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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b>		kwiktag® 018 040 013 
Counsel For The State Bar  Michael J. Glass Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1254  Bar # 102700	Case Number (s) 06-O-14264; 06-O-15418; 07-O-13030	(for Court's use)  <p style="text-align: center; font-size: 1.2em;"><b>PUBLIC MATTER</b></p> <p style="text-align: center; font-size: 1.5em;"><b>FILED</b> <i>[Signature]</i></p> <p style="text-align: center;">OCT 19 2010</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
In Pro Per Respondent  Brian D. McMahon 2530 Wilshire Blvd., Ste. 300 Santa Monica, CA 90403 (310) 315-1133  Bar # 147662	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Brian D. McMahon  Bar # 147662  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 July 24, 1990.
- (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 20 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: prior to February 1 in three billing cycles following the effective date of the discipline.  
(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. See Attachment Page 8.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Attachment Page 9.
- (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 Page 8.

- (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. See Attachment Page 9.
- (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**

Respondent has no prior record of discipline. See Attachment Page 9.

After State Bar disciplinary proceedings commenced, Respondent has made partial restitution to client Susantina Hariputra in the amount of \$1900.00. See Attachment Page 9.

From May 15, 2006 through June 20, 2006, Respondent was an in patient at the Betty Ford Center due to alcoholism. Between July 2007 through February 2008, Respondent attended Alcoholics Anonymous ("AA") Meetings. See Attachment Page 9.

#### D. Discipline:

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of three (3) 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 three (3) 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 (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:

#### 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.
- (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
  - Medical Conditions
  - Law Office Management 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:** See Attachment Pages 10-12 re Substance Abuse Conditions.

In the Matter of  
**BRIAN D. McMAHON**  
 Member #147662  
 A Member of the State Bar

Case number(s): 06-O-14264;  
 06-O-15418; and  
 07-O-13030

**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
Marsha Ross	\$6,300.00	February 2, 2001
Susantina Hariputra	\$6,500.00	June 10, 2005

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than within two (2) years of the effective date of discipline.

**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 reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Marsha Ross	\$500.00	- Per month due on first day of each month beginning the month following effective date of discipline.
Susantina Hariputra	\$500.00	- Per month due on first day of each month beginning the month following effective date of discipline.

**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 12/18/2004; 12/13/2006.)

**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.**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

<b>IN THE MATTER OF:</b>	<b>BRIAN D. McMAHON</b>
<b>CASE NUMBER(s):</b>	<b>06-O-14264; 06-O-15418; 07-O-13030</b>

**FACTS AND CONCLUSIONS OF LAW.**

Respondent Brian D. McMahon ("Respondent") admits that the following facts are true and that he is culpable of violation of the specified statutes and/or Rules of Professional Conduct.

Case No. 06-O-14264

1. On February 9, 1998, Respondent opened a client trust account at Union Bank of California ("Union Bank"), in Los Angeles, California, account number xxxxxx9829 (the "cta").<sup>1</sup> Respondent was the only authorized signatory for the cta.
2. Between June 25, 2004, and July 11, 2006, Respondent issued various checks from his cta in which Respondent knew, or was grossly negligent in not knowing, that there were insufficient funds in the cta to pay the checks. The checks written by Respondent against insufficient funds in the cta included: Check No. 1419, dated June 25, 2004, for \$35.00, payable to Metro Mobile; Check No. 1448, dated August 3, 2005, for \$2,500.00, payable to Respondent; Check No. 1432, dated April 11, 2006, for \$100.00, payable to Lynn Ianni, PhD.; and Check No. 1465, dated July 6, 2006, for \$1,275.50, payable to M. Gedalia.
3. Between June 2004 and February 13, 2006, Respondent paid various personal expenses from personal funds Respondent maintained in the cta, totaling \$287.63, deposited rent checks into the cta totaling \$3,750.00, and deposited a payment of \$1,603.18, from Allstate, on a personal collision coverage matter in the cta.
4. In 1998, Marsha Ross ("Ross") employed Respondent to negotiate a settlement with a majority stockholder of Integrated Healthcare, Inc. ("Integrated") and to obtain payment for stock shares Ross held with Integrated. During the course of Respondent's employment, Respondent recommended that Ross deposit \$57,600.42, of her funds into Respondent's CTA. On February 9, 2000, Respondent deposited a \$57,600.42 cashier's check from Ross into the CTA. During the course of Respondent's employment, Ross authorized Respondent to pay certain medical and dental bills from the \$57,600.42.

