

**State Bar Court of California
Hearing Department
Los Angeles**

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<p>Counsel For The State Bar</p> <p>Melanie J. Lawrence 1149 South Hill Street Los Angeles, CA 90015 (213)765-1066</p> <p>Bar # 230102</p>	<p>Case Number (s)</p> <p>07-O-11420 07-O-13302 08-O-10081</p> <p>08-O-12918 DFM</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED</p> <p>JUL 22 2010 <i>WOC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>David J. Wayman 215 Cranston Crest Escondido, CA 92025</p>	<p>Submitted to: Settlement Judge</p>	
<p>Bar # 140758</p> <p>In the Matter Of: David J. Wayman</p> <p>Bar # 140758</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 June 7, 1989.
- (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 18 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."

(Do not write above this line.)

- (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: 3 billing cycles following the effective date of the Supreme Court order.
(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.
- (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

See attachment.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of 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 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 one 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.

- (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.

(Do not write above this line.)

- (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:**

In the Matter of
David J. Wayman

Case number(s):
07-O-11420 et.al.

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

- 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 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

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";

- 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.

12/23/05	\$49.99	X-Box Live
12/27/05	\$27.50	Harvey's Casino
1/13/06	\$62.89	Stir Fresh Enterprises
1/17/06	\$100.00	cash withdrawal
1/17/06	\$19.38	HP Shopping.com
1/26/06	\$46.94	Dr *XOFT Spy
3/07/06	\$101.50	cash withdrawal
3/07/06	\$202.00	cash withdrawal
3/08/06	\$200.00	cash withdrawal
3/09/06	\$101.50	cash withdrawal
3/09/06	\$19.95	FriendFinder
3/13/06	\$200.00	cash withdrawal
3/13/06	\$130.77	La Quinta
3/17/06	\$203.00	cash withdrawal
3/27/06	\$71.70	America Online Service
3/31/06	\$100.00	cash withdrawal
3/31/06	\$36.95	FriendFinder
3/31/06	\$8.00	ATM withdrawal fee
8/01/06	\$300.00	cash withdrawal
8/02/06	\$22.00	cash withdrawal
8/07/06	\$91.07	Banamex
8/07/06	\$0.91	foreign transaction fee
8/07/06	\$45.91	HSBC Rosarito
8/07/06	\$0.45	foreign transaction fee
8/7/06	\$26.25	McCheers
8/08/06	\$25.75	Cingular
8/09/06	\$25.75	Cingular
8/10/06	\$120.00	cash withdrawal
8/10/06	\$45.85	Banamex
8/10/06	\$0.45	foreign transaction fee
8/10/06	\$40.00	Virgin Mobile
8/11/06	\$100.00	cash withdrawal
8/14/06	\$300.00	cash withdrawal
8/14/06	\$300.00	cash withdrawal
8/14/06	\$86.25	REI
8/14/06	\$11.84	McClem's Bottle House
8/15/06	\$164.34	That's Italian Restaurant
8/17/06	\$51.49	Cingular
8/18/06	\$95.40	The Kern Lodge
8/18/06	\$65.26	Cheryl's Diner
8/18/06	\$95.16	El Rio Mexican & AmericanFood
8/21/06	\$471.85	Sprint PCS
8/21/06	\$200.00	cash withdrawal
8/21/06	\$461.95	Billmatrix
8/21/06	\$138.61	Banamex
8/21/06	\$1.38	foreign transaction fee
8/21/06	\$124.02	The Kern Lodge
8/22/06	\$40.00	cash withdrawal

8/23/06	\$40.00	cash withdrawal
8/24/06	\$20.00	cash withdrawal
8/25/06	\$140.00	cash withdrawal
8/25/06	\$174.14	Calle 4TA Tijuana
8/25/06	\$1.74	foreign transaction fee
8/25/06	\$27.47	Calle 4TA Tijuana
8/25/06	\$0.27	foreign transaction fee
8/25/06	\$1.00	Ifriends Internet
8/28/06	\$274.67	HBSC Rosarito
8/28/06	\$2.74	foreign transaction fee
8/28/06	\$273.90	HBSC Rosarito
8/28/06	\$2.73	foreign transaction fee
8/28/06	\$136.95	HBSC Rosarito
8/28/06	\$1.36	foreign transaction fee
8/28/06	\$20.00	cash withdrawal
8/28/06	\$10.95	AOL High Speed
8/28/06	\$37.85	Friendfinder
8/28/06	\$0.37	foreign transaction fee
8/28/06	\$8.95	Ifriends Elite
8/30/06	\$278.00	Western Towing
8/31/06	\$2.00	ATM withdrawal fee(domestic)
8/31/06	\$27.00	ATM withdrawal fee(international)
9/22/06	\$100.00	cash withdrawal
9/28/06	\$40.00	cash withdrawal
11/03/06	\$100.00	cash withdrawal
11/06/06	\$40.00	cash withdrawal
11/06/06	\$60.00	cash withdrawal
11/06/06	\$40.00	cash withdrawal
11/07/06	\$20.00	cash withdrawal
11/08/06	\$20.00	cash withdrawal
11/09/06	\$40.00	cash withdrawal
11/10/06	\$100.00	cash withdrawal
11/10/06	\$60.00	cash withdrawal
11/13/06	\$200.00	cash withdrawal
11/13/06	\$80.00	cash withdrawal
11/13/06	\$60.00	cash withdrawal
11/14/06	\$100.00	cash withdrawal
11/15/06	\$60.00	cash withdrawal
2/02/07	\$120.00	cash withdrawal
2/05/07	\$100.00	cash withdrawal
2/05/07	\$100.00	cash withdrawal
2/05/07	\$716.06	cash withdrawal
2/06/07	\$100.00	cash withdrawal
2/07/07	\$2,000.00	cash withdrawal
2/09/07	\$80.00	cash withdrawal
2/09/07	\$100.00	cash withdrawal
2/12/07	\$40.00	cash withdrawal

