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<p align="center">State Bar Court of California Hearing Department Los Angeles DISBARMENT</p>			<p>kwiktag® 018 038 730</p> 
<p>Counsel For The State Bar</p> <p>Eli D. Morgenstern, DTC Office of the Chief Trial Counsel State Bar Of California 1149 South Hill Street Los Angeles, CA 90015-2299 Tel: (213) 765-1334</p> <p>Bar # 190560</p>	<p>Case Number(s): 07-O-12446</p>	<p>For Court use only</p> <p align="center">PUBLIC MATTER</p> <p align="center">FILED</p> <p align="center">MAR 10 2011</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>	
<p>In Pro Per Respondent</p> <p>Vicki Terry 3910 N. Garden Avenue Roswell, New Mexico 88201</p> <p>Bar # 118903</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>		
<p>In the Matter of: VICKI TERRY</p> <p>Bar # 118903</p> <p>A Member of the State Bar of California (Respondent)</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 July 1, 1985.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (10) pages, not including the order.

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- (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."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☒ Costs to be awarded to the State Bar.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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**
 - (a) ☒ State Bar Court case # of prior case 07-J-11263
 - (b) ☒ Date prior discipline effective January 23, 2008
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business & Professions Code Sect 6103
 - (d) ☒ Degree of prior discipline Suspension from the practice of law for six months, that execution of suspension be stayed, and that she be placed on probation for one year.
 - (e) ☐ If respondent has two or more incidents of prior discipline, use space provided below:
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Page 8 for further discussion re: Harm.

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- (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. See Page 8 for further discussion re Candor/Cooperation.
- (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. See Page 9 for further discussion re: Remorse.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☒ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and respondent no longer suffers from such difficulties or disabilities. See Page 8 for further discussion re: Emotional Difficulties.
- (9) ☒ **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct. See Page 8 for further discussion re: Severe Financial Stress.
- (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 Page 8 for further discussion re: Family Problems.

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- (11) ☒ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. See Page 9 for further discussion re: Good Character.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.
- (2) ☐ **Restitution:** Respondent must make restitution to in the amount of \$ plus 10 percent interest per year from . If the Client Security Fund has reimbursed for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Vicki Terry
CASE NUMBER: 07-O-12446

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violating the specified statute.

Facts

1. At all times relevant to the stipulated facts herein, Respondent was a member of the California and Nevada State Bars.

2. At all times relevant to the stipulated facts herein, Respondent represented Rosauro Montoya ("Rosa"), the petitioner in a marital dissolution matter in the state of Nevada titled, *Rosauro Montoya v. Jose Montoya*, Eighth District Family Court Case No. 04-D-317345 (the "marital dissolution"). In connection with her representation of Rosa, Respondent recorded a Lis Pendens to protect the proceeds from the sale of the marital residence.

3. On July 8, 2004, after the Montoyas' marital residence was sold, the court in the marital dissolution ordered that the proceeds of the sale of the home be placed in Respondent's client trust account, pending division of the proceeds by the court.

4. On August 9, 2004, Respondent deposited \$31,626.67 from the title company into her client trust account at Bank of America, account no. xxxx xxxx 0942 ("CTA").¹

5. On December 8, 2004, the trial in the marital dissolution was held. Rosa's divorce was granted. The court held that Rosa was entitled to her half share of the proceeds of the sale of the marital residence, which was \$15,813. The court also held that Rosa was entitled to Jose Montoya's ("Jose") half-share of the sale proceeds (\$15,813), after deducting Jose's attorney fees in the sum of \$1,500, and Rosa's attorney fees in the sum of \$4,500. Thus, by in or December 2004, Respondent was required to maintain ~~\$25,426~~ (\$15,813 + \$9,813) in the CTA on behalf of Rosa.

\$25,626

6. By April 7, 2005, Respondent had disbursed \$9,536.07 to, or on behalf of, Rosa. Thus, by April 7, 2005, Respondent was required to maintain \$16,089.93 (\$25,626-\$9,536.07) in the CTA on behalf of Rosa. On April 7, 2005, the balance in the CTA was \$901.90. Respondent admits to misappropriating \$15,188.03 (\$16,089.93-\$901.90) of Rosa's funds.

