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ORIGINAL

State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Hugh G. Radigan Deputy Trial Counsel 1149 South Hill Street Los Angeles, Ca. 90015 213-765-1206 Bar # 94251	Case Number (s) 08-O-10093 09-O-14128 09-O-19354 10-O-00610 10-O-01494	(for Court's use) <div style="text-align: center;"> FILED NOV 19 2010 <i>HC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center; margin-top: 20px;"> PUBLIC MATTER </div>
In Pro Per Respondent Stephen Lee Burns 2975 Wilshire Blvd. Los Angeles, Ca. 90010 213-232-4779 Bar # 113371	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT	
In the Matter of: Stephen Lee Burns Bar # 113371 A Member of the State Bar of California (Respondent)	DISBARMENT <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 13, 1984**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(21)** 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):
- Costs to be awarded to the State Bar
 - Costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - Costs entirely waived
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 220(c).

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**
- (a) State Bar Court case # of prior case **01-O-03498**
 - (b) Date prior discipline effective **January 19, 2005**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Multiple violations of rule 3-110(A), 4-100(A), 4-100(B)(1) and 4-100(B)(4).**
 - (d) Degree of prior discipline **Ninety day suspension, suspension stayed, and Respondent was placed on 18 months probation.**
 - (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. **(see attachment page 14)**
- (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. **(see attachment page 14)**
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **(see attachment page 14)**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **(see attachment page 14)**
- (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.

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- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. (see attachment page 14)
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.
- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.
- (3) **Client Security Fund Reimbursement:** Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment obligation is enforceable as provided under Business and Professions Code section 6140.5.
- (4) **Other: Restitution:**

It is recommended that Respondent Stephen Lee Burns make restitution to Susan Christopher in the amount of \$4,725.86 plus 10% interest per annum from January 5, 2009, (or to the Client Security Fund to the extent of any payment from the fund to Susan Christopher, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

It is recommended that Respondent Stephen Lee Burns make restitution to Ernest and Madeline Marks in the amount of \$15,048.90 plus 10% interest per annum from December 8, 2009, (or to the Client Security Fund to the extent of any payment from the fund to Susan Christopher, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

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(Stipulation form approved 05/20/10 by SBC Executive Committee, eff. 06/01/10.)

Disbarment

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Attachment language begins here (if any)

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Stephen Lee Burns

CASE NUMBER(S): ET AL. 08-O-10093, 09-O-14128, 09-O-19354, 10-O-00610 and
10-O-01494

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.

Case No. 08-O-10093

1. In April 2004, Lea Sam ("Sam") employed Respondent to represent her in a personal injury claim on a contingency fee basis.
2. In October 2004, Respondent informed Sam that attorney Malek Shraibati ("Shraibati") had been associated into her case and would be handling the case to its conclusion. Respondent and Shraibati shared the same office address of 3530 Wilshire Blvd, #1060, Los Angeles, CA 90010 (the "Los Angeles office"), but Shraibati was not a partner, associate or shareholder with Respondent. Sam did not consent to the association of Shraibati, did not enter into any fee agreement with Shraibati, and did not authorize Shraibati to share in the contingency fee with Respondent pursuant to rule 2-200 of the Rules of Professional Conduct.
3. On November 9, 2004, Sam's insurance carrier, Allstate Insurance ("Allstate"), sent a \$1,000 medical payment draft to Respondent, payable to Sam and Respondent as payment of expenses Sam incurred with Advanced Professional Imaging.
4. On November 24, 2004, Respondent deposited the \$1,000 draft into his client trust account at Citibank, account number xxxxxx0989.¹
5. By letter dated December 2, 2004, Allstate notified Respondent of its right to reimbursement of the \$1,000 it paid from any settlement Respondent obtained on behalf of Sam, pursuant to its policy with Sam.

¹ The full account number is omitted for privacy purposes.

6. In April 2006, Sam terminated Respondent's and Shraibati's representation and employed attorney Ronald Koerner ("Koerner") to assume the representation in the case. By letter dated April 5, 2006 addressed to Respondent, Koerner notified Respondent that Sam terminated his representation.

7. By letter dated April 13, 2006, Shraibati informed Koerner that his office was asserting a lien for services rendered to Sam and for costs advanced on Sam's behalf.

