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<b>Counsel For The State Bar</b>  <b>Diane J. Meyers</b> 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1000	<b>Case Number (s)</b> 07-O-12819 07-O-15044 08-O-12545	(for Court's use)
<b>Bar # 146643</b>	<b>PUBLIC MATTER</b>	<b>FILED</b> <b>AUG 27 2010</b> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<b>In Pro Per Respondent</b>  <b>Todd J. Hilts</b> 2214 2nd Ave. San Diego, CA 92101 (619) 531-7900		
<b>Bar # 190711</b>	<b>Submitted to: Settlement Judge</b>	
<b>In the Matter Of:</b> <b>Todd J. Hilts</b>	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
<b>Bar # 190711</b>	<b>ACTUAL SUSPENSION</b>	
<b>A Member of the State Bar of California</b> (Respondent)	<input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**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 4, 1997**.
- (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 **15** 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."

- (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: **2011 and 2012.**  
(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. **Respondent engaged in the following multiple acts of misconduct in three client matters: Respondent misappropriated funds entrusted to him and commingled personal funds with trust funds in one client matter; represented conflicting interests without providing the proper written disclosures in a second client matter; and failed to maintain**

advanced costs in his trust account and failed to account for fees in a third client matter.  
Respondent also failed to cooperate during the State Bar's investigation of his misconduct in two of the matters.

- (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

Respondent has no prior record of discipline since his admission to the State Bar in December 1997. However, Respondent's first misconduct occurred when he commingled funds in his trust account in early 2005 in connection with the Buchanan matter, which occurred a little over seven years after he was admitted to practice which is insufficient for mitigation. (Kelly v. State Bar (1988) 45 Cal.3d 649, 658.) On the other hand, Respondent's primary area of practice since his admission to the State Bar has been in the areas of criminal and immigration law. Respondent decided to expand his practice to other areas to support his children born in 2004 and 2006. Respondent's limited professional experience dealing with personal injury settlements contributed to his misconduct in the Buchanan matter. (Crawford v. State Bar (1960) 54 Cal.2d 659, 669.) Considerable time has passed since Respondent's misconduct with no further misconduct by Respondent. Respondent provided character references who were aware of Respondent's misconduct and who believe that his misconduct was out of character. The references confirmed that Respondent has been a mentor, gives high priority to his family, is a caring father and son, works hard to protect his client's interests, and expressed remorse and recognition of wrongdoing. During the time of Respondent's misconduct, his father suffered a massive stroke in September 2007 while traveling in Minnesota. Respondent had to take time away from work to assist his father. Respondent's misconduct did not significantly harm his clients. Respondent also has entered into stipulations of fact, thereby saving resources of the State Bar, and thereby further demonstrating his recognition of wrongdoing and remorse for his misconduct. (See In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788, 807.) And while restitution paid under the force or threat of disciplinary proceedings is not a mitigating factor, Respondent made restitution to NAC in the amount of \$9,876.84 on or about July 14, 2010. (Hitchcock v. State Bar (1989) 48 Cal.3d 690, 709.) In July 2010, Respondent also provided Phillips with a complete accounting of his fees. He has informed Phillips of his willingness to participate in fee arbitration. He also provided another \$350 check to Phillips, who had not cashed the \$350 check that Respondent provided to him in June 2008.

### D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **two 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 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 951-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (2) ☒ **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, 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 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, 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:**

#### G. SUPPORTING AUTHORITY:

The recommended discipline falls within the range of discipline of reproof to disbarment under the applicable Standards for Attorney Sanctions for Professional Misconduct, standards 2.2, 2.3, 2.6 and 2.10. However, the standards, while entitled to great weight, do not mandate a specific discipline. The court is "not bound to follow the standards in talismanic fashion. . .," but the Supreme Court is. . .permitted to temper the letter of the law with considerations peculiar to the offense and the offender." [Citations.] ". . .[A]lthough the standards were established as guidelines, ultimately, the proper recommendation of discipline rest[s] on a balanced consideration of the unique factors in each case. [Citations.] " (In the Matter of VanSickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.)

