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State Bar Court of California  
Hearing Department  
Los Angeles  
ALTERNATIVE DISCIPLINE PROGRAM

~~CONFIDENTIAL~~

<p>Counsel For The State Bar</p> <p>MONIQUE T. MILLER DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, California 90015-2299 213-765-1486</p> <p>Bar # 212469</p>	<p>Case Number (s) 06-O-15042 08-O-14321</p> <p><b>FILED</b> APR 07 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>	<p>(for Court's use)</p> <p><b>LODGED</b> MAR 02 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>DAVID LEE CANDAUX 5737 Kanan Road, # 181 Agoura Hills, California 91301 818-632-6661</p>	<p>Submitted to: <b>Program Judge</b></p>	
<p>Bar # 65382</p>	<p><b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b></p>	
<p>In the Matter Of: DAVID LEE CANDAUX</p> <p>Bar # 65382</p> <p>A Member of the State Bar of California (Respondent)</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 December 18, 1975.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 10 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



(Do not write above this line.)

- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]    2 priors
  - (a)  State Bar Court case # of prior case BM4775
  - (b)  Date prior discipline effective September 7, 1984
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Failure to perform
  - (d)  Degree of prior discipline 2 years stayed suspension, 2 years [probation and Professional Responsibility Examination (PRE)]
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:  
  
Case No. 02-O-16124, effective September 17, 2003-Violation of 2-110(A)-Public Reprimand, 1 year probation with Ethics School and MPRE.
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

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



5. On November 21, 2005, Joselyn B. Alexander of JAMS Resolution Center ("JAMS") wrote the parties to schedule a preliminary conference call. Specifically, in her November 21, 2005 letter, Alexander asked the parties to contact her by November 28, 2005 to schedule the conference call. On November 21, 2005, Alexander sent the letter to Respondent by U.S. mail and by facsimile. Respondent received the November 21, 2005 letter.
6. On November 23, 2005, Respondent responded to Alexander's letter confirming that he was available from December 7, 2005 through December 9, 2005 for the conference call.
7. On December 8, 2005, Respondent appeared on behalf of Cota and the TK Theatre in the telephonic conference call in the arbitration proceedings. During the December 8, 2005 conference call, the parties scheduled the arbitration hearing from February 6, 2006 through February 10, 2006. During the December 8, 2005 conference call, the arbitrator directed both parties to exchange witness lists, exhibit binders and arbitration briefs by February 1, 2006. On December 19, 2005, the arbitrator's order regarding the initial status conference was served on Respondent by U.S. mail and by facsimile. Respondent received the order.
8. On December 15, 2005, Derek Scott ("Scott") from JAMS sent the parties confirmation of the arbitration hearing dates and notified the parties that the arbitration fees had to be paid no later than December 26, 2005 or JAMS may cancel the arbitration hearing. The December 15, 2005 letter was sent to Respondent by mail and by facsimile. Respondent received the December 15, 2005 letter but took no steps to ensure the fees were paid.
9. On January 6, 2006, Scott from JAMS wrote the parties in the arbitration proceedings advising them that JAMS had not received the fees for the arbitration. In the January 6, 2006 letter, Scott stated that all fees must be paid by 5:00 p.m. that day or the hearing was subject to cancellation. On January 6, 2006, Scott sent the January 6, 2006 letter with an enclosed account statement to Respondent and Cota. Respondent received the letter and the enclosed statement.
10. As of January 9, 2006, JAMS had not received arbitration fees from the parties in the arbitration matter. Therefore, on January 9, 2006, Scott from JAMS wrote the parties informing them that the arbitration hearing dates had been taken off calendar. On January 9, 2006, Scott sent the letter to both parties, including Respondent, by facsimile. Respondent received the January 9, 2006 letter from Scott.
11. On January 9, 2006, Cota spoke to Respondent about the unpaid arbitration fees. On January 9, 2006, Respondent told Cota that the arbitration had been taken off calendar and told Cota not to send the fees to JAMS.
12. After receiving the January 9, 2006 letter from JAMS, plaintiff Hartsfield paid the arbitration fees and requested a default prove up hearing. A copy of Hartsfield's letter requesting a default prove up hearing was also sent to Respondent.
13. In January 2006 and February 2006, Cota repeatedly telephoned Respondent, and left messages with Respondent's secretary requesting information about the status of the arbitration proceedings. On the few times when Respondent responded to Cota's calls, Respondent told Cota that Hartsfield had not paid his arbitration fees and therefore, Cota did not have to pay his arbitration fees.
14. On January 13, 2006, the arbitrator served the parties with an Order Scheduling

Default Arbitration Hearing. Pursuant to the order, the default hearing was scheduled for February 7, 2006. On January 13, 2006, Respondent was served with the order via facsimile and by certified U.S. mail. Respondent received the order but did not inform Cota that the default hearing had been scheduled. Nor did Respondent take steps to convert the default hearing to a regular arbitration proceeding.

