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<b>State Bar Court of California</b> Hearing Department Los Angeles		
Counsel For The State Bar  Mia R. Ellis Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 213-765-1380  Bar # 228235	Case Number (s) 07-O-14468	(for Court's use)  <div style="text-align: center;"> <b>FILED</b>   <b>JAN 20 2011</b>                       STATE BAR COURT                      CLERK'S OFFICE                      LOS ANGELES                 </div>
Counsel For Respondent  Susan Margolis Margolis & Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039  Bar # 104629	Submitted to: <b>Settlement Judge</b>	
In the Matter Of: David Lowell Nelson  Bar # 170905  A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <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 June 1, 1994.
- (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 11 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".

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- (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: 2012, 2013 (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. Please see attachment to stipulation.
- (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.

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- (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 [REDACTED]
- (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. Please see attachment to stipulation
- (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. Please see attachment to stipulation.
- (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. Please see attachment to stipulation.
- (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.

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**Additional mitigating circumstances**

**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 two 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 6 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.

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- (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:

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- (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:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      David Lowell Nelson

CASE NUMBER(S): ET AL.            07-O-14468

**FACTS AND CONCLUSIONS OF LAW.**

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.

**Facts**

1. Beginning September 2004 through the end of March 2005, Respondent's office manager embezzled approximately \$100,000 in funds from Respondent's Client Trust Account. Respondent learned about the embezzlement toward the end of March 2005.
2. On November 17, 2004, Jennifer Hall ("Mrs. Hall") employed Respondent to represent her and her two minor children ("the minors") in a personal injury claim. At the time, Mrs. Hall was also going through a divorce, but was represented by separate counsel in that matter.
3. The retainer agreement initially stated that the attorney fees would be thirty-three and one-third percent (33 1/3%) of any and all amounts recovered by way of settlement. However, the parties subsequently modified the retainer agreement and agreed that Respondent would receive 25% as attorney fees.
4. In or about April 2005, Respondent's office manager re-paid approximately \$40,000 of the funds he had embezzled to Respondent.
5. In September 2005, Respondent refinanced his home for approximately \$37,000 to repay additional money to his Client Trust Account.
6. From September 2005 through February 2007, Respondent attempted to reconcile the embezzled money with the financial obligations to his clients.
7. On June 19, 2006, Mrs. Hall signed releases to settle her and the minors' personal injury claim.
8. On June 20, 2006, Infinity Insurance ("Infinity") issued three settlement checks. The first check was payable to Mrs. Hall and Respondent in the sum of \$15,000.00. The other two drafts were payable to Respondent, Mrs. Hall, and minors in the sum of 750.00 each. The settlement totaled \$16,500.00.
9. On June 27, 2006, Respondent deposited the three checks from Infinity into Respondent's Wells Fargo Bank client trust account ("CTA").
10. On June 27, 2006, Respondent issued a check to himself for \$4,125.00 as his attorney fees.
11. As of June 28, 2006, Respondent was obligated to maintain \$12,375 in the Wells Fargo Bank CTA on behalf of Mrs. Hall and the minors.

12. On July 14, 2006, the balance in the CTA dropped to \$10,645.73.

13. On July 24, 2006, Respondent sent a letter to Mrs. Hall explaining the disbursement of the \$16,500.00 in settlement funds, which included:

Attorney's fees	\$5,375.00
Dr. Bodzin for Medical Bills	\$5,404.03
Balance	\$4,220.97

The actual balance owed to Mrs. Hall and the minors after disbursement was \$5,720.97. Respondent stated in the letter that he was inclined to keep a balance of \$4,220.97 in his trust account until it could be determined in the pending Hall divorce proceeding who would have a claim to the funds.

14. On July 24, 2006, Respondent disbursed \$1,250 to Mrs. Hall from his CTA.

15. Since Respondent did not disburse more money to Dr. Bodzin or Mrs. Hall, as of July 25, 2006, Respondent was required to maintain \$11,125 in the CTA.

16. In August 2006, an attorney handling Mrs. Hall's dissolution matter advised Respondent that Mrs. Hall's husband would not be making a claim for any portion of the personal injury funds.

17. On September 14, 2006, with no additional disbursements to Mrs. Hall or to Dr. Bodzin, the balance in Respondent's CTA fell to \$4,349.73, \$6,775.27 less than he was required to maintain in Hall matter.

18. On February 9, 2007, Respondent sent another letter to Mrs. Hall regarding the disbursement of funds. This time, the total amounts reflected on the disbursement sheet were:

Attorney's fees	\$4,125
Dr. Bodzin for Medical Bills	\$5,404.03
Amount already Paid to Hall	\$1,250.00
Balance	\$5,721

Respondent also enclosed with the letter a check made payable to Mrs. Hall in the amount of \$5,721.