In *Hipolito v. State Bar* (1989) 48 Cal.3d 621, an attorney had engaged in a single act of misappropriation of \$2,000 from a client. He also abandoned another client. His misconduct significantly harmed two clients. At the time of the misconduct, the attorney encountered severe financial difficulties, filed for bankruptcy, was involved in a bitter and protracted dissolution, and was hospitalized for a stress-related condition. He was candid and cooperative with the victims of the misconduct and the State Bar. He made an extraordinary demonstration of good character, including a history of community service and pro bono work. He also hired a management company to avoid the problems resulting in his misconduct. The Court imposed a three-year stayed suspension and probation and only the minimum actual suspension of one year called for by standard 2.2(a), despite the fact that the amount misappropriated was not "insignificantly small." The Court noted, "This conclusion is consistent with our prior cases, in which 'only the most serious instances of repeated misconduct and multiple instances of misappropriation have warranted actual suspension, must less disbarment. [Citations.] A year of actual suspension, if not less, has been more commonly the discipline imposed in our published decisions involving but a single instance of misappropriation.'" (Id. at p. 628.)

In *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, an attorney misappropriated approximately \$4,700 in trust funds subject to a medical lien. The attorney did not promptly pay the doctor on demand, waiting about six months to send a check to the doctor. The check to the doctor bounced twice. The attorney did not pay the doctor in full until almost a year and a half later, after the doctor hired legal counsel and contacted the State Bar. The attorney had not deposited the related settlement funds into his trust account, but deposited and commingled the funds in his personal account. The attorney had no prior record of discipline in eight years of practice and produced evidence of pro bono activities, neither of which was deemed a strong mitigating factor. The Review Department recommended a one-year actual suspension, a three-year stayed suspension and a three-year probation.

In *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, the attorney was found culpable of misappropriation through gross neglect, withholding an illegal fee, failing to perform services competently, failing to return unearned fees and failing to render an appropriate accounting in four client matters. The Review Department recommended a two-year stayed suspension, a two-year probation and a one-year actual suspension and until he paid restitution of \$8,000 to one client.

In *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, the Review Department recommended a one-year actual suspension, and until restitution was paid, based on numerous acts of misconduct which included not only misappropriation of client funds in two matters, but also improper business transactions with two clients, failing to return client funds in four matters, and issuing insufficiently funded checks to clients in four matters due to his gross negligence. Various aggravating and mitigating factors were found. Among the aggravating factors present was his prior record of discipline.

Balancing the aggravating and mitigating factors present here, a one-year actual suspension is appropriate.

Attachment language begins here (if any):

Respondent admits that the following facts are true and that he is culpable of the following violations:

**Case No. 07-O-12819**

**I. A. FACTS:**

1. Respondent represented Brigitte Buchanan ("Buchanan") in a personal injury case filed in the San Diego County Superior Court on March 24, 2004 and entitled *Brigitte Buchanan v. Archstone-Smith Communities, Inc.*, case number GIC827519 (the "action")

2. On November 24, 2004, Buchanan obtained a \$5,000 loan from New Amsterdam Capital Partners, LLC dba Law Max Legal Partners ("NAC"). As consideration for the \$5,000, Buchanan granted NAC a lien against any recovery she obtained in the action in the amount of \$5,000, plus \$1,500 as fees, and plus 3.95% interest on the aggregate sum of \$6,500, compounded monthly from November 24, 2004 until NAC was paid in full (the "lien").

3. On December 1, 2004, Respondent signed an acknowledgement of the lien in which he agreed to act as NAC's fiduciary regarding any recovery that Buchanan obtained in the action. In the acknowledgement, Respondent agreed not to distribute any recovery obtained in the action to Buchanan prior to satisfying the lien in full. Respondent did not notify the defendant, Archstone-Smith, Inc. ("Archstone"), or its attorney of the lien.

4. On or about January 18, 2005, Respondent settled the action for \$135,000.

5. On February 10, 2005, Respondent deposited a \$15,000 draft related to the \$135,000 settlement into his client trust account at Union Bank, account number xxxxxx3916 (the "CTA"). Also on February 10, 2005, check number 6466 for \$95 to Carl Beels on behalf of Buchanan and check number 6479 to Buchanan for \$6,605 were paid from the CTA.

6. Prior to the \$15,000 deposit on February 10, 2005, check number 6463 from the CTA to Villas of Washington on behalf of Buchanan for \$895 was paid on February 3, 2005; and check number 6473 from the CTA to Buchanan for \$1,500 was paid to Buchanan. At the time check numbers 6463 and 6473 were paid, no funds belonging to Buchanan were on deposit in the CTA.