15. On January 31, 2006, the default arbitration hearing was rescheduled to March 2, 2006. On January 31, 2006, Respondent was properly served with notice of the new hearing date by U.S. mail and by facsimile. Respondent received the notice, but once again, did not inform Cota about the hearing. Nor did Respondent take steps to convert the default hearing to a regular arbitration proceeding.

16. In February 2006, Cota met with Respondent, who told Cota that nothing was happening in the arbitration proceeding and that the arbitration would have to be rescheduled.

17. On March 2, 2006, JAMS held the default hearing in the arbitration proceedings. On March 2, 2006, Hartsfield appeared with his counsel - Robert Lane Morris ("Morris") and with witnesses and exhibits. Neither Respondent nor Cota appeared at the hearing. The arbitration hearing proceeded without Respondent and Cota.

18. On March 18, 2006, Cota wrote Respondent about his unsuccessful efforts to contact Respondent. In his March 18, 2006 letter, Cota noted that Respondent had not responded to Cota's voicemails and stated that it was important they discuss his case. According to Cota's letter, he assumed Hartsfield had been unable to pay the arbitration fees and asked Respondent about steps that could be taken to close the case. The March 18, 2006 letter was sent to Respondent via facsimile. Respondent received the letter but did not respond.

19. On April 17, 2006, the arbitrator issued his arbitration decision. In the decision, The arbitrator awarded the TomKat Theatre to Hartsfield and awarded \$7,047,975 in damages and attorney fees. In addition, the arbitrator enjoined Cota from entering the TomKat Theater.

20. On April 18, 2006, Scott from JAMS served a copy of the arbitration award on Respondent by facsimile and U.S. mail. On April 18, 2006, Respondent received a copy of the arbitration award but did not tell Cota about the award. Nor did Respondent take any action to set aside the arbitration award.

21. On May 1, 2006, Hartsfield's attorney, Morris, filed a Notice of Hearing on Petition to Confirm Contractual Arbitration Award with Los Angeles County Superior Court. The hearing on the petition to confirm the arbitration award was scheduled for May 11, 2006. On May 1, 2006, Respondent's office was served with a copy of the petition to confirm arbitration award. Respondent received the petition but did not file any opposition. Respondent did not inform Cota that the petition had been filed.

22. On May 11, 2006, the court held the hearing on the petition to confirm the arbitration award rendered on April 17, 2006. Respondent failed to appear at the hearing. On May 11, 2006, the court confirmed the arbitration award and entered judgment in favor of Hartsfield.

23. On Monday May 12, 2006, Hartsfield took over the TomKat Theatre, changed all the locks on the property and removed all the cash from the premises. At the time Hartsfield took these actions, Cota was not aware that the arbitration had been held or that a judgment had been entered against him and the TK Theatre. On May 12, 2006, Cota was given a copy of the judgment.

24. On May 15, 2006, Cota went to Respondent's office and showed Respondent a copy of the judgment.

25. On May 15, 2006, Cota employed attorney Denise Wright to have the arbitration award set aside.

26. On May 24, 2006, Wright filed a petition in the civil action to vacate the arbitration award. In support of the petition to vacate, Wright attached a declaration from Respondent dated May 19, 2006.

27. In his declaration, Respondent stated that he had no recollection of receiving any correspondence or documents from JAMS after January 9, 2006. Respondent also stated that he had no valid explanation of why he could not locate the documentation. Respondent also had no valid explanation as to why he told Cota that he did not have to pay the arbitration fees and no valid explanation of why he did not take action after the arbitration award was "apparently received" by his office. In his declaration, Respondent further stated that he had no explanation as to why he did not return Cota's "numerous telephone calls" in January and February of 2006.

28. On June 6, 2006, the court in the civil action denied the petition to vacate the arbitration award.

29. On July 19, 2006, Respondent prepared a second declaration in support of Cota's motions in the civil action. In his July 19, 2006 declaration, Respondent admitted that from December 2005 through April 2006, he failed to inform Cota of the arbitration hearing dates, failed to inform Cota about the petition to confirm the arbitration award and "affirmatively told him that nothing was happening in his case." In the declaration, Respondent said he suffered from medical problems from December 2005 to February 2006 and contended that he had problems with his office staff. Respondent also admitted that by early January 2006, he had stopped coming to his office regularly because of his medical problems.

30. On July 20, 2006, Wright filed a motion for new trial on behalf of Cota and the TK Theatre in the civil action. On July 26, 2006, Wright also filed a motion to vacate the judgment and arbitration award in the civil action.

31. On August 18, 2006, the court in the civil action denied the motion for new trial and denied the motion to vacate the judgment and arbitration award.