8. By letter dated May 23, 2007 addressed to Shraibati at the Los Angeles office, Koerner requested that he forward the \$1,000 received from Allstate within 10 days of the letter. The letter was received in the Los Angeles office. Neither Shraibati nor Respondent responded to the letter or forwarded the \$1,000 to Koerner.

9. In or about September 2007, Koerner settled Sam's claim for \$12,000 with State Farm Insurance. Given the lien claim of Respondent and Shraibati, State Farm issued the settlement draft payable to Sam, Koerner's office, Respondent and Shraibati.

10. By letter dated October 24, 2007 addressed to Respondent and Shraibati at the Los Angeles office, Koerner offered to resolve their lien claim for the \$1,000 received from Allstate and requested that they authorize him to endorse their names on the settlement draft if the offer was accepted. In the alternative, Koerner requested that they forward the \$1,000 and authorize him to endorse their names on the settlement draft on the condition that he would maintain funds in trust to cover fees and costs until their lien was resolved. The letter was received in the Los Angeles office. Neither Shraibati nor Respondent responded to the letter or forwarded the \$1,000 to Koerner.

11. On November 2, 2007, Koerner sent another letter via certified mail, return receipt requested and addressed to Respondent and Shraibati at the Los Angeles office. With the letter, Koerner enclosed a copy of his October 24, 2007 letter and requested that they respond to the letter within five days to prevent any further delay in the disbursement of the settlement funds. The letter was received in the Los Angeles office. Neither Shraibati nor Respondent responded to the letter or forwarded the \$1,000 to Koerner.

12. On November 12, 2007, Koerner sent letters via certified mail, return receipt requested, one addressed to Respondent and one addressed to Shraibati at the Los Angeles office. With each the letter, Koerner enclosed a copy of his October 24 and November 2, 2007 letters and requested that they

respond to the letter within five days or he would refer the matter to the State Bar of California ("State Bar"). The letters were received in the Los Angeles office. Neither Shraibati nor Respondent responded to the letters or forwarded the \$1,000 to Koerner.

13. On November 27, 2007, Sam submitted a complaint to the State Bar against Respondent and Shraibati about them delaying the disbursement of her settlement funds.

14. On January 23, 2008, the State Bar sent letters to Respondent and Shraibati regarding Sam's complaint.

15. On February 8, 2008, Respondent and Shraibati requested an extension to February 20, 2008 to respond to Sam's complaint.

16. On February 22, 2008, Respondent forwarded to Koerner a \$1,000 check from the CTA payable to Sam and authorized Koerner to endorse Respondent's name to the \$12,000 settlement draft.

Conclusions of Law

17. By not forwarding the \$1,000 to Koerner until February 22, 2008, Respondent wilfully failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client was entitled to receive in willful violation of 4-100(B)(4) of the Rules of Professional Conduct.

18. By not authorizing Koerner to endorse his name on the \$12,000 settlement draft until on or about February 22, 2008, Respondent wilfully failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client was entitled to receive in willful violation of rule 4-100(B)(4) of the Rules of Professional conduct.

Case No. 09-O-14128

19. On October 27, 2000, Respondent filed a personal injury lawsuit on behalf of his client, Barbara Machado ("Machado"), in the Los Angeles County Superior Court, case no. VC032867. Machado, a minor, suffered serious injuries when she was struck by the defendant's vehicle while crossing a boulevard as a pedestrian on July 31, 1999.

20. In June 2001, Respondent settled Machado's claim with the defendant's insurance carrier, Mercury Insurance Group ("Mercury"), for \$15,000.

21. On August 27, 2001, Respondent informed the court during a status conference that he had settled Machado's claim. The court set a hearing on an order to show cause re: dismissal of the case for November 7, 2001 (the "OSC").

22. On November 7, 2001, Respondent informed the court during the hearing on the OSC that he needed to have a hearing for the approval of a minor's compromise. The court continued the hearing on the OSC to December 21, 2001.

23. On December 21, 2001, Respondent informed the court during the hearing on the OSC that he needed to have a hearing for the approval of a minor's compromise. The court continued the hearing on the OSC to February 7, 2002. Respondent received notice of the hearing.