7. Respondent paid check numbers 6463 and 6473 with personal funds that he maintained in the CTA.

8. On March 9, 2005, Respondent deposited a \$120,000 draft related to the \$135,000 settlement into the CTA.

9. Between April 5 and October 26, 2005, the following checks totaling \$27,736.15 were paid from the CTA on behalf of Buchanan, as follows:

<u>Check</u>	<u>Date Paid</u>	<u>Payee</u>	<u>Amount</u>
6512	04-05-05	Knox Services	\$ 1,535.60
6518	04-06-05	Brigitte Buchanan	\$ 10,000.00
6522	04-14-05	La Jolla Orthopedic Surgery	\$ 350.00
6528	04-14-05	Mission Healthcare	\$ 922.25
6525	04-15-05	Baker Law Group	\$ 175.00
6526	05-03-05	Friedburg & Bunge	\$ 4,000.00
6535	05-31-05	Brigitte Buchanan	\$ 2,000.00
6548	07-21-05	Brigitte Buchanan	\$ 5,000.00
6563	10-03-05	Brigitte Buchanan	\$ 2,000.00
6577	10-26-05	Martin & Associates	\$ 1,753.30



10. On or about October 25, 2005, NAC notified Archstone of its lien against the action and demanded payment of the lien. As of October 25, 2005, the lien amount was \$9,876.84 and interest was accruing on the amount at the rate of 3.95% per month.

11. On or about December 14, 2005, Archstone's attorney, Carey Cooper ("Cooper"), sent a letter to Respondent regarding the notice of the lien received from NAC. In the letter, Cooper informed Respondent that Archstone was not provided timely notice of the lien and was not assuming responsibility for payment of the lien. Respondent did not pay or otherwise satisfy the lien.

12. On December 21, 2005 and January 11, 2006, the following checks totaling \$7,400 were paid from the CTA on behalf of Buchanan, as follows:

<u>Check</u>	<u>Date Paid</u>	<u>Payee</u>	<u>Amount</u>
6606	12-21-05	Alfund Azi	\$ 6,400.00
6238	01-11-06	Brigitte Buchanan	\$ 1,000.00

13. On February 28, 2006, and without paying the lien, the balance in the CTA fell to \$8,683.69, below the minimum of \$9,876.84 that should have remained in the CTA for NAC and Buchanan.

14. On March 21, 2006, check number 6245 from the CTA to Emergency Services Medical for \$315.57 was paid on behalf of Buchanan.

15. On April 26, 2006, and without paying the lien, the balance in the CTA fell to \$2,114.21, below the minimum of \$9,876.84 that should have remained in the CTA for NAC and Buchanan.

16. On May 26, 2006, check number 6247 from the CTA to Buchanan for \$600 was paid.

17. On or about October 4, 2006, Respondent closed the CTA. At the time of closure, the balance in the CTA was \$184,410.51. Also, on October 4, 2006, Respondent opened a client trust account at Union Bank, account number xxxxxx4191 (the "second CTA") with the \$184,410.51.

18. Between February 20 and November 23, 2007, and without paying the lien, the balance in the second CTA repeatedly fell below the minimum of \$9,876.84 that should have remained in the CTA for NAC and Buchanan, including but not limited to \$1,728.64 on May 18, 2007, to \$1,528.15 on July 20, 2007, and to \$1,028.15 on July 27, 2007.

19. Respondent owed a fiduciary duty not only to his client, Buchanan, but to NAC with respect to the settlement funds he received for their benefit.

20. By not maintaining at least \$9,876.84 in the CTA and the second CTA on behalf of NAC and Buchanan between February 28, 2006 and November 23, 2007, Respondent misappropriated at least \$8,848.69 (\$9,876.84 - \$1,028.15) belonging to NAC and Buchanan.

#### **I. B. CONCLUSIONS OF LAW:**

1. By misappropriating at least \$8,848.69 belonging to NAC and Buchanan, Respondent committed an act involving moral turpitude, in wilful violation of section 6106 of the Business and Professions Code.

2. By not maintaining at least \$9,876.84 in the CTA and the second CTA on behalf of NAC and Buchanan between February 28, 2006 and November 23, 2007, Respondent failed to maintain the balance of funds received for the benefit of a client and a third party with whom he owed a fiduciary duty and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation of rule 4-100(A) of the Rules of Professional Conduct.

3. By paying check numbers 6463 and 6473 with personal funds that he maintained in the CTA, Respondent commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation of rule 4-100(A) of the Rules of Professional Conduct.