<sup>1</sup> The full account number is omitted for privacy purposes

5. Between November 1998 and July 11, 2006, Respondent made various deposits in the CTA, and wrote various checks on behalf of Ross against the funds in the CTA purportedly belonging to Ross.
6. Between February 9, 2000, and November 7, 2002, Respondent should have maintained at least \$6,300.00 from the \$57,600.42, deposited into the cta for Ross. Between February 2, 2001, and February 26, 2001, the balance in the cta fell to (-)\$520.57.
7. On June 10, 2005, Respondent deposited a \$14,000.00 settlement draft into the cta from Clarendon America Insurance Company ("Clarendon") payable to Respondent and his client, Susantina Hariputra ("Hariputra"), bringing the balance in the cta to \$14, 107.12.
8. The \$14,000.00 draft deposited into the cta on June 10, 2005, represented settlement of Hariputra's claims arising from a July 8, 2002, incident following mediation of Hariputra's claims. Under Respondent's fee agreement with Hariputra, Respondent was entitled to 40% of the gross settlement, or \$5,600.00 plus costs. Hariputra was entitled to approximately 60% of the gross settlement, less costs, or approximately \$8,400. Respondent failed to make any settlement distribution to Hariputra.
9. On August 3, 2005, the balance in the cta fell to (-) \$2,266.59.
10. On November 14, 2005, Attorney Michael McCabe ("McCabe"), on behalf of Ross, sent a letter to Respondent requesting that Respondent forward an accounting of the \$57,600.42 and other funds Respondent received on Ross' behalf. Respondent never provided a complete accounting to Attorney McCabe or Ross.

#### Conclusions of Law

11. By issuing check numbers 1419, 1448, 1432, and 1465, from the cta when Respondent knew or was grossly negligent in not knowing that there were insufficient funds in the cta to pay the checks, Respondent wilfully committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.
12. By paying personal expenses from personal funds Respondent maintained in the cta, by depositing rent checks into the cta, and by depositing the Allstate check into the cta, Respondent wilfully deposited and commingled funds belonging to Respondent in a bank account labled "Trust Account", "Client Funds Account", or words of similar import in violation of rule 4-100 (A) of the Rules of Professional Conduct.
13. By not providing a complete written accounting to Ross of the funds he received on her behalf, Respondent wilfully failed to render appropriate accounts to a client regarding all funds of the client coming into Respondent's possession in violation of rule 4-100(B)(3) of the Rules of Professional Conduct.
14. By not maintaining at least \$6,300.00 in the cta between February 2, 2001, and February 26, 2001, on behalf of Ross, and by not maintaining at least \$8,400.00 in the cta between

June 10, 2005, and August 3, 2005, on behalf of Hariputra, Respondent wilfully failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account", "Client Funds Account", or words of similar import in violation of rule 4-100 (A) of the Rules of Professional Conduct.

15. By not maintaining at least \$6,300.00 in the cta between February 2, 2001, and February 26, 2001, on behalf of Ross, Respondent misappropriated at least \$6,300.00, from Ross, and by not maintaining at least \$8,400.00 in the cta between June 10, 2005, and August 3, 2005, on behalf of Hariputra, Respondent misappropriated at least \$8,400.00 from Hariputra, and intentionally or through gross negligence committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

