



ORIGINAL

(Do not write above this line.)

State Bar Court of California Hearing Department		
Counsel For The State Bar Eli D. Morgenstern Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015-2299 Bar # 190560 Tel. (213) 765-1334	Case Number (s) 07-O-13002	(for Court's use) <div style="text-align: center;"> PUBLIC MATTER FILED SEP 10 2009 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Philip J. Giacinti, Jr., Esq. Procopio, Cory, Hargreaves & 1917 Palomar Oaks Way, Suite 300 Carlsbad, California 92008 Bar # 65909 Tel. (619) 238-1900	Submitted to: Assigned Judge	
In the Matter Of: JAMES ALLEN MACY Bar # 57677 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <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 18, 1973.
- (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 (16) 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.

(Do not write above this line.)

(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: **
(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

** three billing cycles following the effective date of the Supreme Court order.

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

Although the present misconduct is serious, Respondent has been a member of the State Bar since December 18, 1973, and has no prior record of discipline.

D. Discipline:

- (1) **Stayed Suspension:**

(Do not write above this line.)

- (a) Respondent must be suspended from the practice of law for a period of three (3) years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of three (3) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of eighteen (18) months.
- 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

(Do not write above this line.)

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.
- (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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

(Do not write above this line.)

- (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 JAMES ALLEN MACY Member #57677 A Member of the State Bar	Case number(s): 07-O-13002
---	--------------------------------------

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";

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/18/2004; 12/13/2006.)

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:	JAMES ALLEN MACY
CASE NUMBER(s); ET AL:	07-O-13002-DFM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct.

Facts

1. In December 2005, Nancy Cunningham employed Respondent to handle various legal issues that arose out of her husband's arrest, including a pending civil forfeiture action, a potential criminal indictment, and potential and actual civil disputes involving the Internal Revenue Service. Cunningham did not sign a retainer agreement until February 6, 2006.
2. On December 16, 2005 and January 6, 2006, prior to the execution of the retainer agreement, Cunningham issued two checks to Respondent totaling \$7,500 for his legal services.
3. Pursuant to the terms of the retainer agreement, Respondent and Cunningham agreed that Respondent would charge \$250 an hour for legal services, and that Cunningham would maintain a monthly balance of \$5,000 with Respondent.
4. Pursuant to the retainer agreement, Respondent associated in attorney Douglas Brown to handle the criminal issues, and attorney William Shannahan to handle the tax-related matters, arising out of Cunningham's husband's arrest. Brown charged \$250 an hour for his legal services; the hourly billing rate for Shannahan was not provided to Cunningham. Pursuant to the retainer agreement, Respondent's billing statements would also include the invoices for Brown and Shannahan.
5. In or about March 2006, Cunningham gave Respondent at least \$31,000 in cash (the "\$31,000") to hold until it was determined whether or not the United States government had a claim to

the funds. Respondent placed the \$31,000 in cash in his office safe. Cunningham did not object to the funds being kept in Respondent's office safe.

6. On August 25, 2006, Cunningham gave Respondent a check for \$98,859.30 and asked that these funds be placed into an interest bearing account until it was determined whether or not the United States government had a claim to the funds.

7. On or about August 25, 2006, Respondent deposited the \$98,859.30 check into his trust account. Prior to the \$98,859.30 deposit into the trust account, there was a zero balance in the account. Therefore, as of on or about August 25, 2006, all funds in the trust account were Cunningham's funds.

8. As of on or about August 25, 2006, Respondent held funds totaling at least \$129,859.30 on Cunningham's behalf -- \$98,859.30 in his trust account and the \$31,000 in cash.

9. In September 2006, Cunningham reached an agreement with the United States Attorney with respect to: (1) the civil forfeiture action; and (2) a global resolution of all actual and potential civil disputes and claims and potential criminal charges against Cunningham. As a result of the agreement, the government no longer had any claim to the \$129,859.30 in funds held by him. A formal agreement was executed by the United States Attorney and Cunningham on or about October 5, 2006.

10. In February 2007, Cunningham's attorney-client relationship with Respondent ended. Between December 16, 2005, and October 26, 2006, Cunningham issued fifteen checks to Respondent totaling \$78,500 as payment for his fees.

11. Respondent did not provide Cunningham with a written accounting at any time during his representation of her. And even though Brown and Shanahan timely provided Respondent with their respective accountings, Respondent never forwarded the accountings to Cunningham or advised her of Brown and Shannahan's respective fees. Nonetheless, Respondent unilaterally determined that Cunningham owed additional fees for the legal services provided to her. Consequently, between September 22, 2006, and January 26, 2007, Respondent disbursed to himself an additional \$65,000 from the funds which he had been holding in trust for Cunningham (\$34,000 from the funds held in his trust account + all \$31,000 in cash).