**II. A. FACTS:**

1. Paragraphs I. A. 1 through 20 are incorporated by reference.
2. On February 9, 2007, the State Bar of California ("State Bar") opened an investigation identified as case number 07-O-12819 concerning a complaint submitted against Respondent by NAC.
3. On or about August 3, 2007, a State Bar investigator sent a letter to Respondent regarding its investigation of NAC's complaint. Respondent received the letter. In the August 3, 2007 letter, the investigator requested a response to the allegations raised by NAC's complaint by August 17, 2007. Respondent did not respond to the letter.
4. On or about August 21, 2007, a State Bar investigator sent a letter to Respondent regarding its investigation of NAC's complaint. Respondent received the letter. In the August 21, 2007 letter, the investigator requested a response to the allegations raised by NAC's complaint by August 31, 2007.
5. On or about August 30, 2007, Respondent requested an extension to respond to the investigator's letter. The State Bar denied Respondent's request.
6. On or about September 28, 2007, Respondent informed the investigator by telephone that he would provide a written response to the investigator's letter by October 5, 2007. Respondent did not provide a written response to the allegations raised by NAC's complaint.

**II. B. CONCLUSION OF LAW:**

1. By not providing a written response to the allegations raised by NAC's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in wilful violation of section 6068(i) of the Business and Professions Code.

**Case No. 07-O-15044**

**I. A. FACTS:**

1. On August 31, 2005, Evelyn Delores Straczynski ("Evelyn") filed a petition for a martial dissolution from her husband, Charles Straczynski ("Charles"). Prior to filing the petition, in or about June 2005, Evelyn made an accusation to the police that she was the victim of domestic violence by Charles. By June 2005, Evelyn was diagnosed as suffering from dementia and Alzheimer's disease.
2. On September 23, 2005, Charles filed for a petition to be appointed the conservator for Evelyn in the San Diego County Superior Court, case number P189683. On November 22, 2005, the court declined to grant the petition because of the conflict of interest between Charles and Evelyn.
3. On February 15, 2006, the daughter of Evelyn and Charles, Evelyn Lorraine Straczynski ("Lorraine"), filed a petition to be appointed the conservator for Evelyn in case number P189683.
4. On June 23, 2006, the court appointed attorney Boris Siegel ("Siegel") to represent Evelyn.
5. On June 26, 2006, Siegel filed a petition for Julie Lubitz to be appointed as Evelyn's conservator in case number P189683.
6. On August 7, 2006, Lorraine filed a petition for David Dorame ("Dorame") to be appointed the conservator for Evelyn in case number P189683.

7. On or about August 14, 2006, Charles employed Respondent to provide legal assistance in case number P189683 and the dissolution and entered into a fee agreement with Respondent for the representation.
8. On August 21, 2006, Respondent became the attorney of record for Lorraine in case number P189683.
9. In a letter to the State Bar of California dated October 29, 2008, Respondent represented that Charles retained him for the family law case and "to do everything he requested in the Conservatorship proceedings (as documented in the retainer agreement). This included representing his daughter, Lorraine." Respondent further represented that Charles authorized all the work for the Conservatorship proceedings, including the work he performed for Lorraine. Respondent admitted that Charles could not be appointed as Evelyn's conservator given the pending dissolution proceeding and the allegations of domestic violence. Respondent denied that there was any conflict of interest between Charles and Lorraine, but represented that Charles "had completed control over his daughter Lorraine since he controlled the money and the ability to disinherit Lorraine." Respondent stated that Evelyn's estate was valued at over \$3,000,000 at the time. Respondent further admitted that the purpose of Lorraine's petition for conservatorship over her mother's estate and person was to terminate the dissolution proceeding.
10. As Charles had complete control over Lorraine and the motive to establish a conservatorship for Evelyn in order to terminate the dissolution proceeding, he potentially could not provide conflict-free representation to Charles and Lorraine.
11. The August 2006 fee agreement between Respondent and Charles did not state that Respondent would be representing Lorraine in the conservatorship. Further, the fee agreement did not state that Charles agreed to pay for the fees Lorraine incurred for the representation. Lorraine did not sign the fee agreement and did not provide written consent to Charles paying for her representation by Respondent. In August 2006, Respondent billed Charles for services provided to Lorraine in the conservatorship and withdrew funds that Charles had advanced to Respondent as payment for the services provided to Lorraine.
12. Respondent did not obtain the informed written consent of Charles and Lorraine to the dual representation.

