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State Bar Court of California Hearing Department San Francisco		PUBLIC MATTER
<p>Counsel For The State Bar</p> <p>Erica L. M. Dennings Office of the Chief Trial Counsel 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 145755</p>	<p>Case Number (s)</p> <p>06-O-14100 07-O-11220 07-O-11328 07-O-13670 08-O-13493 09-O-12089 09-O-14217</p>	<p>(for Court's use)</p> <div style="text-align: center; margin-top: 50px;"> <p>FILED <i>[Signature]</i></p> <p>APR 06 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> </div>
<p>Counsel For Respondent</p> <p>Howard Melamed 319 Lennon Lane Walnut Creek, CA 94598</p> <p>Bar # 40962</p>	<p>Submitted to: Assigned Judge</p>	
<p>In the Matter Of: Elizabeth L. Shivell</p> <p>Bar # 98471</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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 May 29, 1981.
- (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 17 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):
- 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
 - (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. see attachment
- (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. see attachment
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

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

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

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(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two (2) 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 two (2) 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 one (1) year.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
 - iii. and until Respondent does the following:

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.

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- (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.
- (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:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 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

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

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perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:** see attachment

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ELIZABETH L. SHIVELL

CASE NUMBER(S): 06-O-14100
07-O-11328
07-O-11220
07-O-13670
08-O-13493
09-O-12089
09-O-14217

CASE NO. 06-O-14100:

Facts

At all times pertinent to these charges, respondent maintained an attorney-client trust account, account number 16643-07807, at Bank of America.

On or between May, 2006 and August, 2006, respondent issued the following checks against insufficient funds:

<u>Date</u>	<u>Check Number</u>	<u>Payee</u>	<u>Amount</u>	<u>Balance</u>
5/4/06	1712	Respondent	\$5,000.00	\$3,331.85
5/5/06	1714	Respondent	\$2,500.00	\$-368.15
8/3/06	1722	Court	\$20.00	\$ -5.53
8/4/06	1727	Court	\$320.00	\$-338.53

The bank paid check number #1712 and check #1714 against insufficient funds. The bank returned check #1722 and check #1727.

On or about May 3, 2006, respondent made two deposits to her attorney-client trust account, one in the sum of \$1225.00; and the second in the sum of \$2,500.00. These sums had not cleared the bank prior to her withdrawal of \$5,000 on 5/4/06.

Conclusions of Law

Respondent by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, and by failing to maintain funds sufficient to cover her checks, and By attempting to withdraw deposits prior to the check clearing the bank, respondent failed to maintain funds in trust in willful violation of Rules of Professional Conduct, rule 4-100(A).

CASE NO. 07-O-11328:

Facts

On or about December 9, 2006, client Anne Graham hired respondent to represent her in spousal support matters. Ms. Graham paid respondent the sum of \$5,000 and signed an Agreement for Legal Representation and Attorneys Fees and Costs.

On or about January 9, 2007, Ms. Graham terminated respondent's services and requested a refund of her unearned fees.

Respondent refunded \$4,200 to Ms. Graham.

On or about April 24, 2007, respondent and Ms. Graham attended mediation regarding an outstanding fee dispute.

On April 24, 2007, the parties signed a Stipulation for Settlement regarding their outstanding fee dispute.

Paragraph fourteen of the Stipulation reads as follows: "Graham will contact the State Bar and dismiss her complaint."

Conclusions of Law

By entering into an agreement that required Ms. Graham to "dismiss" her State Bar complaint, respondent agreed or sought an agreement that a plaintiff would withdraw a disciplinary complaint or would not cooperate with the investigation or prosecution conducted by the disciplinary agency, in wilful violation of Business and Professions Code, section 6090.5(a)(2).

Case No. 07-O-11220:

Facts

On or about July 20, 2006, client Teresa Higginson retained respondent to represent her in dissolution and child support matters. Ms. Higginson signed an Agreement for Legal Representation and Attorneys Fees and Costs. She paid respondent \$2,500, representing one half of the initial retainer.

On or about October 31, 2006, respondent sent Ms. Higginson a monthly statement, indicating that \$1,188.00 remained in Ms. Higginson's trust account. This was the last bill respondent provided to Ms. Higginson.

On or about February 16, 2007, Ms. Higginson terminated respondent's services and requested a return of her unearned fees of \$1,188.00.