7. In or about 2005, Rosa submitted an application for reimbursement with the State Bar of Nevada Clients' Security Fund ("Nevada CSF"). Respondent was not provided notice of Rosa's application, and thus Respondent did not participate in the Nevada CSF investigation. The Nevada CSF Committee only acknowledged that Rosa received \$5,000 from Respondent. The Nevada CSF

¹ The complete account number has been omitted due to privacy concerns.

Committee approved Rosa's claim in the amount of \$25,136.57, which exceeded the sum misappropriated by Respondent. Because Respondent did not receive notice of Rosa's application, Respondent was unable to assist the Nevada CSF with their investigation. Ultimately, the Nevada CSF paid Rosa a total of \$15,442.40.

8. In May 2007, Respondent informed the Office of the Chief Trial Counsel of the State Bar of California ("OCTC") in writing that the Nevada CSF had reimbursed a former client (Rosa) over \$15,000. Thereafter, Respondent responded promptly to all of OCTC's inquiries and willingly provided any and all documentation requested with respect to the investigation of the instant matter.

9. On April 10, 2008, in a matter titled, *In Re: Reinstatement of Vicki Carlton*, No. 50371, the Nevada Supreme Court denied Respondent's petition to be relieved from actual suspension. At the hearing, the Nevada State Bar introduced evidence that Respondent had misappropriated Rosa's funds. However, the Nevada State Bar never filed disciplinary charges against Respondent for having misappropriated Rosa's funds. The four-year statute of limitations within which a disciplinary proceedings in the State of Nevada must commence has lapsed.

10. In June 2009, Respondent made a payment to Rosa, through the Nevada State Bar, in the sum of \$901.90.

11. On November 12, 2009, Respondent tendered her resignation with the State Bar of California, and has remained on involuntarily inactive status since that time. On December 21, 2010, the Supreme Court declined to accept Respondent's resignation.

12. To date, Respondent had made restitution to the Nevada CSF in the amount of \$3,000.

Conclusions of Law

By misappropriating Rosa's funds, Respondent willfully violated Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7) was February 11, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that OCTC has informed her that as of February 11, 2011, the prosecution costs in this matter are \$2,082.09. 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.

AGGRAVATING CIRCUMSTANCES.

1. Prior Record of Discipline

A prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has been a member of the State Bar of California since July 1, 1985, and has a prior record of discipline.

On January 23, 2008, the California Supreme Court ordered (S158719) that Respondent be suspended from the practice of law for six months, that execution of the suspension be stayed, and that she be placed on probation for one year. The discipline resulted from Respondent's stipulation to the following reciprocal jurisdiction matter arising from the state of Nevada:

In Case No. 07-J-11263, Respondent stipulated to failing to pay sanctions ordered by the Nevada Supreme Court in violation of Business and Professions Code section 6103. On February 22, 2009, Respondent successfully completed probation as ordered by the Supreme Court in Order S158719 (State Bar Case No. 07-J-11263).

2. Harm

Respondent's misuse of Rosa's funds caused harm to Rosa. (Std. 1.2(b)(iv).)

MITIGATING CIRCUMSTANCES.

1. Candor and Cooperation

Respondent's stipulation to the facts, her culpability, and her disbarment is a mitigating circumstance. (Standard 1.2(e)(v). See also, *In the Matter of Spaitth* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521.)

Further, as explained in the Statement of Facts, Respondent notified OCTC that she misappropriated Rosa's funds, and fully cooperated with OCTC's investigation. Thereafter, Respondent tendered her resignation with charges pending with the State Bar Court. After the Supreme Court declined to accept the resignation, Respondent agreed to stipulate to her disbarment.

2. Emotional Difficulties

The statement below was included in the stipulation which served to resolve Case Number 07-J-11263. It is included herein because it is also relevant to these proceedings.