24. On February 7, 2002, Respondent did not appear for the hearing on the OSC. The defendant's attorney reported that Respondent had not set a hearing for a minor's compromise and that defendant's attorney would set the hearing himself so that the case could be properly closed. The court set a hearing on an order to show cause re: dismissal of the case and sanctions on Respondent for March 26, 2002 (the "second OSC").

25. On March 26, 2002, Respondent appeared for the hearing on the second OSC, but had not set the case for a minor's compromise hearing. The court concluded that Respondent showed no good cause as to why he had not set the case for a minor's compromise hearing. The court imposed a \$250 sanction against Respondent for failing to timely submit a request for a minor's compromise hearing. The court continued the hearing on the second OSC to April 24, 2002 and ordered Respondent to immediately submit a request for a minor's compromise hearing to be held no later than April 24, 2002.

26. On April 24, 2002, Respondent appeared for the hearing on the second OSC, but had not set the case for a minor's compromise hearing. The court imposed a \$250 sanction against Respondent for his failure to set and complete a minor's compromise hearing as ordered by the court. The court ordered Respondent to have the minor's compromise hearing set and heard and all necessary documents prepared, executed, and submitted to the court prior to June 28, 2002, or a heavy sanction would be imposed against him. The court set a hearing on an order to show cause re: dismissal of the case and sanctions on Respondent for June 28, 2002 (the "third OSC").

27. On June 28, 2002, Respondent appeared for the hearing on the third OSC, but had not complied with the court's April 24, 2002 order. Respondent reported that he could not locate Machado's mother and guardian ad litem, Sandra Rocha ("Rocha"). The court imposed a \$150 sanction against Respondent for failing to comply with the court's order. The court continued the third OSC to July 26, 2002.

28. On July 26, 2002, Respondent appeared for the hearing on the third OSC. The court dismissed the case, with prejudice, for failing to diligently prosecute the case and to comply with the court's rules and orders.

29. On January 3, 2003, Respondent filed a motion for relief to set aside the dismissal

30. On January 24, 2003, the court granted the motion for relief and set aside the dismissal. The court set a hearing on an order to show cause re: dismissal for March 21, 2003 and warned Respondent that the case could be dismissed again if the minor's compromise was not resolved prior to the hearing (the "fourth OSC").

31. On March 20, 2003, Respondent filed a petition to compromise Machado's claim with the court.

32. On March 21, 2003, Respondent appeared for the hearing on the fourth OSC, but had not resolved the minor's compromise prior to the hearing. Respondent reported that a hearing on his petition to compromise Machado's claim was set for April 17, 2003. The court imposed a \$200 sanction against Respondent for failing to comply with the court's January 24, 2003 order.

33. On April 17, 2003, the court approved Respondent's petition for a minor's compromise and dismissed Machado's case, without prejudice, but retained jurisdiction over the terms of the settlement. The court ordered an allowance of \$4,724 for Respondent's fee and costs. The court also ordered that the balance of \$10,276 from the \$15,000 settlement be paid by check or draft payable to Rocha as trustee for Machado, and that such check or draft bear an endorsement on the face or reverse that it is for deposit in an interest-bearing, federally insured blocked account in the name of Rocha as trustee for Machado. The court further ordered that the funds be deposited into a blocked account at Cal Fed Bank within 48 hours of Rocha's or Respondent's receipt of the funds, and that no funds be withdrawn from the court without a written court order until Machado reached the age of 18 years. The court finally

ordered that Rocha or Respondent file proof of the deposit of the funds into the blocked account within 15 days of the deposit.

34. After the court approved the minor's compromise, Respondent did not follow through with obtaining the settlement funds from Mercury in a timely manner. As such, Respondent never deposited any of settlement funds in an interest-bearing account for Machado's benefit as ordered by the court, before Machado reached 18 years of age on September 12, 2007. In January 2009, Machado contacted Respondent regarding payment of her settlement funds.

35. On January 10, 2009, Machado met with Respondent and Machado signed a release to obtain the \$15,000 from Mercury. Respondent informed Machado that she would net \$12,000 from the settlement.

36. On January 28, 2009, Respondent deposited the \$15,000 settlement draft from Mercury, dated January 22, 2009 and payable to Respondent, Machado, and Machado's medical provider, King-Drew Medical Center ("King-Drew"), into his client trust account at Citibank, account number xxxxxx0989 (the "CTA").² However, King-Drew had withdrawn its statutory lien claim against Machado's settlement in November 2001.

