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

<p>Counsel For The State Bar</p> <p>AGUSTIN HERNANDEZ Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1713</p> <p>Bar # 161625</p>	<p>Case Number(s): 07-O-13006 07-O-13915 07-O-14395</p>	<p>For Court use only</p> <p><b>FILED</b></p> <p>JUN 22 2011 <i>MC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p><b>PUBLIC MATTER</b></p>
<p>Counsel For Respondent</p> <p>EDWARD O. LEAR 5200 West Century Blvd., Ste. 345 Los Angeles, CA 90045 (310) 642-6900</p> <p>Bar # 132699</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: WILLIAM EDWARD JOHNSON</p> <p>Bar # 132436</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 December 11, 1987.
- (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 19 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."

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- (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 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are 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.

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- (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. Respondent has no record of prior discipline since being admitted on December 11, 1987.
- (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. Respondent has submitted 29 letters and declarations from people attesting to his good character. Most of them are aware of the full extent of his misconduct, but a few are only generally aware that he is being investigated and/or disciplined by the State Bar. All character references are aware of the

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passing of Respondent's wife and the resulting depression. The character references are mostly attorneys. One of them currently employs Respondent on an independent contractor basis. Others have worked with Respondent in the past and some have been friends with Respondent for over 20 years. In addition to attorneys, letters were received from the psychologist that treated Respondent after his wife's death, as well as from another psychologist and Respondent's personal physician. A letter was also received from Respondent's father who is a Former Presiding Judge of Los Angeles County Superior Court. Letters were also received from a former Workers' Compensation Judge, his former law office landlord, and the president and CEO of a large corporation.

- (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:**

During the time of the misconduct in this stipulation, Respondent was suffering from severe depression as a result of the death of his wife. Respondent married his wife on November 21, 2001. In February 2002, his wife was diagnosed with stage four cancer. The ensuing years were difficult due to his wife's grave illness. His wife passed away on April 16, 2007. Respondent became so depressed that he was unable to function or practice law for almost three years. He sought professional psychological therapy which helped. Ultimately, the psychological therapy and the passage of time helped him overcome his depression. Respondent resumed the practice of law in March 2010. Respondent also resumed his therapy with the same psychologist in November 2010. His psychologist has indicated that Respondent's condition has improved significantly and he is now at the status that he was before his wife's death. It is the psychologist's opinion that Respondent is not a threat to the public. Respondent also enrolled in LAP late last year and attends weekly group meetings.

**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 six 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 the 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.

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- (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 5.162(A) & (E), 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.
- (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:**



5. On May 9, 2007, defense counsel in the Williams case delivered a letter to Respondent's law office in which he voluntarily extended the time to respond to the Interrogatories to May 19, 2007. Respondent did not provide defense counsel with responses to the Interrogatories or otherwise communicate with him.
6. In May 2007, Respondent stopped performing legal services on behalf of Williams and withdrew from representation of Williams without informing her that he would not continue to represent her.
7. In June 2007, Williams employed attorney Andrew J. Haley ("Haley") to represent her in the Williams case.
8. On June 15, 2007, Haley mailed a letter to Respondent at his law office address informing Respondent of his employment and requesting that Respondent provide a copy of the client file. Respondent received the letter.
9. On June 18, 2007, Haley spoke to Respondent by telephone, and Respondent agreed to provide the client file and a signed substitution of attorney.
10. On June 22, 2007, Haley mailed a letter to Respondent at his law office address confirming Respondent's agreement to release the client file and to provide a signed substitution of attorney. Haley's letter also requested that Respondent refund \$5,000 of unearned fees paid by Williams. Respondent received the letter. Respondent did not respond to the letter.
11. On June 27, 2007, Haley mailed a letter to Respondent at his law office address again requesting the client file, a signed substitution of attorney, and a refund of \$5,000 of unearned fees. Respondent received the letter. Respondent did not respond to the letter.
12. On July 9, 2007, the defense counsel in the Williams case filed a motion to compel discovery and for sanctions of \$1,633 against Williams and Respondent and served Respondent by mail at Respondent's law office. Respondent received a copy of the motion. Respondent did not inform Williams or Haley of the receipt of the motion.
13. On July 17, 2007, Haley filed a notice of his association as counsel for Williams which stated that Williams was in the process of substituting out Respondent. On this date, Haley mailed a copy of the substitution of attorney to Respondent at Respondent's law office address. Respondent did not return a signed substitution of attorney to Haley or otherwise contact Haley or Williams.
14. At no time did Respondent release the client file to Haley or Williams. At no time did Respondent provide a signed substitution of attorney to Haley or Williams.
15. Respondent did not earn \$5,000 of the \$11,125 advanced by Williams. Respondent did not refund the \$5,000 to Williams until October 15, 2010.
16. On September 14, 2007, Haley appeared in court on behalf of Williams for the hearing on the motion to compel discovery and for sanctions filed by opposing counsel. Respondent did not appear. At that time, the court ordered that Respondent pay sanctions in the amount of \$2,518 to the opposing party. On September 14, 2007, Haley mailed to Respondent at his law office address a copy of the notice of ruling informing