**I. B. CONCLUSIONS OF LAW:**

1. By not obtaining Lorraine's written consent to Charles paying for Respondent's representation, Respondent accepted compensation for representing a client from one other than the client without complying with the requirements that there was no interference with Respondent's independence of professional judgment or with the client-lawyer relationship; and that Respondent obtained the client's informed written consent, in wilful violation of rule 3-310(F) of the Rules of Professional Conduct.
2. By representing both Charles and Lorraine in connection with the conservatorship, Respondent accepted representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client, in wilful violation of rule 3-310(C)(1) of the Rules of Professional Conduct.

**Case No. 08-O-12545**

**I. A. FACTS:**

1. In March 2007, William and Harriet Phillips ("Phillips") employed Respondent to represent them in a breach of contract claim against Frank Schnabel ("Schnabel"), a Florida resident. Respondent agreed to file a breach of contract lawsuit against Schnabel on behalf of Phillips in the federal court for the Central or Southern District of California, based upon diversity of citizenship. On or about March 29, 2007, Phillips gave Respondent a \$1,000 check as an advance fee for the representation.
2. On or about May 7, 2007, Phillips gave Respondent \$350 as advanced costs. Respondent did not deposit the \$350 advanced as costs in any trust account for Phillips's benefit.

3. On or about June 18, 2008, and after Phillips terminated Respondent's employment, Respondent gave Phillips a \$350 check from his client trust account as a refund of the advanced costs. Also, on or about June 18, 2008, Respondent told Phillips in a letter that he would send them an accounting of his fees in 10 days. Respondent did not provide the accounting to Phillips.

**I. B. CONCLUSIONS OF LAW:**

1. By not depositing the \$350 advanced as costs in a trust account, Respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation of rule 4-100(A) of the Rules of Professional Conduct.

2. By not providing an accounting to Phillips, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in wilful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

**II. A. FACTS:**

1. Paragraphs I. A. 1 through 3 are incorporated by reference.

2. On June 18, 2008, the State Bar of California ("State Bar") opened an investigation identified as case number 08-O-12545 concerning a complaint submitted against Respondent by Phillips.

3. On or about August 18, 2008, a State Bar investigator sent a letter to Respondent regarding its investigation of Phillips's complaint. Respondent received the letter. In the August 18, 2008 letter, the investigator requested a response to the allegations raised by Phillips's complaint by September 2, 2008. Respondent did not respond to the letter.

4. On or about September 19, 2008, a State Bar investigator sent a letter to Respondent regarding its investigation of Phillips's complaint. Respondent received the letter. In the September 19, 2008 letter, the investigator requested a response to the allegations raised by Phillips's complaint by October 3, 2008.

5. On or about October 1, 2008, Respondent requested a two-week extension to respond to Phillips's complaint. The State Bar granted Respondent an extension to respond to Phillips's complaint to October 17, 2008. Respondent did not provide a written response to Phillips's complaint.

**II. B. CONCLUSION OF LAW:**

1. By not providing a written response to the allegations raised by Phillips's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in wilful violation of section 6068(i) of the Business and Professions Code.

In the Matter of  
Todd J. Hilts

Case number(s):  
07-O-12819, 07-O-15044, and 08-O-12545

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:
- 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.

(Do not write above this line.)

In the Matter of  
Todd J. Hilts

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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.

8/2/10  
Date

TJH  
Respondent's Signature

Todd J. Hilts  
Print Name

8/12/10  
Date

DM  
Respondent's Counsel Signature

Print Name

Diane J. Meyers  
Print Name

Deputy Trial Counsel's Signature

(Do not write above this line.)

In the Matter Of Todd J. Hilts	Case Number(s): 07-O-12819, 07-O-15044 and 08-O-12545
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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.

Paragraph A(8) on page two of the stipulation is modified to provide that the costs are to be paid in equal installments prior to February 1 for the membership years 2012 and 2013.

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

8-27-10

Judge of the State Bar Court

PRO TEM JUDGE



## 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 August 27, 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:

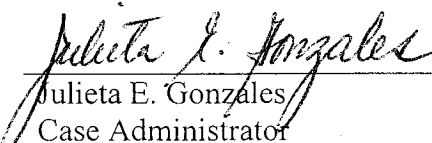
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

TODD J HILTS ESQ  
LAW OFC TODD J HILTS  
2214 2ND AVE  
SAN DIEGO, CA 92101

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

Diane J. Meyers, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 27, 2010.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Case Administrator  
State Bar Court