Case No. 06-O-15418

1. In March 2004, Randall Yang, Estella Yang, and their minor son, Ryan Yang, employed Respondent to represent them in a personal injury matter. Under Respondent's Fee Agreement, dated March 31, 2004, Respondent would receive 33 1/3% of the gross settlement proceeds if the case settled prior to court ordered arbitration or mediation, and 40% of the gross settlement proceeds if the case settled after court ordered arbitration or mediation.
2. On September 8, 2005, following a court ordered mediation, Respondent settled the Yangs cases as follows: Randall Yang-\$40,000.00; Estella Yang-\$6,000.00; and Randall Yang as Guardian Ad Litem for Ryan Yang-\$4,999.00. Respondent also reached a settlement with Rawlings Company ("Rawlings"), on behalf of Aetna Health Plans, with regard to Rawlings subrogation lien claim for reimbursement for medical care payments made for the Yang family.
3. On September 26, 2005, Respondent deposited three settlement drafts into his client trust account at Union Bank of California, account number xxxxxx9829 ("the cta")<sup>2</sup> as follows: a \$40,000.00 draft made payable to the Law Offices of Brian D. McMahon and Randall P. Yang; a \$6,000.00 draft made payable to the Law Offices of Brian D. McMahon and Estella Yang; and a \$4,999.00 draft made payable to the Law Offices of Brian D. McMahon and Randal P. Yang as guardian of Ryan Yang, a minor.
4. Pursuant to Respondent's settlement agreement with Rawlings, Respondent was to pay a total of \$5,300.00 to Rawlings. Respondent agreed to accept a lesser fee and agreed to waive some costs so that the Yang family would net \$30,000.00.
5. On October 13, 2005, Check Number 1462, in the amount of \$30,000.00 and payable to Randall Yang was paid from the CTA.

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<sup>2</sup> The full account number is omitted for privacy purposes.

6. Without reimbursing any money to Rawlings on behalf of the Yang family, between November 4, 2005, and February 10, 2006, the balance in the CTA repeatedly fell below the \$5,300.00 which should have been maintained in the CTA, reaching \$284.26 on February 10, 2006.
7. On March 27, 2006, after Jo Hanna Wilson of Rawlings had sent a fax to Respondent and threatened to collect the \$5,300.00 owed to Rawlings directly from the Yangs, Respondent contacted Ms. Wilson. Respondent and Ms. Wilson reached an agreement for Respondent to reimburse Rawlings a total of \$3,791.00.
8. On October 2, 2006, after failing to receive payment from Respondent, Ms. Wilson sent a letter to Mr. Yang in which Ms. Wilson requested payment of the \$3,791.00 owed to Rawlings. On October 17, 2006, Mr. Yang made a complaint to the State Bar against Respondent for failing to pay Rawlings. Respondent then issued a cashier's check to Rawlings, in the amount of \$3,791.00, in payment of the subrogation lien.

#### Conclusions of Law

16. By not maintaining at least \$5,300.00 in the cta for Rawlings from the Yang family's settlement funds between September 26, 2005, and March 15, 2006, and by not maintaining at least \$3,791.00 in the cta for Rawlings from the Yang family's settlement funds between September 26, 2006, and April 18, 2006, Respondent wilfully failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account", "Client Funds Account", or words of similar import in violation of rule 4-100(A) of the Rules of Professional Conduct.
17. By not maintaining at least \$5,300.00 in the cta for Rawlings from the Yang family's settlement funds between September 26, 2005, and March 15, 2006, and by not maintaining at least \$3,791.00 in the cta for Rawlings from the Yang family's settlement funds between September 26, 2006, and April 18, 2006, Respondent misappropriated funds to which he was not entitled, and intentionally or through gross negligence committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

#### Case No. 07-O-13030

1. On May 15, 2007, Brian Evans ("Evans") employed Respondent to represent him at trial in an unlawful detainer matter scheduled for trial on June 8, 2007. Respondent did not file a Substitution of Attorney naming him as Evans attorney prior to the unlawful detainer trial.
2. On June 8, 2007, Respondent met with Evans at the court prior to the commencement of the unlawful detainer trial. However, Respondent left the court without appearing at the trial on behalf of Evans and without informing the court that he was leaving and would not be representing Evans.