On March 5, 2007, Ms. Higginson sent a letter via United States Mail, postage pre-paid, certified, to respondent at 95 S. Market Street, Suite 450, San Jose, California, 95113. This is respondent's official membership records address, maintained by the State Bar pursuant to Business and Professions Code, section 6002.1. In the letter, Ms. Higginson requested a refund of the \$1,188.00 and an accounting of a \$360.00 amount noted on her last bill.

Respondent received the letter and failed to respond or otherwise address Ms. Higginson's fees.

Ms. Higginson wrote again on March 30, 2007, and again sent the letter with a return receipt requested. Respondent received the letter and failed to respond.

On or about Thursday, April 25, 2007, respondent met with the Office of the Chief Trial Counsel regarding Ms. Higginson's complaint. Respondent became aware of Ms. Higginson's State Bar complaint.

On or about July 19, 2007, respondent refunded Ms. Higginson \$1188.00 by way of an official check issued from Washington Mutual Bank. The parties are utilizing fee arbitration with the Santa Clara County Bar Association regarding remaining fee issues.

Conclusions of Law

By not refunding Ms. Higginson's unearned fee of \$1,188.00 until July, 2007, respondent failed to refund promptly a fee paid in advance that had not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 07-O-13670:

Facts

On or about December 2006, Todd Asmussen (hereinafter referred to as "Asmussen") retained respondent to represent him in his pending child support and child custody dispute; and to potentially bring an action for fraud against the mother of his child, Melissa Baxter. Melissa Baxter had filed pleadings on or about December 6, 2006, seeking an increase in her temporary child support from Asmussen.

Asmussen paid respondent the sum of \$12,000 for the legal representation in the two matters; \$2,000 was for the fraud matter, the remainder for the child support and custody issues.

On or about December 14, 2006, respondent filed a Substitution of Attorney, substituting herself in as Asmussen's counsel in the matter of *Todd Asmussen vs. Melissa Baxter*, case number 1-93-FL-034130, filed in Superior Court, County of Santa Clara.

Respondent failed to perform on behalf of Asmussen by failing to promptly respond to discovery and by failing to file responsive pleadings, resulting in a \$2,000 fine against her client, as follows:

On or about January 4, 2007 the attorney for Melissa Baxter, Robin Yeamans (hereinafter referred to as "Yeamans") served respondent with a Request for Production of Documents. The response was due on or about February 8, 2007.

Respondent received the Request for Production of Documents and failed to respond in a timely fashion. Respondent provided a partial response on or about February 23, 2007. Yeamans demanded further responses.

On or about April 9, 2007, Yeamans filed and served a motion to compel discovery. Respondent Respondent received the motion to compel discovery and failed to file a response.

On or about April 24, 2007, Yeamans filed and served motion for attorney's fees and costs. Respondent received the motion for attorney's fees and costs and failed to file a response.

On or about May 17, 2007, at a status conference, the court set the motion for May 31, 2007 at 1:30 p.m., to address the discovery issues and motions. Respondent was present in court and aware of the calendared matter.

On or about May 31, 2007, at the scheduled hearing, respondent advised the court that "We had dropped the ball" regarding the pending discovery motions. The court accepted this as an admission. The court ordered respondent's client, the petitioner (Asmussen) to pay sanctions in the sum of \$2,000 to Yeamans for attorney's fees.

Respondent failed to advise Asmussen that Yeamans had filed motions to compel discovery and motions for attorney's fees. Respondent failed to advise Asmussen that the hearing on May 31, 2007, was to address the outstanding discovery matters. Respondent told Asmussen not to attend the May 31, 2007 hearing date.

In or about July 2007, Asmussen terminated respondent's services.

During the course of the representation, and after terminating the representation, Asmussen repeatedly requested an accounting of respondent's legal services on his behalf and the use of the funds that he gave respondent, in excess of \$12,000.

Respondent did not provide Asmussen an accounting until November 2007.

With respect to the fraud matter, respondent provided Asmussen with a bill dated November 18, 2007. The bill charged Asmussen \$882 against the retainer of \$2,000, and indicated a credit balance of \$1,118.

Respondent did not refund the difference between Asmussen's initial \$2,000 payment and \$882 (\$1,118) to Asmussen.

Respondent brought no cause of action on behalf of Asmussen against Baxter for fraud. All services on the fraud matter were preliminary in nature and provided no benefit to Asmussen.