Respondent of the monetary sanctions imposed against him. Respondent received the letter.

17. On December 7, 2010, and May 26, 2011, Respondent paid \$1,633 and \$885, respectively, to opposing counsel as payment for the sanctions imposed by the court in the Williams case.

18. On June 18, 2007, Williams filed a complaint with the State Bar about Respondent's conduct.

19. On September 24, 2007, and November 30, 2007, a State Bar Investigator mailed letters to Respondent at his address of record with the State Bar regarding the complaint by Williams. The letters requested that Respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Williams's complaint. Respondent received the letters.

20. Respondent did not provide the State Bar with a written response to Williams's complaint or otherwise cooperate or participate in the State Bar's investigation.

#### CONCLUSIONS OF LAW:

21. By not responding to Williams's status inquiries and not informing Williams of the receipt of Interrogatories and the motion to compel, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services and failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

22. By withdrawing from employment without informing Williams that he was withdrawing from employment, without cooperating with Williams substituting Haley as her new counsel, without releasing the client file, and without refunding unearned fees until October 15, 2010, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

23. By not paying timely the \$2,518 in sanctions to the opposing party as ordered by the court in the Williams case, Respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

24. By not providing the State Bar with a written response to Williams's complaint or otherwise participate in the State Bar's investigation, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code, section 6068(i).

Case No. 07-O-13915 (Complainant: Julian Starks)

#### FACTS:

25. On June 7, 2007, Julian Starks ("Starks") employed Respondent to serve as a party arbitrator in Stark's medical malpractice matter. At that time, Starks paid Respondent \$1,500 in advanced fees for his services.

26. On March 9, 2007, March 23, 2007, June 13, 2007, and June 27, 2007, Starks's counsel, Susan Pintar ("Pintar"), mailed letters to Respondent at his law office address seeking to communicate with Respondent on behalf of Starks concerning Stark's case. In her letter of June 13, 2007, Pintar reminded Respondent that he needed to contact the other party's arbitrator to select a neutral arbitrator. In her letter of June 27, 2007, Pintar informed Respondent that Stark was becoming upset by Respondent's delay. Respondent received the letters. Respondent did not respond to the letters or otherwise communicate with Pintar or Starks.

27. Respondent did not contact the other party's arbitrator to select a neutral arbitrator or otherwise take any steps to pursue Stark's arbitration. Respondent withdrew from representation without informing Stark or Pintar.

28. On August 1, 2007, and September 6, 2007, Pintar mailed letters to Respondent terminating his services and requesting that Respondent return the advanced fees. Respondent received the letters. Respondent did not respond to the letters or otherwise communicate with Pintar or Starks.

29. Respondent did not serve as an arbitrator in Starks's case or provide any legal services of value to Stark. Respondent did not refund the \$1,500 to Starks until October 15, 2010.

30. On September 21, 2007, Starks filed a complaint with the State Bar about Respondent's conduct.

31. On November 14, 2007, and December 6, 2007, a State Bar Investigator mailed letters to Respondent at his address of record with the State Bar regarding the complaint by Stark. The letters requested that Respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Starks's complaint. Respondent received the letters.