3. On June 8, 2007, when the unlawful detainer matter was called for trial, Evans informed the court that he had met with Respondent, that Respondent reeked of alcohol, and that Evans had fired Respondent. The court continued the unlawful detainer trial until July 13, 2007.
4. On June 8, 2007, the court also issued an Order to Show Cause Re Contempt Against Respondent ("OSC"), for abandoning Evans at trial, with a hearing on the OSC set for June 29, 2007. Respondent was personally served with the OSC.
5. On June 29, 2007, Respondent appeared in court at the OSC Hearing. Respondent advised the court that Respondent would file a Substitution of Attorney in the unlawful detainer trial by July 2, 2007. The court continued the OSC until July 13, 2007, and ordered Respondent to return in court on July 13, 2007, as well as give notice of the OSC hearing.
6. Respondent did not file the Substitution of Attorney in the unlawful detainer matter by July 2, 2007.
7. On July 13, 2007, Respondent did not appear in court for the trial in the unlawful detainer matter or the OSC hearing. The court continued the trial in the unlawful detainer matter until August 9, 2007, so that Evans could hire counsel. The court also issued a bench warrant against Respondent for his failure to appear in court on July 13, 2007.
8. On July 16, 2007, Respondent appeared in court on the bench warrant. The court set hearing on the OSC for August 9, 2007, and ordered Respondent to return to court on August 9, 2007.
9. On July 27, 2007, Respondent filed a Substitution of Attorney naming Respondent as Evans attorney in the unlawful detainer action.
10. On August 9, 2007, Respondent filed a Declaration with the court regarding his failure to appear in court on July 13, 2007, in the unlawful detainer action.
11. On August 10, 2007, the court held a hearing on the OSC, at which Respondent made an appearance. The court continued the OSC hearing until September 7, 2007, and ordered Respondent to return to court on September 7, 2007.
12. On September 7, 2007, the court held a hearing on the OSC. Respondent did not appear, but Attorney Robert Moest ("Moest") appeared on Respondent's behalf. At Moest's request, the court continued the hearing on the OSC until September 25, 2007.
13. On September 25, 2007, the court held a hearing on the OSC. Respondent did not appear, but Attorney Robert Moest ("Moest") appeared on Respondent's behalf. At Moest's request, the court continued the hearing on the OSC until October 12, 2007, and ordered Respondent to submit evidence of his attendance in an alcohol recovery program, a 60-day chip, and a declaration from Evans to the court. Moest waived notice of the hearing on behalf of Respondent.

14. On October 12, 2007, the court held a hearing on the OSC. Respondent did not contact the court, did not appear at the OSC hearing, did not submit evidence of his attendance in an alcohol recovery program, a 60-day chip, or a declaration from Evans. The court continued the OSC hearing until October 26, 2007, and issued a bench warrant against Respondent.
15. On October 22, 2007, the court held a hearing on the OSC. Respondent did not appear for the hearing, but Attorney Moest appeared on Respondent's behalf. Attorney Moest filed Evans' declaration with the court and presented a 90-day chip to the court on Respondent's behalf. The court continued the OSC hearing until November 9, 2007. Moest waived notice of the hearing on Respondent's behalf.
16. On November 9, 2007, the court held a hearing on the OSC. Respondent did not appear for the hearing. Attorney Moest appeared on Respondent's behalf. Moest submitted documents to the court regarding Respondent's progress in an alcohol recovery program. The court discharged the OSC.

#### Conclusions of Law

17. By not providing legal representation for Evans at trial on June 8, 2007, and by abandoning Evans at trial without informing the court that he was leaving the court and would not be representing Evans, respondent intentionally or recklessly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct.
18. By abandoning Evans at trial without informing the court that he was leaving the court and would not be representing Evans, Respondent wilfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in violation of rule 3-700(A)(2) of the Rules of Professional Conduct.
19. By not appearing for the hearings on the OSC on July 13, 2007, and September 7, 2007, and by not submitting evidence of this attendance in an alcohol recovery program, a 60-day chip, and a declaration from Evans by October 12, 2007, Respondent wilfully disobeyed or violated orders of the court requiring him to do an act connected with or in the course of Respondent's profession which he ought in good faith to have done in violation of Business and Professions Code section 6103.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was September 20, 2010.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 20, 2010, the prosecution costs in this matter are \$5,681.43. Respondent further

acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

## **AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 2.2(a) provides that "Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another persons or of concealment of a material fact to a 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 2.6 provides, in pertinent part, that "Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending o 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:

- (a) Sections 6067 and 6068;
- (b) Sections 6103 through 6105;...."