"In 1984, Respondent graduated from law school and became a member of the Bar in California and Nevada in 1985. Respondent practiced law primarily in Nevada until the middle of 1987 when she married another attorney and became a full time mother to their two children.

During the next ten years, Respondent practiced law part time, mostly assisting her husband in his law practice. In 1996, Respondent's husband became involved with the family's nanny and filed for a divorce in December 1996. The Decree of Divorce was filed on June 17, 1997. The divorced marked the beginning of approximately eight years of extremely adversarial, post-divorce litigation, primarily over child custody. In the aftermath of the divorce, Respondent received very little of the community property and only about two years of spousal support which was consumed primarily by the costs of litigation. Respondent was left financially destitute following the divorce."

The emotional difficulties Respondent experienced as a result of her family problems are a mitigating circumstance. (Std. 1.2(e)(iv).)

Respondent acknowledges that these circumstances do not excuse the misconduct described herein; but the circumstances are offered merely as an explanation for her misconduct.

3. Good Character

Since 2005 through the present, Respondent has held positions within her church (deaconess, chorister, assistant on religious liberty committee) which demonstrates her good character and commitment to the community. (Std 1.2(e)(vi).)

4. Remorse

By notifying OCTC that she had misappropriated her client's funds, by fully cooperating with OCTC's investigation, and by making partial restitution to the Nevada CSF, with the stated intent to make full restitution as soon as she can, Respondent has taken objective steps to demonstrate her remorse and acknowledge her wrongdoing. (Std. 1.2(e)(vii).)

Throughout these proceedings, Respondent has admitted to the misconduct, and never minimized the harm it caused Rosa and the legal profession. Respondent has also displayed genuine remorse for her misconduct.

OTHER FACTORS IN CONSIDERATION.

Respondent practiced law exclusively in Nevada; she never maintained a law office in California.

In February 2009, Respondent moved to New Mexico to reside with her parents in order to minimize her expenses so that she could make restitution to the Nevada CSF. As of the date of this stipulation, Respondent is pursuing becoming an insurance agent, but must fulfill the requisite training and pass the New Mexico insurance exam.

AUTHORITIES SUPPORTING DISCIPLINE.

1. Standards

Standard 2.2(a) of the Standards for Attorney Sanctions for Professional Misconduct ("Standards") applies in this matter and provides that culpability of a member of wilful misappropriation of entrusted funds shall result in disbarment. Only if the amount of funds misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed.

Here, the amount of funds that Respondent misappropriated is not insignificant. The contrary is true. In addition, Respondent has a prior record of discipline. Finally, the mitigating circumstances described above are not sufficiently compelling to warrant a deviation from Standard 2.2(a).

2. Case Law

The Supreme Court has repeatedly held that disbarment is the usual discipline for the wilful misappropriation of client funds. (*See, Grim v. State Bar* (1991) 53 Cal.3d 21; *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221; and *Chang v. State Bar* (1989) 49 Cal.3d 114, 128)

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In the Matter of: VICKI TERRY	Case number(s): 07-O-12446
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SIGNATURE OF THE PARTIES

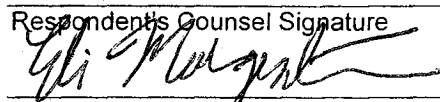
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

2/25/11
Date


Respondent's Signature

VICKI TERRY
Print Name

3/1/11
Date


Respondent's Counsel Signature
Deputy Trial Counsel's Signature

Print Name
ELI D. MORGENSTERN
Print Name

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In the Matter of: VICKI TERRY	Case Number(s): 07-O-12446
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DISBARMENT ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), 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.)**

Respondent Terry is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

3/9/11
Date


Judge of the State Bar Court

DONALD F. MILES

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 10, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

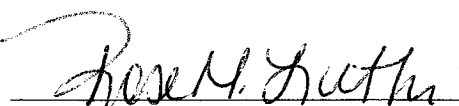
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

VICKI C. TERRY
3910 N GARDEN AVE
ROSWELL, NM 88201

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

ELI MORGENSTERN, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 10, 2011.



Rose Luthi
Case Administrator
State Bar Court