2/12/07	\$100.00	cash withdrawal
2/13/07	\$40.00	cash withdrawal
2/14/07	\$260.00	cash withdrawal
2/15/07	\$100.00	cash withdrawal
2/15/07	\$100.00	cash withdrawal
2/20/07	\$220.00	cash withdrawal
2/20/07	\$80.00	cash withdrawal
2/21/07	\$26.00	Cingular
2/21/07	\$153.02	DirectTV

4. On November 26, 2007, and again on March 18, 2008, an investigator from the State Bar of California sent correspondence to Respondent directing him to provide a response to the allegation that CTA check no. 1363 was issued against insufficient funds, and to provide documents therewith. Respondent received the letters but did not respond to any of them.

Conclusions of Law:

By not maintaining at least \$3,500 received on behalf of Eugene Rogers in his CTA, Respondent willfully failed to maintain the balance of funds received for the benefit of his client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in wilful violation of Rules of Professional Conduct, rule 4-100(A). By misappropriating \$1,016.66 that he was required to maintain in trust for Eugene Rogers, Respondent committed an act involving moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code section 6106. By using his CTA to pay his personal and business expenses, Respondent misused his client trust account, in willful violation of rule 4-100(A), Rules of Professional Conduct. By failing to provide a written response to the allegations or otherwise cooperate in the investigation of the matter, Respondent willfully failed to cooperate and participate in a disciplinary investigation in violation of Business and Professions Code section 6068(i).

FACTS:

07-O-13302

5. On March 24, 2005, Logan Ott employed Respondent to represent Ott in two personal injury cases resulting from automobile accidents: one which occurred on November 12, 2004, and the other which occurred on February 21, 2005. The February 2005 accident was with an uninsured driver, coverage for which was provided to Ott by his own insurer, American Automobile Association ("AAA").

6. Respondent negotiated a settlement with AAA of the February 2005 accident in the sum of \$8,594.68. On December 27, 2005, AAA issued a check in the amount of \$4,994.68 for medical payments payable to Respondent and Ott. On January 3, 2006, Respondent deposited the check into his CTA.

8. On November 21, 2006, AAA issued a check in the amount of \$3,600 payable to Respondent and Ott, in full payment of the settlement. On November 28, 2006, Respondent deposited the check into his CTA.
9. Respondent negotiated a settlement with Farmers Insurance of the November 2004 accident in the sum of \$11,000, and received that sum from Farmers which he deposited in his CTA on February 21, 2007.
10. On February 21, 2007, Respondent issued a check payable to Ott in the amount of \$2,500.
11. On June 6, 2007, Ott sent Respondent a letter informing Respondent that some of Ott's medical care providers had not yet been paid, and requesting that Respondent pay them from the settlement funds Respondent had received.
12. In September 2007, Ott and Respondent had a telephone conversation in which Ott demanded a personal meeting with Respondent at which Respondent would provide Ott an accounting and the undisbursed settlement funds. Respondent agreed to meet with Ott and to provide Ott an accounting and the undisbursed settlement funds. During the meeting that followed later that month:
 - a. Respondent provided Ott an accounting for the settlement of the November 2004 accident, but did not provide an accounting for the February 2005 accident;
 - b. Ott identified several errors in Respondent's accounting of the November 2004 accident settlement, and Respondent promised to provide a corrected accounting to Ott in a follow-up meeting to be held approximately two weeks thereafter;
 - c. Respondent stated that the settlement of the February 2005 accident was approximately \$2,000 and that Ott's portion thereof would be approximately \$1,000.
13. Respondent's representation that he had received only \$2,000 in settlement of the February 2005 accident was false, and Respondent either knew it to be false, or was grossly negligent in not knowing it was false.
14. Respondent never provided the corrected accounting of the November 2004 accident settlement to Ott as he promised in the September 2007 meeting.
15. On January 9, 2008, Ott and Respondent attended a mediation of Ott's demands. As a result of the mediation, Respondent agreed to pay \$3,655, less payment to AAA as full payment of a med pay lien. Payment in full was due to Ott and AAA on or before February 10, 2008. Respondent also agreed to pay Ott \$5,374.68 less payment to "RMG" for a lien. Payment was due to "RMG" by January 16, 2008, and to Ott on or before February 10, 2008.
16. By February 20, 2008, Respondent had paid out all of the \$5,374.68 to which he had agreed. But, he had not yet paid the \$3,655. He did not pay the \$3,655 as agreed because he either willfully, or with gross negligence, misappropriated the funds.
17. On March 27, 2008, Ott sent a letter to Respondent demanding the balance of the settlement funds Respondent had agreed to pay him, and an accounting. Respondent received the letter but did not respond to it. Between April 25, 2008 and August 8, 2008, Ott left over five voicemail