In *Bradpiece v. State Bar* (1974) 10 Cal. 3d 742, the Respondent misappropriated \$11,250 from his clients \$15,000.00 settlement. The court imposed discipline consisting of a one year actual suspension, four years probation. At the hearing, Respondent acknowledged his guilt and offered no excuses for it. He had no prior record of discipline, financial and domestic difficulties, and made prompt restitution before the State Bar proceedings began.

In *Baker v. State Bar* (1989) 49 Cal. 3d 804, in ten matters, the Respondent misappropriated \$10,743.00 in one matter and a total of \$4,908.00 in the other matters. Respondent was also found culpable of issuing checks against insufficient funds, failure to perform, and improper withdrawal of employment. The court imposed discipline consisting of a three year stayed suspension, five years probation with conditions, including a one year actual suspension. In mitigation, the Respondent had no prior discipline. Respondent had a drug and alcohol problem but ceased practicing law and sought treatment when he recognized the extent of his addiction. Respondent also repaid the misappropriated \$10,743.00 prior to State Bar involvement, cooperated in State Bar proceedings, acted as a judge pro tem on a pro bono basis, and had evidence of continued sobriety.

In *In the Matter of Tindall* (1991) 1 Cal. State Bar Ct. Rptr. 652, the Respondent misappropriated over \$24,000.00 from a client's trust account in nineteen separate withdrawals over an eight month period of time. Respondent failed to complete work on the case, failed to communicate

with the client, and failed to cooperate with the client's subsequent counsel. The court recommended discipline consisting of a five year stayed suspension, five years probation with conditions, including a three year actual suspension and restitution. In mitigation, the Respondent had been in practice for less than seven years with no prior discipline and came from a poverty law and legal services background. Respondent did not make full restitution and made partial restitution only after the State Bar became involved.

## **AGGRAVATING CIRCUMSTANCES**

### **FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.**

Under standard 1.2(b)(ii), Respondent's current misconduct evidences multiple acts of wrongdoing as indicated above in Case Nos. 06-O-14264, 06-O-15418, and 07-O-13030.

Under standard 1.2(b)(iii), Respondent's misconduct was surrounded by or followed by a refusal or inability to account to the client or person who was the object of Respondent's misconduct involving trust funds as in Case No. 06-O-14264, Respondent's misconduct included issuing checks from his cta against insufficient funds, and misappropriation of \$6,300.00 from client Ross, and misappropriation of \$8,400 from client Hariputra. In Case No. 06-O-15418, Respondent misappropriated \$3,791.00 due to Rawlings from the Yang family settlement.

Under standard 1.2(b)(iv), Respondent's misconduct harmed significantly a client, the public or the administration of justice as in Case No. 06-O-14264 Respondent misappropriated \$6,300.00 from client Ross, and misappropriated \$8,400 from client Hariputra. In Case No. 06-O-15418, Respondent misappropriated \$3,791.00 due to Rawlings from the Yang family settlement. In Case No. 07-O-13030, Respondent violated a court order by not appearing at OSC hearing on July 13, 2007, and September 7, 2007, by not submitting evidence of his attendance in an alcohol recovery program, a 60-day chip, and a declaration from Evans by October 12, 2007.

## **MITIGATING CIRCUMSTANCES.**

In regard to Respondent's family problems at the time of the misconduct, in October 2005, Respondent separated from his wife. In June 2006, Respondent's wife commenced divorce proceedings. The divorce proceedings have continued through the present time.

## **ADDITIONAL MITIGATING CIRCUMSTANCES.**

Respondent has no prior record of discipline.

After State Bar disciplinary proceedings commenced, Respondent has made partial restitution to client Susantina Hariputra in the amount of \$1900.

At the time of the misconduct, Respondent was subject to an alcohol-related intervention and hospitalization at Brotman Medical Center on May 7, 2006. From May 15, 2006, through June 20, 2006, Respondent was an in-patient at the Betty Ford Center to problems with alcohol abuse. Respondent attended Alcoholics Anonymous ("AA") meetings from July 2007 through February 2008. Respondent acknowledges that he has a substance abuse problem.

## **STATE BAR ETHICS SCHOOL.**

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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.