37. Without disbursing \$12,000 to Machado, the balance in the CTA fell to \$8,876.41 on October 28, 2009.

38. Respondent misappropriated \$3,123.59 (\$12,000 - \$8,876.41) belonging to Machado by not maintaining \$12,000 in the CTA as of October 28, 2009.

39. Respondent did not pay Machado \$12,000 until on or about November 10, 2009, despite her repeated requests to Respondent for payment between January and March 2009.

Conclusions of Law

40. By not complying with the court's March 26 and April 24, 2002 and January 24 and April 17, 2003 orders, Respondent wilfully disobeyed or violated orders of the court requiring him to do an act connected with or in the course of Respondent's profession which he ought in good faith to have done in willful violation of section 6103 of the Business and Professions Code.

² The full account number is omitted for privacy purposes.

41. By not maintaining \$12,000 in the CTA for Machado as of October 28, 2009, Respondent wilfully 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 rule 4-100(A) of the Rules of Professional Conduct.

42. By misappropriating \$3,123.59 belonging to Machado, Respondent wilfully committed an act involving moral turpitude, dishonesty or corruption in willful Violation of section 6106 of the Business and Professions Code.

43. By not disbursing \$12,000 to Machado until November 10, 2009, Respondent wilfully failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client was entitled to receive in willful violation of rule 4-100(B)(4) of the Rules of Professional Conduct.

44. By not timely setting a minor's compromise hearing, by allowing the case to be dismissed on July 26, 2002, by not following through with obtaining the settlement funds from Mercury in a timely manner, and consequently, by not timely depositing \$10,276 into a blocked account for Machado's benefit, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

Case No. 09-O-19354

45. In March 2008, Susan Christopher ("Christopher") employed Respondent on a contingency fee basis to represent her in a personal injury claim arising from a March 4, 2008 automobile accident. Christopher received medical treatment by Nwude Chiropractic, Inc. ("Nwude") as a result of the accident.

46. On November 23, 2008, Christopher's insurance carrier, Ameriprise Insurance ("Ameriprise"), sent a \$1,710.86 draft to Respondent, payable to Respondent and Christopher. The draft represented payment of Nwude's bill for the medical treatment provided to Christopher as a result of the accident.

47. On December 4, 2008, Respondent deposited the \$1,710.86 draft into his client trust account at Citibank, account number xxxxxx0989 (the "CTA").³

³ The full account number is omitted for privacy purposes.

48. On December 8, 2009, without disbursing the \$1,710.86 to Nwude or Christopher, the balance in the CTA fell to negative \$3,496.60.

49. Respondent misappropriated \$1,710.86 belonging to Nwude and Christopher by not maintaining \$1,710.86 in the CTA as of December 8, 2009.

50. In December 2008, Respondent settled Christopher's bodily injury claims with Infinity Automobile Insurance Co. ("Infinity") for \$3,015. In Respondent's retainer agreement signed by Christopher in March 2008, Christopher had granted Respondent a special power of attorney to settle her claim if he deemed the settlement offer to be fair and reasonable and granted Respondent a special power of attorney to sign and endorse her name to any draft or release. On December 18, 2008, Respondent or Respondent's agent signed Christopher's name to the release of claims provided to Infinity, and Respondent or Respondent's agent signed the release as a witness to Christopher's signature.

51. Respondent did not inform Christopher that he had settled her bodily injury claim with Infinity in December 2008.

52. On or about January 5, 2009, Infinity sent a \$3,015 draft to Respondent, payable to Respondent and Christopher. Respondent received the draft, but never deposited the draft into the CTA.

53. Respondent did not inform Christopher of his receipt of the \$1,710.86 draft in or about December 2008 or his receipt of the \$3,015 draft in or about January 2009.

54. Between June and November 2009, Ameriprise, through its attorney, the Wilber Lane Law Firm ("Wilber"), contacted Respondent's office on several occasions and left messages requesting reimbursement of the \$1,710.86 in medical payments from the \$3,015 settlement. Respondent did not respond to Wilber's requests.

55. On November 25, 2009, Wilber sent a letter to Respondent, and sent a copy of the letter to Christopher. In the letter Wilber requested that Respondent contact Wilber to discuss Christopher's claim.