messages on Respondent's phone numbers, demanding his funds and an accounting. Respondent received all of the messages but did not respond to any of them.

18. Between April 2008 and June 2009, Respondent made multiple payments to Ott in final satisfaction of the \$3,655.

19. On January 9, 2008 and again on March 6, 2008, an investigator from the State Bar of California sent letters to Respondent directing him to provide a response to Ott's allegations, and to provide documents therewith. Respondent received both letters but did not respond to either of them.

Conclusions of Law:

By not paying Ott his share of the funds from the settlements in full until February 2008 and June 2009, respectively, despite having received them in November 2004 and November 2007, Respondent willfully failed to deliver promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive in willful violation of Rules of Professional Conduct, rule 4-100(B)(4). By misappropriating \$3,655 of Ott's funds Respondent willfully committed an act involving moral turpitude, dishonesty, or corruption, in violation of Business and Professions Code section 6106. By misrepresenting to Ott at their September 2007 meeting that the amount Respondent had received in settlement of the February 2005 accident was approximately \$2,000, when he either knew, or was grossly negligent in not knowing, that that statement was false, Respondent willfully committed an act involving moral turpitude, dishonesty, or corruption in violation of Business and Professions Code section 6106. By not responding to Ott's March 27, 2008 letter or any of his calls between April and August of 2008, Respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of Business and Professions Code section 6068(m). By responding to Ott's demand in September 2007 for an accounting by providing only an inaccurate accounting for the November 2004 accident, which Respondent failed to correct as he promised Ott he would, and by not providing at any time an accounting for the February 2005 accident, despite Ott's demands that he do so, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(3). By failing to provide a written response to the allegations or otherwise cooperate in the investigation of the matter, Respondent willfully failed to cooperate and participate in a disciplinary investigation in violation of Business and Professions Code section 6068(i).

FACTS:

08-O-10081

20. In November, 2005, Guadalupe Munoz employed Respondent to represent her in a medical malpractice case against Paradise Valley Hospital and Dr. Harry Boffman, Jr. Munoz had contracted a "MRSA" infection after surgery performed by Dr. Boffman at Paradise Valley Hospital

21. Respondent filed a civil complaint for medical malpractice in San Diego County Superior Court on April 14, 2006. The case was entitled Guadalupe Soledad Munoz v. Paradise Valley Hospital, et al. Case No. GIC864389 ("Medical Malpractice Case"). After filing the Medical Malpractice Case, Respondent never designated an expert witness, did not take the deposition of any party or witness, and propounded only form interrogatories on her behalf.

22. On August 23, 2006, Munoz employed Respondent to also represent her in a personal injury matter arising from an automobile accident which had occurred on July 17, 2006 ("Auto Accident Case").

23. From October 2006 through December 2006, Munoz called Respondent's office repeatedly, and left messages requesting the status of her Medical Malpractice Case. Respondent received the messages but did not respond.

24. In February 2007, the defendants in the medical malpractice case filed a Motion for Summary Judgment on the grounds that there were no triable issues of material fact, that the defendants had met the standard of care, and the defendant's treatment of Munoz did not cause her claimed injuries or damages.

25. On March 9, 2007, Munoz sent Respondent a letter, which he received, requesting the status of both the Medical Malpractice Case and the Auto Accident Case. Respondent did not respond.

26. Respondent opposed the Motion for Summary Judgment. On May 24, 2007, the Court granted the Motion for Summary Judgment.

27. On May 25, 2007, the Court held a motion hearing at which Respondent did not appear. The Court confirmed the tentative ruling and dismissed the case. Respondent became aware of the Court's ruling on or around May 25, 2007, but he did not advise Munoz that the case had been dismissed. Respondent took no further steps thereafter to preserve Munoz's rights to appeal the ruling granting the summary judgment motion.

