




(Do not write above this line.)

State Bar Court of California **PUBLIC MATTER**
Hearing Department
San Francisco

Counsel For The State Bar Treva R. Stewart The State Bar of California 180 Howard Street San Francisco, CA 94105 Bar # 239829	Case Number (s) 07-O-13860	(for Court's use) <div style="text-align: center;"> FILED  SEP 09 2008 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
Counsel For Respondent Jonathan I. Arons 101 Howard St. Ste. 310 San Francisco, CA 94105 Bar # 111257	Submitted to: Assigned Judge	
In the Matter Of: Patrick Carter Bar # 60763 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, 1974**.
- (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 **12** 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: **three billing cycles following the effective date of the Supreme Court Order herein.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ o n i n 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

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law 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:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **one year**, 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 **90 days**.

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 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.

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- (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: See Stipulation Attachment**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PATRICK CARTER

CASE NUMBER(S): 07-O-13860-PEM

FACTS AND CONCLUSIONS OF LAW.

FACTS

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

1. During at least from December, 2006 until its closure in January, 2008, respondent maintained an attorney-client trust account (hereinafter, "CTA"), account number 029-5094296 at Wells Fargo Bank.
2. On February 20, 2007, respondent deposited an official check from Citibank in the amount of \$89,581.49 into his CTA.
3. On or about September 28, 2007, respondent informed the State Bar that he was divorced and upon his divorce, his joint checking account maintained with his wife was closed. Thereafter, he commenced using his CTA "on a couple of occasions" like a personal checking account. Respondent stated that he retired in early 2007, no longer had client funds in the CTA and would be closing the CTA.
4. On or about October 4, 2007, Wells Fargo Bank notified the State Bar of several insufficient funds (hereinafter, "NSF") transactions in respondent's CTA .
5. Between on or about August 10, 2007, and on or about November 14, 2007, respondent issued the following checks and/or electronic funds transactions, even though there were insufficient funds in the account to cover these checks and electronic funds transactions:

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<u>Date</u> ¹	<u>Check Number</u>	<u>Amount</u>	<u>Balance</u> ²	<u>Payee</u>
8/17/07	1194	\$2,000.00	-1,977.67	Citibank
8/17/07	1197	\$1,950.00	-3,927.67	Kaiser Permanente
8/21/07	electronic	\$167.00	-190.67	American Express
10/29/07	unknown	\$43.45	-99.10	Shell oil
10/31/07	unknown	\$548.00	-681.10	American Express
10/23/07	electronic	\$548.00	-535.65	American Express
10/26/07	unknown	\$548.00	-569.65	American Express
11/05/07	electronic	\$548.00	-715.10	American Express
11/08/07	electronic	\$548.00	-749.10	American Express
11/14/07	electronic	\$548.00	-783.00	American Express

6. As to each of these transactions, Wells Fargo Bank, at or near the time the transaction was presented for payment, notified respondent, in writing, of the NSF transaction, notified respondent of the NSF fee, and requested that respondent immediately deposit funds sufficient to cover the NSF transactions and resultant fees. Wells Fargo sent respondent the NSF transaction notices to 2523 28th Avenue, San Francisco, California, 941116-2911.
7. Respondent received the notices and was aware of their contents.
8. Records of respondent's CTA reflect that between December 31, 2006 through the account's closure in January, 2008, respondent issued funds for personal items from his CTA as follows:

<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Payee</u>
1/29/07	1147	\$1,500	Martha Carter
3/6/07	1160	\$24.50	Clover Cleaners
3/12/07	1159	\$335.00	filing fee
4/2/07	1163	\$57,612.35	North American Title
4/5/07	1165	\$600.00	Araville Residential
4/16/07	chk card ³	\$119.00	Pet Camp LLC
6/5/07	1172	\$263.77	Benicia Highlands
6/12/07	1175	\$46.00	Mtn. Vista Farm client fees

¹This is the date that the check was presented for payment.

²The balance in respondent's CTA account when the check was presented for payment.