56. In December 2009, Christopher submitted a complaint against Respondent to the State Bar of California ("State Bar"). Christopher complained that Respondent settled her claim without her knowledge and failed to disburse any of the settlement funds received by him.

57. On February 11, 2010, Infinity sent a \$3,015 draft to Respondent, payable to Respondent and Christopher, to replace the stale-dated draft issued by Infinity in January 2009.

58. On March 11, 2010, Respondent deposited the \$3,015 draft into the CTA.

59. On May 22, 2010, Christopher terminated Respondent's employment. Christopher requested that Respondent release her file, the medical payment he received from Ameriprise, and the \$3,015 he received from Infinity. Christopher also requested that Respondent provide an accounting of his services.

60. Respondent has not disbursed any of the \$1,710.86 received from Ameriprise or any of the \$3,015 received from Infinity to Christopher, Nwude, or Ameriprise.

Conclusions of Law

61. By not maintaining \$1,710.86 in the CTA on behalf of Nwude or Christopher as of December 8, 2009, Respondent wilfully 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 rule 4-100(A) of the Rules of Professional Conduct.

62. By misappropriating \$1,710.86 belonging to Nwude and Christopher, Respondent wilfully committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

63. By not informing Christopher that he had settled her bodily injury claim with Infinity in December 2008, Respondent wilfully failed to keep a client reasonably informed of a significant development in a matter in which Respondent had agreed to provide legal services in willful violation of section 6068(m) of the Business and Professions Code.

64. By not informing Christopher of his receipt of the \$1,710.86 and \$3,015 drafts, Respondent wilfully failed to notify a client promptly of the receipt of the client's funds in willful violation of rule 4-100(B)(1) of the Rules of Professional Conduct.

65. By not disbursing any of the \$1,710.86 received from Ameriprise or any of the \$3,015 received from Infinity to Christopher, Nwude, or Ameriprise, Respondent wilfully failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client was entitled to receive in willful violation of rule 4-100(B)(4) of the Rules of Professional Conduct.

Case No. 10-O-00610

66. In June 2009, Stav Shatzki (“Shatzki”) employed Respondent to handle her bankruptcy. Shatzki advanced \$4,500 to Respondent for the representation.

67. From August 2009 through November 2009, Shatzki contacted Respondent’s office and requested the status of her bankruptcy, and particularly, when a bankruptcy petition would be filed on her behalf.

68. On November 17, 2009, Shatzki contacted Respondent. Respondent informed Shatzki that he would have the bankruptcy petition filed by November 27, 2009 at the latest. Respondent did not file a bankruptcy petition for Shatzki.

69. On December 2, 2009, Shatzki terminated Respondent’s employment and requested a refund of the \$4,500 paid to Respondent. Shatzki repeated her request for a \$4,500 refund in an e-mail to Respondent on December 17, 2009. Respondent did not refund any portion of the \$4,500 paid by Shatzki.

70. Respondent did not earn the \$4,500 paid by Shatzki, as he had not filed any bankruptcy petition for Shatzki as agreed.

Conclusions of Law

71. By not filing a bankruptcy petition for Shatzki, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

72. By not returning \$4,500 to Shatzki, Respondent wilfully failed to refund promptly any part of a fee paid in advance that had not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 10-O-01494

73. In February 2007, Ernest Marks (“Ernest”) employed attorney Mark Shraibati (“Shraibati”) on a contingency fee basis to represent him and his wife, Madeline Marks (“Madeline”), in their personal injury claims arising out of a January 24, 2007 automobile accident.

74. In August 2007, Ernest received a letter from Respondent. In the letter, Respondent informed Ernest that Respondent, not Shraibati, would be handling the claims from that point on. Ernest and Madeline did not enter into any written fee agreement with Respondent for the representation.

75. In June 2009, Ernest and Madeline agreed to settle their claims with Platinum Claims Services (“Platinum”) for \$10,000 each.

76. On June 29, 2009, Platinum issued a \$10,000 draft payable to Respondent and Ernest pursuant to the settlement.

77. On July 21, 2009, Respondent deposited the \$10,000 draft into his client trust account at Citibank, account number xxxxxx0989 (the “CTA”).⁴

78. In August 2009, Shraibati sent Respondent a check for \$8,838. The check represented medical payments by The Hartford, the insurer for Ernest and Madeline, that Shraibati received on behalf of Ernest and Madeline during his representation.