Respondent owes Asmussen \$2,000 in a refund of unearned fees on the fraud matter.

Respondent's billing to Asmussen regarding the child custody and support matters indicated \$741 owed by Asmussen, and credited Asmussen for \$8,000 in payment.

In fact, Asmussen had paid respondent \$10,000 in fees, not \$8,000, toward the child support and custody matters.

Respondent agreed to credit Asmussen the \$2,000 he paid in court sanctions against his outstanding attorney's fees.

Respondent owes Asmussen at least \$4,000 in return of advanced attorney's fees, representing the \$2,000 she failed to account for (Asmussen paid \$10,000, not \$8,000) in addition to the \$2,000 credit that respondent gave Asmussen regarding the court ordered sanctions.

With respect to the child custody and support matter, respondent failed to complete discovery, causing \$2,000 in sanctions to be assessed against her client, and was terminated by Asmussen shortly thereafter. The services provided by respondent, prior to her termination, provided no benefit to Asmussen.

Respondent owes Asmussen a refund of \$12,000 in the child support and custody matter, reflecting a refund of \$10,000 paid by Asmussen and the credit back for \$2,000 in sanctions.

On September 24, 2007, Asmussen filed a complaint against respondent with the State Bar of California.

On or about November 13, 2008, a judgment was entered against respondent in the amount of \$14,653.33 plus costs, interest, and attorneys fees. This amount represented the amount of unearned fees respondent owed Asmussen.

After the judgment was entered, Asmussen and respondent agreed that respondent could pay the amount owed in installments.

On or about November 25, 2008, respondent sent Asmussen several checks with dates ranging from December 25, 2008 through December 23, 2009. Respondent represented to Asmussen that the funds would be available as of the dates of the checks. The check dated December 23, 2008 was in the amount of \$15,000. The February 23, 2009 check was in the amount of \$500.

Within a few days of December 23, 2008, Asmussen presented the \$15,000 check to Wells Fargo Bank, the bank on which the check was drawn, to cash it. A bank representative informed Asmussen that there were not sufficient funds in the account to cash the check.

In or about February 2009, Asmussen presented the February 23, 2009 check for \$500 to respondent's bank. There were insufficient funds to cash the check.

On August 19, 2009, respondent sent Asmussen a cashier's check in the amount of \$14,000.

Conclusions of Law

By not filing complete and timely discovery responses, and by failing to file responses to the motions to compel and motions for attorneys fees, resulting in a \$2,000 sanction against her client, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

By not advising Asmussen of the motions to compel discovery, the motion for attorneys fees, and the purpose of the May 31, 2007 hearing, respondent failed to keep her client reasonably informed of significant developments in a matter in which she agreed to provide legal services in willful violation of section 6068(m) of the Business and Professions Code.

By not providing an accounting until November 2007, respondent failed to promptly render appropriate accounts to Asmussen regarding Asmussen's payments to respondent in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

By failing to refund Asmussen \$2,000 in the fraud matter and \$12,000 in the child support and custody matter for more than two years, respondent failed to refund unearned fees in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

By providing Asmussen with checks drawn on a bank account that she knew did not have sufficient funds to cover the checks, respondent committed an act of moral turpitude and dishonesty in wilful violation of Business and Professions Code, section 6106.

Case No. 08-O-13493:

Facts

On or about May 27, 2006, Dana Valente employed respondent to represent her in dissolution. The petition for dissolution of marriage had been filed by Valente's husband on May 24, 2006. *Valente v. Valente*, Madera County Superior Court case number MFL 004483. Valente paid respondent \$5,000 in advanced fees.

Respondent subsequently took some action on the case, including filing a response to the petition.

Subsequently, Valente's husband withdrew his request for dissolution and filed a request for dismissal on February 20, 2008. Valente and her husband reconciled.

In or about April 2008, respondent filed a substitution a substitution of attorney substituting Valente in pro per.

On or about October 21, 2006, respondent provided an invoice to Valente reflecting a credit in the amount of \$3,469.10 due to Valente. Respondent never provided any other statements or indicated to Valente that the balance had changed.

On May 27, 2008 Valente spoke to respondent who promised to send her invoices and a refund of her balance. Respondent failed to do so.

Valente called respondent and left at least two messages with respondent asking her to return the \$3,469.10.