19. In March 2007, Mrs. Hall discovered that Respondent had not paid Dr. Bodzin as Respondent claimed on the disbursement sheets. Mrs. Hall began making monthly payments to Dr. Bodzin to satisfy the bill.

20. On October 26, 2007, Respondent sent an email to Mrs. Hall's new attorney. In the email, Respondent acknowledged Mrs. Hall's attempts to collect the funds held by Respondent and to pay the medical bills. In addition, Respondent stated he had confirmed that Mrs. Hall had paid Dr. Bodzin \$4,597.98 and that \$500.00 remained unpaid. In addition, Respondent stated that he would make Mrs. Hall whole.

21. On October 31, 2007, Respondent sent a cashier's check in the amount of \$5,800.00 to Mrs. Hall's new attorney to reimburse Mrs. Hall and to satisfy Dr. Bodzin's bill. Respondent ultimately disbursed \$12,771 to Mrs. Hall.

**Conclusions of Law**

Through grossly negligent conduct of not maintaining the required funds in his CTA on behalf of Mrs. Hall and minors, Respondent wilfully failed to maintain client funds in a trust account in violation Rules of Professional Conduct, rule 4-100(A).

By misappropriating at least \$6,775.27 of his client's funds for his own use and benefit, Respondent was grossly negligent in violating Business and Professions Code, section 6106.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was November 23, 2010.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 23, 2010, the prosecution costs in this matter are \$2,057.30. 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.**

Standard 2.2(a) culpability 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 mitigating circumstances.

Standard 2.3 – culpability 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 a 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.

**AGGRAVATING CIRCUMSTANCES.**

**FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.**

Respondent's conduct harmed his client as she found it necessary to hire new counsel to assist in resolving the outstanding liens in this case.

**MITIGATING CIRCUMSTANCES.**

**FACTS SUPPORTING MITIGATING CIRCUMSTANCES.**

Although the misconduct is serious, Respondent has no prior record of discipline in his twelve years of practice.

Respondent's office manager embezzled \$100,000 from his Client Trust Account which money was never fully repaid. During that time, Respondent suffered difficulties in his personal life when his son was born with serious medical complications that required prolonged and repeated hospitalizations over a period of months. Also, during this time, Respondent was caring for his mother, who suffered serious health problems.

Respondent has been cooperative to the extent that he stipulated to facts, conclusions of law and level of discipline.

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 misconduct. The character letters remain in the State Bar file.

#### **STATE BAR ETHICS SCHOOL.**

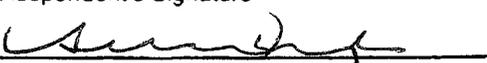
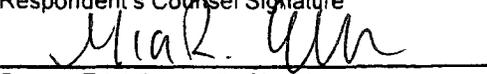
Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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In the Matter of DAVID LOWELL NELSON	Case number(s): 07-O-14468
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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:

<u>12/19/10</u> Date	 Respondent's Signature	<u>David L Nelson</u> Print Name
<u>12/22/10</u> Date	 Respondent's Counsel Signature	<u>SUSAN MARGOLIS</u> Print Name
<u>12/28/10</u> Date	 Deputy Trial Counsel's Signature	<u>Mia R. Ellis</u> Print Name

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In the Matter Of <b>DAVID LOWELL NELSON</b>	Case Number(s): <b>07-O-14468</b>
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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.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

01-18-11

Judge of the State Bar Court



**RICHARD A. PLATEL**

**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 January 20, 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:

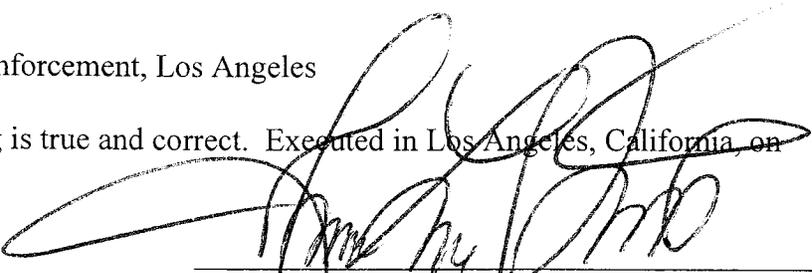
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SUSAN LYNN MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

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

Mia R. Ellis, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 20, 2011.



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Johnnie Lee Smith  
Case Administrator  
State Bar Court