28. Between May 2007 and June 2007, Munoz called and left messages for Respondent requesting the status of her Medical Malpractice Case and requesting that he forward her file. Respondent received the messages but did not respond to them. He did not release her file.

29. Respondent never filed a complaint or took any other action on Munoz's behalf in the Auto Accident Case, nor did he withdraw from representation, substitute out of representation, or advise Munoz of the Statute of Limitations.

Conclusions of Law:

By not propounding any discovery on Munoz's behalf other than form interrogatories, not designating an expert, not taking the deposition of any party or witness, and not conducting sufficient discovery so as to present evidence of triable issues of fact in opposition to the defendants' summary judgment motion in the Medical Malpractice Case, by not taking any steps to preserve Munoz's rights to appeal the ruling on the summary judgment motion in that case, and by not taking any steps to advance the Auto Accident Case or advise Munoz of the Statute of Limitations in that case, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in a matter for which he was employed in willful violation of Rules of Professional Conduct, rule 3-110(A). By not responding to Munoz's numerous attempts to contact him, Respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of Business and Professions Code section 6068(m). By not informing Munoz that the defendants had prevailed on their motion for summary judgment and that her case had been dismissed, and by not informing her of the Statute of Limitations in her Automobile Accident Case, Respondent failed to keep his client reasonably informed of significant developments in a matter or matters in which Respondent had agreed to provide legal services in willful

violation of Business and Professions Code section 6068(m). By not making Munoz file in her Medical Malpractice Case available to her despite her requests that he do so, Respondent willfully failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

MITIGATING CIRCUMSTANCES.

While the misconduct in these matters is serious, Respondent has been in practice for 21 years with no prior record of discipline. (Std. 1.2(e)(i).)

AGGRAVATING FACTORS.

The current misconduct evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.6(a) states that where two or more acts of professional misconduct are charged and different sanctions are prescribed by the standards for the acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

Standard 2.2(a) requires disbarment for wilful misappropriation of entrusted funds. If the amount of the funds is insignificantly small or if the most compelling circumstances clearly predominate, disbarment is not required but the discipline shall not be less than a one-year actual suspension.

Standard 2.2(b) applies to violations of Rule 4-100, not including wilful misappropriation. It requires at least a three month actual suspension irrespective of mitigating circumstances.

Standard 2.3 states that discipline for an act of moral turpitude 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 2.4(b) requires reproof or suspension for willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or for willfully failing to communicate with a client.

Standard 2.6 applies to violations of B&PC § 6068. It requires disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard for the purposes of imposing discipline.

Standard 2.10 applies to violations of any rule or B&PC section not specified under any other standard. It requires reproof or suspension according to the gravity of the offense or harm to the victim, and with due regard for the purposes of imposing discipline.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
08-O-10081	14	3-700(A)(2)
08-O-12918 ²	16-23	3-700(A)(2), 3-510, 6068(m), 4-100(B)(1), 4-100(B)(3) 4-100(B)(4), 4-100(B)(4), 6068(i)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 6, 2010, the prosecution costs in this matter are \$7,229.00. 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.

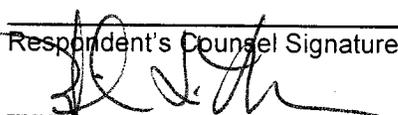
² On June 16, 2010, the State Bar filed a Motion to Dismiss this matter and each of these counts. The Motion has not yet been ruled upon by the Assigned Judge.

(Do not write above this line.)

In the Matter of David J. Wayman	Case number(s): 07-O-11420 et.al.
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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.

<u>7/6/10</u> Date	 Respondent's Signature	<u>DAVID WAYMAN</u> Print Name
<u>7/6/10</u> Date	 Deputy Trial Counsel's Signature	<u>Melanic J. Lawrence</u> Print Name

(Do not write above this line.)

In the Matter Of
DAVID J. WAYMAN

Case Number(s):
07-O-11420; 07-O-13302; 08-O-10081; 08-O-12918

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.

Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5. (Rules Proc. Of State Bar, rule 291.)

Case No. 08-O-12918 is to be added to the caption of this stipulation and order.

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

7/20/10


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 Los Angeles, on July 22, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

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

DAVID J WAYMAN
215 CRANSTON CREST
ESCONDIDO CA 92025

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:

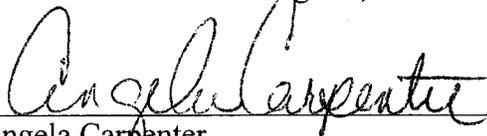
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

MELANIE LAWRENCE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 22, 2010.



Angela Carpenter
Case Administrator
State Bar Court