On or about September 11, 2008 Valente filed a complaint with the State Bar of California regarding respondent's failure to return unearned fees.

On or about August 12, 2009, respondent sent Valente a money order in the amount of \$3,469.10.

Conclusions of Law

By failing to refund Valente \$3,469.10 for more than a year, respondent failed to refund unearned fees in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2) .

Case No. 09-O-12089:

Facts

On or about April 18, 2006 Tina Ernst ("Ernst") employed respondent to represent her in dissolution of marriage. Ernst paid respondent \$1225 in advanced fees. Ernst had filed a petition for legal separation in 2001, but taken no further action.

Thereafter, respondent performed some work on the case, including filing a petition for dissolution and on or about June 29, 2007, filing a request for entry of default. The request for entry of default was denied due to the fact that too many years had passed since the petition for separation had been filed. The case would have to be refiled and started over again. Respondent did not inform Ernst that the motion for entry of default was denied or that the case would have to start over again.

Respondent acknowledged that she owed Ernst \$595 plus interest in unearned fees from in or about June 2007.

On or about April 29, 2009, Ernst filed a complaint with the State Bar of California regarding respondent's failure to return unearned fees.

On or about August 12, 2009, respondent sent Ernst a money order in the amount of \$595.50.

Conclusions of Law

By not informing Ernst that the request for entry of default was denied and that the case would have to be refiled, respondent failed to keep Ernst reasonably informed of a significant development in her case in wilful violation of section 6088(m) of the Business and Professions Code.

By not refunding \$595.50 to Ernst for more than two years, respondent failed to refund unearned fees, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 09-O-14217:

Facts

In or about September 2007, Gloria Gordon ("Gordon") employed respondent to represent her in a real property matter. Gordon paid respondent \$2,500 as advanced attorney's fees.

Thereafter, respondent failed to take any steps to pursue Gordon's matter. On or about February 29, 2008 Gordon sent respondent a letter requesting a refund of her legal fees. Respondent failed to respond to the letter or to return the \$2,500.

Conclusions of Law

By not taking any steps to pursue Gordon's matter, respondent failed to perform, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

By not refunding \$2500 to Gordon, respondent failed to refund unearned fees, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7) was March 9, 2010.

PARTIES' ACKNOWLEDGMENTS:

A (8): Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7:

Until costs are paid in full, Respondent will remain ineligible to seek reinstatement to the practice of law until she pays all disciplinary costs, pursuant to rule 662(c), Rules of Procedure.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct: By the misconduct stipulated to above, respondent committed multiple acts of misconduct in multiple matters.

Harm: In the *Higginson* matter, Higginson was deprived of her funds for over five months. In the *Valente* matter, Valente was deprived of her funds for over one year. In the *Ernst* matter, Ernst was deprived of her funds for almost two years. In the *Asmussen* matter, Asmussen was deprived of his funds for more than two years. In the *Gordon* matter, Gordon has been deprived of her funds for more than two years.

ADDITIONAL MITIGATING CIRCUMSTANCES.

No Prior Discipline. Although the above misconduct is serious, it should be noted that respondent has no prior record of discipline since being admitted to practice in 1981, twenty-seven years ago.

Restitution: Respondent refunded \$4200 to Graham before the intervention of the State Bar, and \$930 to her afterwards.

Participation in Lawyer's Assistance Program: On April 19, 2007, respondent self referred to the State Bar Lawyer Assistance Program, began attending weekly LAP group meetings in May 2007, continued psychoanalysis and medication as agreed with her case manager at intake, was assessed and evaluated for long-term participation in LAP in October 2007, and signed her long-term participation agreement with LAP on November 11, 2007.

Emotional and Physical Difficulties: In February 2008, the respondent became critically ill. On or about March 4, 2008, doctors began a series of three emergency surgeries to save her life. ~~She~~ She was not expected to survive. Respondent was in a medically induced coma for approximately a month and continued to be hospitalized until approximately May 29, 2008. It was during this illness and hospitalization that complainant Gordon wrote to respondent and complainant Valente called the respondent demanding a refund of unearned fees. Both were

Valente called the respondent demanding a refund of unearned fees. Both were informed of the respondent's condition and the delays her recovery would cause in addressing their complaints.