³Check Card purchase

7/23/07	chk card	\$22.99	Rose Drive Market
7/30/07	chk card	\$201.50	Rose Drive Market
8/15/07	1196	\$220.89	Comcast
9/13/07	1211	\$116.39	Verizon Wireless
9/17/07	1212	\$1,107.44	Wells Fargo Home Mortgage

9. A review of the CTA account also revealed that there was a disbursement made on behalf of a client from the account, as follows:

<u>Date</u>	<u>Check</u>	<u>Amount</u>	<u>Notation</u>
1/26/07	1139	\$40.00	Client costs: telephone call

10. Expenditures from respondent's CTA were for personal use and for a client matter(s).

Conclusions of Law

By maintaining his personal funds in his CTA and using his CTA for personal expenditures, as demonstrated by the aforementioned transactions, respondent commingled client and personal funds in his CTA in wilful violation of 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 Notice of Disciplinary Charges filed on March 28, 2008 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 and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Respondent has no prior record of discipline in more than 29 years of practice.

Upon becoming aware of these disciplinary proceedings, respondent cooperated in the investigation.

Respondent demonstrated recognition of his wrongdoing by taking steps to close the CTA account.

AUTHORITIES SUPPORTING DISCIPLINE

Standards for Attorney Sanctions for Professional Misconduct

Standard 2.2(b) provides that culpability of commingling of entrusted funds with personal property or another violation of rule 4-100 ... “shall result in *at least a three month actual* suspension, irrespective of mitigating circumstances. (Emphasis added).

Standard. 2.3 states that offenses involving moral turpitude shall result in actual suspension or disbarment.

Case Law

In *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, the attorney was found culpable of violating rule 4-100 for depositing personal funds into his client trust account client trust account and using the client trust account for personal expenses, even where no client funds were in the client trust account. *Doran, supra* 3 Cal. State Bar Ct. Rptr. 871 at 876. The attorney also repeatedly wrote checks on an account which had insufficient funds which constituted moral turpitude. *Id.* Further, he was culpable of violating rules 3-110(A), 3-700(A)(2) of the Rules of Professional conduct. *Id.* at 877-878. The attorney was suspended for 18 months, stayed, placed on three years probation and suspended for six months and until compliance with probation conditions.

RESTRICTIONS WHILE ON ACTUAL SUSPENSION.

1. During the period of actual suspension, respondent shall not:
 1. Render legal consultation or advice to a client;
 2. Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
 3. Appear as a representative of a client at a deposition or other discovery matter;
 4. Negotiate or transact any matter for or on behalf of a client with third parties;
 5. Receive, disburse, or otherwise handle a client's funds; or
 6. Engage in activities which constitute the practice of law.

2. Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the Probation Unit, pertaining to periods in which the respondent was actually suspended from the practice of law.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 1, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 1, 2008, the costs in this matter are \$4,271.40. 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.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

(Do not write above this line.)

In the Matter of Patrick Carter	Case number(s): 07-O-13860
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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.

8-7-08

Date

August 22, 2008

Date

8/22/08

Date

Patrick J. Carter

Respondent's Signature

Patrick J. Carter

Print Name

Jonathan I. Arons

Respondent's Counsel Signature

Jonathan I. Arons

Print Name

Treva R. Stewart

Deputy Trial Counsel's Signature

Treva R. Stewart

Print Name

(Do not write above this line.)

In the Matter Of Patrick Carter	Case Number(s): 07-O-13860
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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:

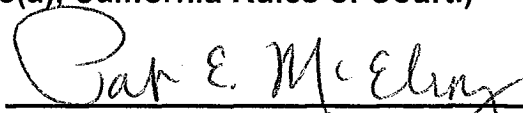
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 2, section A(8)-- costs to be paid in equal amounts prior to February 1 for the following membership years: 2010, 2011 & 2012.
2. On page 5, section F(2)-- an "x" is inserted in the box so that respondent is ordered to comply with the requirements of rule 9.20, California Rules of Court.

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.)**

September 9, 2008

Date


Pat E. McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 9, 2008, 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 San Francisco, California, addressed as follows:

JONATHAN IRWIN ARONS
LAW OFC JONATHAN I ARONS
101 HOWARD ST #310
SAN FRANCISCO, CA 94105

by certified mail, No. _____, with return receipt requested, through the United States Postal Service at _____, California, addressed as follows:

by overnight mail at _____, California, addressed as follows:

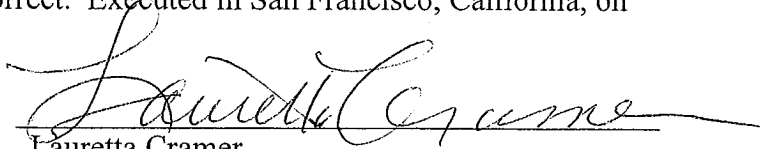
by fax transmission, at fax number _____. No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

TREVA STEWART, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 9, 2008.


Laurretta Cramer
Case Administrator
State Bar Court