## **OTHER CONDITIONS NEGOTIATED BY THE PARTIES**

### **SUBSTANCE ABUSE CONDITIONS**

#### **Abstinence:**

Respondent shall abstain from use of any alcoholic beverages, and shall not consume or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

#### **Reporting Abstinence:**

Respondent shall report his compliance with this condition (i.e. Abstinence) by statement under penalty of perjury in each written quarterly report to the Office of Probation required pursuant to this order.

#### **Submit to Examination:**

Within thirty (30) days of the effective date of the discipline in this matter, if Respondent has not already done so, Respondent shall submit to a medical examination by a doctor certified by the American Society of Addiction Medicine, to be mutually agreed upon by Respondent and the State Bar or as ordered by the Court ("Doctor"). The Doctor shall conduct an evaluation and issue a report to the Office of Probation and include/address the following:

1. Provide an evaluation, pursuant to DSM-IV-TR, to determine a diagnosis, if any, of Respondent's condition regarding alcohol;

The evaluation may include the performance of standardized tests in oral or written form; interviews with Respondent; review of records relating to his medical condition, criminal proceedings, criminal probation records, State Bar disciplinary records, alcohol treatment or recovery records; and other information provided by the State Bar and/or Respondent.

No physically invasive procedures may be performed without prior consent of Respondent or upon a court order. The Doctor will advise Respondent and/or the State Bar if any physically invasive procedure is required.

2. For any condition regarding alcohol which is diagnosed by the Doctor a determination should be made as to whether the Doctor recommends any treatment to address that condition, and the Doctor should state in specific terms the Doctors' recommendations for how Respondent should be tested, monitored, and/or treated.

#### **Compliance with Recommended Treatment:**

Respondent shall comply with all treatment conditions recommended by the Doctor, either as originally set forth or as may be modified thereafter.

Respondent shall report his compliance with these conditions by statement under penalty of perjury in each written quarterly report to the Office of Probation and he shall provide such satisfactory proof of his compliance as the Office of Probation may request.

#### **Random Blood/Urine Tests:**

Respondent must select a licensed 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.

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. 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.

#### **Consent for Release of Treatment and Recovery Information:**

Respondent shall provide a written consent to all alcohol or drug recovery or treatment providers, including testing facilities, who provide services as identified in these Substance Abuse Conditions to release information to the Office of Probation regarding his treatment, compliance, and status.

**Copy of this Stipulation to all Treatment Providers:**

Within thirty (30) days of the effective date of discipline in this matter, Respondent shall deliver a copy of this stipulation to all treatment providers who provide services to him described in these Substance Abuse Conditions.

**Reporting Consent and Delivery of Stipulation:**

Respondent shall report his compliance with the condition of providing consent to release treatment and recovery information and his delivering of this Stipulation to treatment providers, by statement under penalty of perjury in each written quarterly report to the Office of Probation required pursuant to this order and he shall provide to the Office of Probation satisfactory proof of his compliance if requested.

**Costs are Responsibility of Respondent:**

Respondent shall be responsible for the prompt and timely payment of all costs associated with these Substance Abuse Conditions, including, without limitation, the cost of examination(s), testing, treatment, or therapy, and any all other costs related to these Substance Abuse Conditions.

**Modification of Conditions:**

Modification of these conditions shall be pursuant to the Rules of Procedure of the State Bar of California, rule 550 et seq.



(Do not write above this line.)

In the Matter of <b>BRIAN D. McMAHON</b> Member #147662	Case number(s): 06-C-14264; 06-O-15418; 07-O-13030
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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.

Page 7: Financial Conditions: # a. [Restitution]: The checked second paragraph, creating a two-year deadline for restitution payments, conflicts with the time line in paragraph b. [Installment Restitution Payments], and is deleted.

Page 5: Additional conditions of Probation: Paragraph (6) [Probation monitor] is deleted as a condition of probation.

Page 17: State Bar Ethics School: The second paragraph ["Respondent admits..."] under this heading is deleted as redundant and confusing.

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.)

10/18/10  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Judge of the State Bar Court

**DONALD F. MILES**

**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 October 19, 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:

**BRIAN D. MCMAHON  
2530 WILSHIRE BLVD STE 300  
SANTA MONICA, CA 90403**

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

**MICHAEL J. GLASS**, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 19, 2010.



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Bernadette C.O. Molina  
Case Administrator  
State Bar Court