12. In November 2006, Respondent also disbursed an additional \$7,280 to Brown and Shannahan from the funds held in his trust account. In total, Respondent disbursed \$72,280 (\$41,280

from the funds held in the trust account + all \$31,000 in cash) from the funds he held in trust on behalf of Cunningham to himself and Brown and Shannahan.

13. In December 2006, Shannahan told Cunningham that Respondent would not be returning all of her funds because she owed Respondent additional attorney's fees.

14. On December 10, 2006, Cunningham wrote Respondent a letter inquiring about her funds; and shortly thereafter, Respondent received the letter but failed to respond to it.

15. On January 24, 2007, Cunningham wrote Respondent a letter requesting an accounting; and on February 8, 2007, attorney J. William Hargreaves ("Hargreaves"), wrote Respondent a letter on behalf of Cunningham also requesting an accounting of Cunningham's funds. Respondent received both of the letters, but failed to respond to them, provide an accounting, or turn over Cunningham's funds.

16. On or about February 16, 2007, Respondent issued a check from his trust to Cunningham in the amount of \$58,000. At the time Respondent issued the check for \$58,000, he had not provided Cunningham with a written accounting explaining how he had arrived at the \$58,000 amount. On or about February 23, 2007, the trust account check cleared Respondent's trust account.

17. On April 9, 2007, Hargreaves wrote Respondent a letter requesting that Respondent provide him with an accounting by no later than April 11, 2007. Respondent received the April 9, 2007 letter but failed to respond to it and failed to account.

18. On or about May 15, 2007, Cunningham submitted a complaint against Respondent to the State Bar of California.

19. On June 5, 2007, the State Bar contacted Respondent regarding the allegations raised in Cunningham's complaint.

20. On August 20, 2007, Respondent provided a written response to the State Bar. In his response, Respondent provided a written accounting for the legal services provided in the Cunningham matter. However, the accounting failed to include the date of each task, the length of time for each task, the cost of each task and otherwise failed to provide a basis for calculating the attorney's fees charged in the Cunningham matter.

21. On August 20, 2007, Respondent also provided a copy of the accounting to Hargreaves.

22. On September 10, 2007, Cunningham wrote Respondent about her funds. In her September

10, 2007 letter, Cunningham advised Respondent that she had reviewed the accounting provided on August 20, 2007, and noted that Respondent had not provided a breakdown of the time spent on each service and had not provided the date of each service. In her letter, Cunningham requested a detailed accounting of the attorney services provided by Respondent. Respondent received the letter, but did not provide Cunningham with an appropriate accounting.

23. On April 8, 2009, Respondent filed an Answer to the First Amended Notice of Disciplinary Charges herein. Attached to the Response was an appropriate accounting of the services that Respondent claimed to have performed for Cunningham. According to the accounting, Respondent's legal fees in connection with his representation of Cunningham were \$158,461.82.

Conclusions of Law

By unilaterally determining his own fees and withdrawing funds held in his trust account to satisfy the fees, Respondent failed to maintain 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 willful violation of Rules of Professional Conduct, rule 4-100(A).

By failing to render a written accounting to Cunningham, despite her repeated requests, and despite requests from Hargreaves on Cunningham's behalf, until August 20, 2007, and by failing to render an appropriate accounting to Cunningham at any time, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

By depositing the \$31,000 in cash in his office safe, 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, Respondent willfully violated Rules of Professional Conduct, rule 4-100(A).

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY.

The parties waive any variance between the First Amended Notice of Disciplinary Charges ("First Amended NDC") herein filed on March 19, 2009, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was July 31, 2009.

DISMISSALS.

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

CASE NO.	COUNT	ALLEGED VIOLATION
07-O-13002	TWO	Business & Professions Code § 6106
07-O-13002	THREE	Rules of Professional Conduct, rule 4-100(B)(4)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of July 31, 2009, the prosecution costs in this matter are \$3,782. The costs are to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the Supreme Court Order.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.) Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards

Standards 2.2(b) of the Standards for Attorney Sanctions for Professional Misconduct (“Standards”) apply to this proceeding.