Severe Financial Stress: Following respondent's near fatal illness and hospitalization in February-May 2008 as set forth above, respondent could not return to work part-time until February 2009 and full-time until August 2009. Respondent earned no income for over 14 months. During that time respondent lost her home and her law practice. Respondent had no funds with which to make restitution to her clients and had no ability to do so until she received awards of attorney's fees and costs in August 2009. Immediately upon receiving those fees, respondent promptly paid Asmussen, Ernst, and Valente, even before satisfying her personal debts and expenses.

Family Problems: During 2005-2007, the respondent was guardian of a teenager whose only parent had suffered a series of debilitating strokes. The teen was deeply troubled, including depression requiring treatment and hospitalization, substance abuse, truancy, criminal proceedings and gang activities. Financial and trust account records were lost when the teen stole a computer from respondent's home. Respondent's work hours were sharply curtailed due to the demands on her time to work with counselors, doctors, police and school officials during regular work hours. These events severely impacted respondent's ability to maintain communications with clients, consistently and accurately maintain trust account and other financial records, and promptly respond to developments in her cases. These circumstances directly affected her conduct in the management of her trust accounts in the Ernst, Asmussen, and Valente matters.

Character letters: Respondent provided seven character letters, of which five were written by attorneys. All of the letters attest to respondent's good reputation in the legal community and knowledge about her misconduct.

ADDITIONAL CONDITIONS

Respondent shall comply with all provisions and conditions of her participation plan with the State Bar Lawyer's Assistance Program ("LAP") and all modifications thereto and any other conditions required of him by LAP until such time as she successfully graduates from LAP or until the expiration of probation, whichever is sooner. Within 14 calendar days from the effective date of discipline, respondent shall sign a waiver with LAP that authorizes LAP to provide Probation with information regarding her compliance with LAP, and respondent shall provide the Office of Probation with a copy of the waiver within 21 calendar days from the effective date of the discipline. Revocation of this written waiver is a violation of probation. In addition, with each quarterly report and before the due date of her final report, respondent shall request and obtain from LAP written proof of her compliance with LAP, and provide the original of the LAP compliance report to the Office of Probation with her written report. The written LAP compliance report shall be dated not sooner than 10 calendar days prior to the date respondent submits her required reports to the Office of Probation.

In the Matter of ELIZABETH L. SHIVELL (#98471)	Case number(s): 06-O-14100, 07-O-11220, 07-O-11328, 07-O-13670, 08-O-13493, 09-O-12089, 09-O-14217
A Member of the State Bar	

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Gloria Gordon	\$2,500	February 29, 2008

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. ~~No later than 30 days prior to the expiration of the period of probation (or period of suspension),~~ Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

*Respondent understands that she will remain on actual suspension until the

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Gloria Gordon	\$250	monthly

restitution is completed

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2008.)

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- 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.

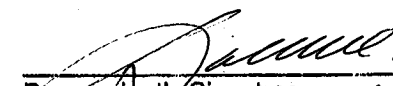
(Do not write above this line.)

In the Matter of ELIZABETH L. SHIVELL (#98471)	Case number(s): 06-O-14100; 07-O-11328; 07-O-11220; 07-O-13670; 08-O-13493; 09-O-12089; 09-O-14217
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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.

3/16/10
Date


Respondent's Signature

Elizabeth L. Shivell
Print Name

March 17, 2010
Date


Respondent's Counsel Signature

Howard Melamed
Print Name

22 March 2010
Date


Deputy Trial Counsel's Signature

Erica L. M. Dennings
Print Name

(Do not write above this line.)

In the Matter Of ELIZABETH L. SHIVELL (#98471)	Case Number(s): 06-O-14100; 07-O-11328; 07-O-11220; 07-O-13670; 08-O-13493; 09-O-12089; 09-O-14217
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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.)

Date

April 6, 2010

Pat McElroy
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, April 6, 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:

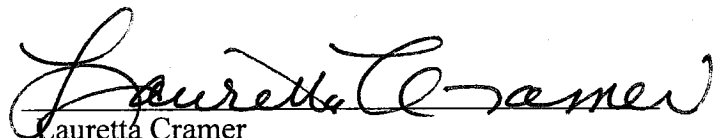
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**HOWARD RICHARD MELAMED
319 LENNON LN
WALNUT CREEK, CA 94598 - 2418**

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

ERICA DENNINGS , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 6, 2010.



Laretta Cramer
Case Administrator
State Bar Court