79. On October 7, 2009, Respondent deposited the \$8,838 into the CTA.

80. Between October 26 and December 8, 2009, Respondent was to maintain the entire \$10,000 received from Platinum on behalf of Ernest and the entire \$8,838 in medical payments in the CTA, as he had not obtained the authorization of Ernest or Madeline to disburse any of the funds and had not disbursed any of the funds on their behalf. Between October 26, 2009 and December 8, 2009, the balance in the CTA fell to negative \$3,496.60, repeatedly fell below the \$18,838 that should have been maintained in the CTA on behalf of Ernest and Madeline on, but not limited to, the following dates:

<u>Date</u>	<u>Balance</u>
10-26-09	\$13,870.41
11-03-09	\$ 8,728.10
12-08-09	\$ 3,496.60 -

81. On November 28, 2009, Respondent sent a letter to Ernest and Madeline with his proposal for the disbursement of the funds received on their behalf. Ernest and Madeline did not accept all the terms of Respondent’s proposal. Particularly, Ernest and Madeline did not agree that Respondent was entitled to 40% of the settlement as he proposed.

⁴ The full account number is omitted for privacy purposes.

82. On December 18, 2009, Respondent sent a letter to Ernest and Madeline. In the letter, Respondent confirmed his agreement to reduce his fee to 33-1/3% of the gross \$20,000 settlement from Platinum, or \$6,666. Respondent and Shraibati were entitled to \$456.10 for reimbursement of costs advanced during their representation, or \$350 for a court filing fee, \$10 for a police report, and \$96.10 for copies. According to Respondent, Ernest and Madeline were entitled to a minimum of \$13,769.09 from the funds received from The Hartford and Platinum.

83. As of December 8, 2009, a minimum balance of \$15,048.90 (\$18,838 less \$3,333 for attorney fees owed by Ernest and less \$456.10 for costs) should have been maintained in the CTA from the funds paid by The Hartford on behalf of Ernest and Madeline and from the funds paid by Platinum on behalf of Ernest.

84. On February 26, 2010, Platinum issued a \$10,000 draft payable to Respondent and Madeline pursuant to the settlement.

85. On April 29, 2010, Respondent deposited the \$10,000 draft received on behalf of Madeline in the CTA.

Conclusions of Law

86. By not maintaining \$18,838 in the CTA on behalf of Ernest and Madeline between October 26 and December 8, 2009, Respondent wilfully 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 rule 4-100(A) of the Rules of Professional Conduct.

87. By not maintaining a minimum balance \$15,048.90 in the CTA as of December 8, 2009, Respondent misappropriated \$15,048.90 belonging to Ernest and Madeline. By misappropriating funds belonging to Ernest and Madeline, Respondent wilfully committed acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

PENDING PROCEEDINGS.

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

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 2, 2010, the prosecution costs in this matter are approximately \$7,554.50. 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) provides that “Culpability of a member of willful 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 provides that “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.”

Standard 2.4(a) provides that “Culpability of a member of a pattern of willfully failing to perform services demonstrating the member’s abandonment of the causes in which he or she was retained shall result in disbarment.”

Standard 2.6 provides that “Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension 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:

- (a) Sections 6067 and 6068;
- (b) Sections 6103 through 6105;...”

In *Kaplan v. State Bar* (1991) 52 Cal.3d. 1067, Respondent stole \$29,000 in funds belonging to the law partnership of which he was a partner. The court imposed discipline consisting of disbarment. Respondent lied to the State Bar during its investigation and to his partners when they confronted him with his thefts. In mitigation, Respondent had no prior record of discipline and was suffering from extreme stress at the time of the misconduct. However, Respondent failed to show that he had fully recovered from the effects of the stresses. Respondent’s acts involved intentional dishonesty and concealment and was designed to defraud his partners. In aggravation, there was no indication that Respondent would have stopped his misconduct if his thefts had not been discovered by his partners.