Standard 2.2(b) provides that a violation of rule 4-100 not involving the willful misappropriation of entrusted funds shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances. Here, without providing Cunningham with an accounting, Respondent unilaterally determined Cunningham's legal fees, and withheld \$72,280 from the funds that he was required to maintain in trust to satisfy those fees. "It is well settled that an attorney may not unilaterally determine his own fee and withhold trust funds to satisfy it even though he may be entitled to reimbursement for his services. [Citations.]" (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1037, quoting, *Brody v. State Bar* (1974) 11 Cal.3d 347, 350, fn. 5.) Further, Respondent failed to respond to repeated requests from his client for an appropriate accounting. Respondent's misconduct constitutes a substantial violation of his fiduciary obligations in trust account matters and warrants a suspension greater than the minimum three month actual suspension mandated by Standard 2.2(b).

Case Law

In *McKnight v. State Bar*, *supra*, 53 Cal.3d 1025, the attorney, while representing a client in a corporate dissolution, obtained a distribution check in the amount of \$17,331.85 relating to the dissolution. The attorney failed to inform the client of the check, placed one-half of the amount in his trust account, and, without authorization, placed the other half into his personal account for attorney fees. Also, without formal documentation and without advising the client to seek independent legal counsel, the attorney obtained the client's authorization to borrow up to \$15,000, but the attorney actually borrowed \$25,000 and withdrew the remaining over \$8,500 placed in his trust account, claiming the client had authorized a loan up to \$40,000. The attorney did not repay the loan within the time promised. He eventually repaid it, but did not return over \$8,500, originally disbursed to himself as attorney fees. In mitigation, the attorney presented evidence regarding manic depression, which was undiagnosed at the time of the dealings with the client. The Supreme Court ordered, *inter alia*, that Respondent be suspended from the practice of law for five years, stayed, and that he be actually suspended for one year and make restitution.

OTHER FACTORS IN CONSIDERATION.

After Cunningham terminated Respondent in December 2006, Respondent underwent two major surgeries in 2007; and in July 2007 Respondent was stricken with a still undiagnosed malady which caused him to be hospitalized for three days and unable to work for three weeks. Respondent's medical problems contributed to his delay in responding to Cunningham's requests for accountings after she terminated his representation.

As noted above, Respondent provided the State Bar with an appropriate accounting in April 2009. With a few exceptions, the State Bar has been able to confirm that the entries in the April 2009 accounting properly memorialize the services actually performed by Respondent on Cunningham's behalf during the approximately one year period in which he represented her. However, whether Cunningham received any benefit from some of the services, and the actual amount of time Respondent spent performing some of the services, is in dispute.

OTHERS CONDITIONS NEGOTIATED BY THE PARTIES.

The parties have stipulated that Respondent shall be actually suspended from the practice of law in the State of California for a period of eighteen (18) months 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.

STATE BAR ETHICS AND TRUST ACCOUNT SCHOOLS.

Because Respondent has agreed to attend State Bar Ethics and Trust Account Schools as part of this stipulation, he may receive Minimum Continuing Legal Education credit upon the satisfactory completion of the courses.


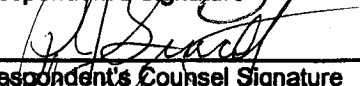
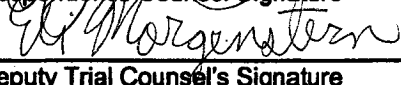
(Do not write above this line.)

In the Matter of JAMES ALLEN MACY Member #57677	Case number(s): 07-O-13002
--	--------------------------------------

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.

8/19/2009
Date
8/19/2009
Date
8/20/09
Date


Respondent's Signature

Respondent's Counsel Signature

Deputy Trial Counsel's Signature

JAMES A. MACY
Print Name
PHILIP J. GIACINTI, JR.
Print Name
ELI D. MORGENSTERN
Print Name

(Do not write above this line.)

In the Matter Of JAMES ALLEN MACY Member #57677	Case Number(s): 07-O-13002
--	--------------------------------------

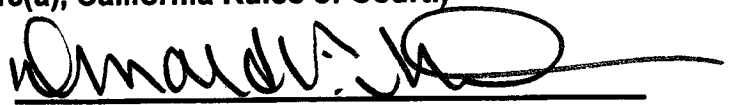
ORDER

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 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.)

9/9/09
Date


Judge of the State Bar Court

DONALD F. MILES

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 10, 2009, 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:

PHILIP JOSEPH GIACINTI, JR ESQ.
PROCOPIO CORY ET AL LLP
530 B ST #2100
SAN DIEGO, CA 92101 - 4469

- 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 September 10, 2009.



Rose Luthi
Case Administrator
State Bar Court