32. On February 19, 2008, Respondent contacted the Investigator by telephone and informed him that he would respond to Stark's complaint by February 24, 2008. Thereafter, Respondent did not provide the State Bar with a written response to Starks's complaint or otherwise cooperate or participate in the State Bar's investigation.

#### CONCLUSIONS OF LAW:

33. By withdrawing from serving as Starks's party arbitrator without informing Stark or Pintar and without refunding the unearned fees until October 15, 2010, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

34. By not providing the State Bar with a written response to Stark's complaint or otherwise participate in the State Bar's investigation, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code, section 6068(i).

Case No. 07-O-14395 (Complainant: Terry Pearson)

#### FACTS:

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35. In May 2005, Terry Pearson ("Pearson") employed Respondent to represent her in a medical malpractice case against USC Medical Hospital and other parties.

36. On March 27, 2007, Pearson's case settled for \$250,000. Thereafter, Respondent received a check from Tenet payable to Pearson and Respondent in the sum of \$250,000.

37. On June 21, 2007, Respondent deposited the \$250,000 settlement check received on behalf of Pearson in a client trust account maintained at Wells Fargo Bank, account number xxx-xxx2498 ("Respondent's CTA").

38. On August 2, 2007, Respondent provided Pearson with the following incorrect accounting of the settlement proceeds. This incorrect accounting was due to a mistake by Respondent.

Attorney Fees (pursuant to Business and Professions Code, section 6146):

40% of first \$50,000:	\$20,000.00
33 1/3% of next \$50,000:	\$16,666.66
25% of \$100,000:	\$25,000.00
Total attorney fees:	\$61,666.66
Less \$2,500 previously advanced by Pearson:	-\$2,500.00
Total amount kept by Respondent for fees:	\$59,166.66

Amount for costs kept by Respondent: \$35,227.76

Total amount kept by Respondent for fees and costs: \$94,394.42

Pearson's share of settlement proceeds: \$155,605.58

39. Shortly thereafter, Respondent provided Pearson with the following revised accounting adjusting for additional costs of \$1,620.75 and the correct settlement amount of \$250,000 (the August 2, 2007 accounting was mistakenly based on a \$200,000 settlement):

Attorney Fees (pursuant to Business and Professions Code, section 6146):

40% of first \$50,000:	\$20,000.00
33 1/3% of next \$50,000:	\$16,666.66
25% of \$150,000:	\$37,500.00
Total attorney fees:	\$74,166.66
Less \$2,500 previously advanced by Pearson:	-\$2,500.00
Total amount kept by Respondent for fees:	\$71,666.66

Amount for costs kept by Respondent: \$36,848.51

Total amount kept by Respondent for fees and costs: \$108,515.17

Pearson's share of settlement proceeds: \$141,484.83

40. On August 24, 2007, Respondent mistakenly disbursed to Pearson only \$141,384.83 from Respondent's CTA which is \$100 less than the \$141,484.83 pursuant to his revised accounting.

41. Respondent advanced many of the \$36,848.51 in costs on behalf of Pearson. However, due to the passing of his wife, Respondent lost track of which costs had been actually been paid and which were still outstanding. At the time of the accounting and disbursement of settlement proceeds, Respondent had not paid \$2,000 to one expert and \$3,900 to another expert. These \$5,900 in costs were included as part of the \$36,848.51 that Respondent kept from the settlement proceeds to pay for costs.

42. On September 13, 2007, Respondent transferred \$107,784.90 from Respondent's CTA to his business account, reducing the balance in Respondent's CTA to \$1,000. At the time that Respondent made this transfer, he had not paid the outstanding \$5,900 in costs to the experts despite having kept this amount from the settlement proceeds.

43. Respondent failed to maintain \$5,900 in trust on behalf of Pearson.

44. Respondent dishonestly or with gross negligence misappropriated \$4,900 (\$5,900 minus CTA balance of \$1,000) of Pearson's funds.

45. On May 12, 2011, Respondent sent Pearson a check for \$8,526. This amount consisted of the \$5,900 that he had not remitted to the experts plus interest. The \$8,526 payment also included \$1,000 that Respondent had received as a refund from another expert that did not earn the entire retainer fee that Respondent had previously advanced on behalf of Pearson.