In *Kelly v. State Bar* (1988) 45 Cal. 3d. 649, Respondent misappropriated \$19,597.05 of funds being in trust for one client. Respondent subsequently contacted the client, whom he knew was then represented by another attorney, without the consent of their attorney and coerced the client into signing a statement that the client had loaned misappropriated money to the Respondent. The court imposed discipline consisting of disbarment. The court noted that there was no evidence suggesting that Respondent’s behavior was an isolated act. The court also noted that Respondent’s lack of a prior record of discipline was not especially commendable. In this regard, Respondent had been practicing seven and one years, which was long enough to know that his conduct was wrong, but not so long as to make his blemish free record surprising.

In *Weber v. State Bar* (1988) 47 Cal. 3d. 492, in a probate matter, Respondent had misappropriated \$25,000 entrusted to him, knowingly made false misrepresentations to the probate court regarding a tax audit and the cash balance of the estate trust account, twice failed to comply with lawful court orders to distribute portions of the estate, and had knowingly written a check, in response to a superior court order, on an account that held funds insufficient to cover the payment. The court imposed discipline consisting of disbarment. In aggravation, the court found that Respondent's filing of lawsuits against the judges, attorneys, who opposed him regarding his handling of the probate proceedings, the Stat Bar and its representatives provided a basis for a finding of aggravation. The court reasoned that the aforementioned lawsuits were highly probative on the question of the Respondent's acceptance of responsibility for his actions and his contemptuous attitude toward disciplinary proceedings.

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE.

Case Nos. 01-O-03498, 02-O-15271, 03-O-01316, 04-O-12652 and 04-O-12896

Effective February 19, 2005, pursuant to California Supreme Court order S129002, Respondent was suspended for ninety days, the suspension stayed and Respondent was placed on probation for eighteen months for multiple violations of rule 3-110(A), 4-100(A), 4-100(B)(1) and 4-100(B)(4) in the above-referred five separate matters.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Under standard 1.2(b)(ii), Respondent's acknowledged misconduct evidences multiple acts of wrongdoing and demonstrates a pattern of misconduct. In Case No. 09-O-14128, Respondent repeatedly failed to comply and constructively respond to successive orders to show cause to the detriment of the client, delaying the ultimate disbursement of settlement proceeds while ignoring the express directive of the applicable court order approving the minor's compromise. Similarly, in Case No. 10-O-00610, Respondent failed to accomplish the retained task of timely filing of a bankruptcy petition on the client's behalf in spite of repeated requests and assurances from Respondent that it would be accomplished by a date certain.

Under standard 1.2(b)(iii), Respondent's misconduct was surrounded by dishonesty, concealment and an inability to account to his clients as evidenced by Respondent's conduct in Case No. 08-O-10093 where Respondent delayed for an inordinate amount of time to disburse and account for a med-pay draft or authorize his signature to a settlement draft so as to facilitate disbursement of the proceeds to the client and medical care provider. Similarly, in Case Nos. 09-O-19354, 09-O-14128, and 10-O-01494, Respondent misappropriated settlement proceeds in the amounts of \$4,725.86, \$3,123.59, and \$15,048.90, respectively, which constitutes an additional aggravating factor pursuant to standard 1.2(b)(iv), as it visited significant harm upon the involved clients.

(Do not write above this line.)

In the Matter of Stephen Lee Burns	Case number(s): 08-O-10093 09-O-14128 09-O-19354 10-O-00610 10-O-01494
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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>November 12, 2010</u> Date	<u>Stephen L. Burns</u> Respondent's Signature	<u>Stephen Lee Burns</u> Print Name
<u>November 15 '10</u> Date	<u>Hugh G. Radigan</u> Deputy Trial Counsel's Signature	<u>Hugh G. Radigan</u> Print Name

(Do not write above this line.)

In the Matter of Stephen Lee Burns	Case Number(s): 08-O-10093 09-O-14128 09-O-19354 10-O-00610 10-O-01494
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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.)**

Respondent **Stephen Lee Burns** is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 490(b) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

11-17-10
Date


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 Los Angeles, on November 19, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING DISBARMENT; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

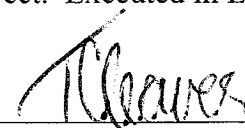
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**STEPHEN LEE BURNS
LAW OFFICE OF STEPHEN L BURNS
2975 WILSHIRE BLVD STE 640
LOS ANGELES, CA 90010**

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 19, 2010.



Tammy Cleaver
Case Administrator
State Bar Court