### CONCLUSIONS OF LAW

32. By failing to pay the arbitration fees or have Cota pay the arbitration fees; by failing to convert the default prove up hearing to a regular arbitration hearing; by failing to oppose the default prove up hearing; by failing to appear at the default hearing; by failing to take immediate steps to set aside and/or appeal the arbitration award; by failing to oppose the petition to confirm the arbitration award; by failing to appear at the hearing to confirm the arbitration award; by otherwise failing to monitor the arbitration proceedings and by failing to take any actions whatsoever to protect the rights of

Cota and the TK theatre, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

33. By failing to inform Cota that he needed to pay the JAMS arbitration fees; by failing to inform Cota that a default prove up hearing had been scheduled in the arbitration proceedings; by failing to inform Cota that an arbitration award had been issued in the arbitration proceedings and by failing to tell Cota that Hartsfield had filed a petition to confirm the arbitration award, Respondent failed to inform Cota of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

34. By failing to respond promptly to Cota's telephone calls and letter, Respondent failed to respond promptly to reasonable status inquiries of a client in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

#### **FACTS AND CONCLUSIONS OF LAW IN CASE NO. 08-O-14321**

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.

#### FACTS

35. At all times relevant herein, Respondent maintained a client trust checking account at Bank of the West designated account number XXX-XXX367 ("client trust account").

36. At all times relevant herein, Respondent was the only authorized signatory on the client trust account.

37. In 2008, Cary Ross ("Ross") was counsel for Respondent's landlord. In 2008, Ross filed an unlawful detainer action on behalf of the landlord and against Respondent after Respondent failed to pay his rent.

38. In September 2008, the balance in Respondent's client trust account was \$2,676.17.

39. In September 2008, Respondent issued client trust account check number 4227 in the amount of \$4,200 and made payable to "Cary Ross" to settle the unlawful detainer action.

40. On September 26, 2008, Bank of the West notified the State Bar of California and Respondent that check number 4227 had been returned due to insufficient funds in the client trust account.

41. On September 29, 2008, Respondent deposited \$1,600 in cash into his client trust account, raising the balance in the account to \$4,254.17.

42. On October 3, 2008, Respondent issued client trust account check number 4228 in the amount of \$4,200 and made payable to "Cary Ross" to settle the unlawful detainer action. On October 3, 2008, check number 4228 cleared Respondent's the client trust account.

43. On November 17, 2008, the State Bar opened an investigation, case no. 08-O-14321, pursuant to notification from Bank of the West that Respondent had issued a client trust account check against insufficient funds (the "insufficient funds matter").

44. On November 24 and December 22, 2008, a State Bar investigator wrote Respondent regarding the insufficient funds matter. The investigator's letters requested that Respondent respond in writing to a specific allegation of misconduct being investigated by the State Bar in the insufficient funds matter. Respondent received the letters but failed to provide a response.

#### CONCLUSIONS OF LAW

45. By maintaining personal funds in his client trust account and by disbursing fund from his client trust account to pay personal expenses, Respondent commingled his personal funds in a bank account labeled "Trust Account" or "Client's Funds Account" in wilful violation of rule 4-100(A) Rules of Professional Conduct.

46. By not providing a written response to the allegation in the insufficient funds matter or otherwise cooperating in the investigation of the insufficient funds matter, Respondent failed to cooperate in a disciplinary matter in willful violation of Business and Professions Code section 6068(i).

#### **RULE 133 NOTICE OF PENDING PROCEEDINGS**

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on July 21, 2009.

#### **POTENTIAL INCREASE IN DISCIPLINE**

Respondent understands that the matters in this addendum, being additional misconduct, may result in the Office of Chief Trial Counsel seeking – and/or the State Bar Court recommending – additional ADP conditions or increased discipline in the underlying cases. In addition, his length of participation in the court's Alternative Discipline Program may be extended.

(Do not write above this line.)

In the Matter of DAVID LEE CANDAUX, Bar No. 65382	Case number(s): 06-O-15042; 08-O-14321
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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 Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

8/12/09 \_\_\_\_\_ DAVID LEE CANDAUX  
 Date Respondent's Signature Print Name

\_\_\_\_\_ \_\_\_\_\_  
 Date Respondent's Counsel Signature Print Name  
 August 19, 2009 \_\_\_\_\_ MONIQUE T. MILLER  
 Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter Of <b>DAVID LEE CANDAUX, Bar No. 65382</b>	Case Number(s): <b>06-O-15042; 08-O-14321</b>
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

*10/16/08*

Date



Judge of the State Bar Court

**RICHARD A. PLATEL**

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 2, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW;  
AGREEMENT AND ORDER AMENDING CONTRACT AND WAIVER FOR  
PARTICIPATION IN THE STATE BAR COURT'S ALTERNATIVE DISCIPLINE  
PROGRAM;  
ORDER AMENDING CONFIDENTIAL STATEMENT OF ALTERNATIVE  
DISPOSITIONS AND ORDERS

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

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

DAVID LEE CANDAU  
23371 MULHOLLAND DR #176  
WOODLAND HILLS CA 91364

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

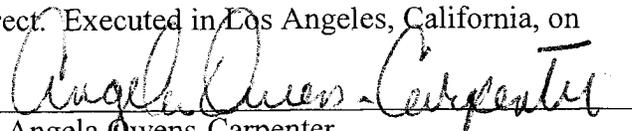
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 2, 2010.

  
Angela Owens-Carpenter  
Case Administrator  
State Bar Court