46. Additionally, Respondent also now realizes and acknowledges that he made another error in his calculation of attorney fees. This error is solely based on Respondent's mistake and there was no intent to defraud Pearson. Pursuant to Business and Professions Code section 6146(c)(1), Respondent's fees must be calculated and based on the net recovery after deducting disbursements for costs. Respondent mistakenly believed that he could calculate his fees from the gross recovery. Accordingly, the correct accounting is as follows:

Net Recovery (pursuant to Business and Professions Code, section 6146):

Settlement:	\$250,000.00
Less costs:	\$36,848.51
Net Recovery:	\$213,151.49

Attorney Fees (pursuant to Business and Professions Code, section 6146):

40% of first \$50,000:	\$20,000.00
33 1/3% of next \$50,000:	\$16,666.66
25% of \$113,151.49:	\$28,287.87
Total attorney fees:	\$64,954.53
Less \$2,500 previously advanced by Pearson:	-\$2,500.00
Total amount fees Respondent is entitled to:	\$62,454.53

Amount for costs kept by Respondent:	\$36,848.51
Total amount allowed for fees and costs:	\$99,303.04
Pearson's share of settlement proceeds:	\$150,696.96

47. Accordingly, Respondent's attorney fees should have been \$64,954.53 and not \$74,166.66. Based on the revised attorney fees, Pearson's share of the settlement proceeds is \$150,696.96 and not the \$141,384.83 that he previously disbursed to her. Respondent readily acknowledges his mistake and on May 20, 2011, Respondent remitted the difference of \$9,312.13 to Pearson.

48. On October 30, 2007, Pearson made a complaint to the State Bar about Respondent's conduct.

49. On December 4, 2007, and January 8, 2007, a State Bar Investigator mailed letters to Respondent at his address of record with the State Bar regarding the complaint by Pearson. The letters requested that Respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Pearson's complaint. Respondent received the letters.

50. Respondent did not provide the State Bar with a written response to Pearson's complaint or otherwise participate in the State Bar's investigation.

#### CONCLUSIONS OF LAW:

51. By not maintaining a balance of \$5,900 on behalf of Pearson in Respondent's CTA, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited 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).

52. By misappropriating \$4,900 of Pearson's funds, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code, section 6106.

53. By not providing the State Bar with a written response to Pearson's complaint or otherwise participate in the State Bar's investigation, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code, section 6068(i).

#### PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was May 25, 2011.

#### AUTHORITIES SUPPORTING DISCIPLINE.

##### Standards

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: "the protection of the public, the courts and the legal

profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

Standard 1.6(a) states that “[i]f two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.”

In this case, the misconduct warranting the most severe sanction is the misappropriation of \$4,900. Standard 2.2(a) states that “[c]ulpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of the mitigating circumstances.”

Standard 2.2(b) states that “[c]ulpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.”

Standard 2.3 provides that “[c]ulpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to the court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

Standard 2.4(b) provides that “[c]ulpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.”

Standard 2.6(b) also provides that Respondent’s violation of Business and Professions Code, section 6103 shall result in suspension or disbarment depending on the gravity of the offense and the harm to the victim.

Standard 2.6(a) provides that Respondent’s violation of Business and Professions Code, section 6068(i) shall result in suspension or disbarment “depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

#### Case Law

The Supreme Court has emphasized the importance of the standards and has held that great weight should be given to the application of the standards in determining the appropriate level of discipline. (In re Silverton (2005) 36 Cal. 4th 81.) The standards must be followed unless there is a compelling reason justifying a deviation from the standards. (In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.) The Supreme Court has held that unless it has “grave doubts as to the propriety of the recommended discipline,” it will uphold the application of the standards. In re Silverton, supra, 36 Cal. 4th at p. 91-92.

In this case, there are sufficient extenuating circumstances and mitigation to warrant a deviation from the standards. Standard 2.2(a) would seem to require a one-year actual suspension for Respondent's misappropriation of \$4,900. However, the standard is a guideline and not an inflexible requirement. The Supreme Court has held that the minimum one year of actual suspension pursuant to standard 2.2(a) "should be regarded as a guideline, not an inflexible mandate." (Edwards v. State Bar (1990) 52 Cal.3d 28, 38.)

