McPayah-Obiamalu	Case number(s): 06-O-13573
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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.

6/11/10
Date

Vivian McPayah-Obiamalu
Respondent's Signature

Vivian McPayah-Obiamalu
Print Name

6-15-10
Date

Dane C. Dauphine
Respondent's Counsel Signature

Dane C. Dauphine
Print Name

Deputy Trial Counsel's Signature

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In the Matter Of Vivian McPayah-Obiamalu	Case Number(s): 06-O-13573
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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.)**

06-22-10
Date


Judge of the State Bar Court

RICHARD A. PLATEL

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 30, 2010, 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:

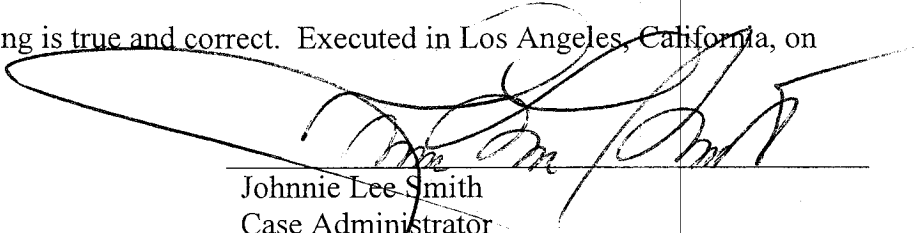
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

VIVIAN MCPAYAH-OBIAMALU
OBIAMALU LAW FIRM
15322 CENTRAL AVE STE B
CHINO, CA 91710

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

DANE DAUPHINE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 30, 2010.



Johnnie Lee Smith
Case Administrator
State Bar Court