The Supreme Court has imposed discipline consisting of a three-year stayed suspension with one year of actual suspension and three years of probation for a misappropriation of approximately \$3,000. Upon settlement, the attorney sent the client a check for \$3,000 representing the client's share of the settlement proceeds. However, the check was not honored by the bank as there were insufficient funds in the trust account. The lowest balance in the account during the relevant time was \$33.22. The Court found that the misappropriation was willful, but also found extenuating circumstances warranting discipline that was less than disbarment. The Court held that "[d]isbarment would rarely, if ever, be an appropriate discipline for an attorney whose only misconduct was a single act of negligent misappropriation, unaccompanied by acts of deceit or other aggravating factors." In mitigation, the attorney had no record of prior discipline; promptly repaid the funds before the State Bar contacted him; cooperated with the State Bar; and took steps to improve his management of trust funds. In aggravation, the attorney committed multiple acts of misconduct by misusing his trust account by sometimes paying personal expenses from it, and demonstrated a lack of appreciation of the seriousness of his misconduct. (Edwards, supra, 52 Cal. 3d 28.)

The misconduct in Edwards is more serious than this case. Edwards's misappropriation was willful. Johnson's misconduct was attributable to his depression and he did not intend to defraud Pearson of \$4,900. Edwards also failed to appreciate the seriousness of his misconduct. Johnson does appreciate and acknowledge the seriousness of his misconduct. Johnson should receive less than the one-year actual suspension imposed on Edwards.

The Supreme Court imposed a three-year stayed suspension with six months of actual suspension for a willful misappropriation of approximately \$1,200. The respondent was also found culpable of an additional act of dishonesty and moral turpitude by misrepresenting to his former client's new attorney that the misappropriated funds were still in being held in trust. In mitigation the court considered the respondent's alcoholism, lack of prior record of discipline in 14 years of practice, and his good reputation in the legal community. In aggravation, the court found that the respondent failed to make restitution until the State Bar got involved. (Bates v. State Bar (1990) 51 Cal.3d 1056.)

In Bates, in addition to the \$1,200 misappropriation, the Court also found an additional act of moral turpitude based on his misrepresentation regarding the status of the client funds. Johnson is not culpable of a second count of moral turpitude, but the amount of his misappropriation is larger. Similarly, neither Bates nor Johnson made restitution until the State Bar got involved. The both presented character references attesting to their good character. A six-month actual suspension would seem appropriate for Johnson.

The Supreme Court imposed a sixth-month stayed suspension with no actual suspension and with one year of probation for commingling and misappropriating \$24,000 of client funds. The Court found several extenuating circumstances including that that respondent's single incident of misconduct was aberrational behavior and not typical. The Court noted that although a misappropriation of \$24,000 cannot be condoned, he did not act with any intent to defraud his client. The respondent had settled a matter for a client for

\$24,000. In an effort to expedite the check clearing process, the respondent, who was out of town at the time, instructed his secretary to deposit the check into his business account instead of his client trust account. When he returned to the office, he learned that his secretary had quit and that the entire \$24,000 had been spent on payroll and office expenses. In mitigation, the Court considered that the respondent promptly acknowledged his wrong doing and began to make restitution. The respondent had no record of prior discipline in thirteen years of practice. At the time of the misconduct, the respondent was dependent on alcohol as a result of a difficult divorce which contributed to his poor judgment. Prior to the commencement of disciplinary proceedings, the respondent stopped drinking alcohol and began attending Alcoholics Anonymous meetings. The respondent was also remorseful and cooperated with the State Bar. (Waysman v. State Bar (1986) 41 Cal.3d 452.)

The Supreme Court imposed a one-year stayed suspension with no actual suspension and one year of probation for a misappropriation of less than \$3,000. The respondent had received a partial distribution check for \$3,000 payable to his client. The respondent endorsed the check without his client's knowledge and consent. The check was then deposited into his firm's payroll account instead of his client trust account. The balance in the respondent's payroll account fell below \$3,000 on several occasions before he ultimately paid his client. The Court found that although the misappropriation was willful, he had not intended to defraud his client. Rather, the Court found that the misappropriation was the result of his lax office procedures. In mitigation, the Court considered that the respondent promptly paid his client with interest before any State Bar involvement and expressed remorse. In aggravation, the respondent had one prior imposition of discipline consisting of a public reproof for violating former rules 2-111 (delivery of client files) and 5-101 (unethical business dealings with client), Rules of Professional Conduct. (Palomo v. State Bar (1984) 36 Cal.3d 785.)

Waysman and Palomo are cited herein as authority that the Supreme Court has imposed actual suspension of less than one year in misappropriation cases when there are extenuating circumstances, the misconduct is aberrational and unlikely to recur, or when the member did not intend to defraud his client.

The case law supports discipline of a six-month actual suspension in this case. As discussed above on page 4, Respondent is entitled to mitigation as a result of the death of his wife. His lack of prior discipline in 23 years of practice is indicative that the misconduct is attributable to the resulting depression and that the misconduct was aberrational and unlikely to recur. (See Edwards, supra, 52 Cal. 3d at p. 37-38.)

In view of the extenuating circumstances and mitigation in this matter, discipline consisting of a two-year stayed suspension with six months of actual suspension and three years of probation is appropriate and sufficient to protect the public, the courts and the integrity of the legal profession.

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In the Matter of: WILLIAM EDWARD JOHNSON	Case Number(s): 07-O-13006, 07-O-13915 & 07-O-14395
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### 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

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

#### c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

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

**d. Client Trust Accounting School**

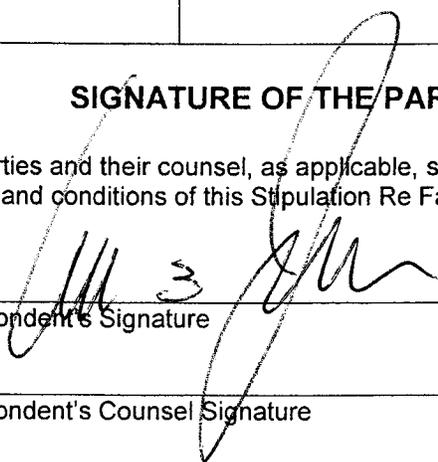
- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

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In the Matter of: WILLIAM EDWARD JOHNSON	Case number(s): 07-O-13006, 07-O-13915 & 07-O-14395
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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.

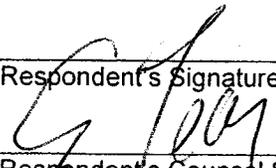
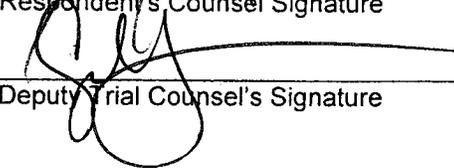
<u>6/2/11</u> Date	 Respondent's Signature	<u>WILLIAM EDWARD JOHNSON</u> Print Name
<u>                    </u> Date	<u>                    </u> Respondent's Counsel Signature	<u>EDWARD O. LEAR</u> Print Name
<u>                    </u> Date	<u>                    </u> Deputy Trial Counsel's Signature	<u>AGUSTIN HERNANDEZ</u> Print Name

(Do not write above this line.)

In the Matter of: WILLIAM EDWARD JOHNSON	Case number(s): 07-O-13006, 07-O-13915 & 07-O-14395
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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.

_____	_____	WILLIAM EDWARD JOHNSON
Date	Respondent's Signature	Print Name
<u>5/30/11</u>		_____
_____	_____	EDWARD O. LEAR
Date	Respondent's Counsel Signature	Print Name
<u>June 7, 2011</u>		_____
_____	_____	AGUSTIN HERNANDEZ
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:  
WILLIAM EDWARD JOHNSON

Case Number(s):  
07-O-13006, 07-O-13915 & 07-O-14395

### ACTUAL SUSPENSION 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.)**

Date

6-14-11

  
Judge of the State Bar Court

**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 June 22, 2011, 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:

EDWARD O LEAR  
CENTURY LAW GROUP LLP  
5200 W CENTURY BLVD #345  
LOS ANGELES CA 90045

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

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 22, 2011.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court