

State Bar Court of California
Hearing Department
Los Angeles

ORIGINAL

<p>Counsel For The State Bar</p> <p>Djinna M. Gochis, Assistant Chief Trial Counsel 1149 South Hill Street Los Angeles, California 90015</p> <p>Bar # 108360</p>	<p>Case Number (s) 08-0-10682</p>	<p>(for Court's use)</p> <p>FILED MAR - 2 2010 <i>MC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>Counsel For Respondent</p> <p>JoAnne Robbins, Esq. Karpman and Associates 301 North Canon Drive, Suite 303 Beverly Hills, California 90210</p> <p>Bar # 82352</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter Of: DONALD BRADLEY CRIPE</p> <p>Bar # 138548</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 7, 1988.
- (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 *17* 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):
- costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - case ineligible for costs (private reproof)
 - costs to be paid in equal amounts for the following membership years: costs to be paid in equal amounts prior to February 1 for three billing cycles following the effective date of the reproof. (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
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - * (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 or a separate attachment entitled "Prior Discipline."

- (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. page 10-13
- (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. see page 10-13
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings. see page 10-13
- (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. see page 10-13
- (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. see page 10-13

- (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. see page 10-11
- (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:

see page 10-13

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of one (1) year.
- (2) During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproof.
- (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) 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 within one year of the effective date of the reproof.

No MPRE recommended. Reason: Not required for the protection of the public (see In Re Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 75). Respondent will be taking additional continuing education classes.

- (11) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

(Do not write above this line.)

Attachment language (if any):

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136328

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DONALD BRADLEY CRIPE

CASE NUMBER(S): ET AL. 08-0-10682

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.

1. On May 1, 2006, Respondent was appointed "Special Master" in the family law matter of *Denise A. Savastano v. Nicholas T. Savastano*, Superior Court, County of Riverside, Family Law Department, Case no. RID 205859 ("Marriage of Savastano").
2. As part of his appointment, Respondent was to take action to evaluate the community and corporate assets. He was also required to take possession of and to protect the proceeds related to the community.
3. On April 10, 2007, Respondent received the first of three checks from New Dimensions Escrow related to the Marriage of Savastano in the sum of \$54,182.05.
4. At the time the check was received, Respondent had a bookkeeper ("Ms. B"). She had worked for Respondent since mid-2003, initially as an assistant and paralegal. When Respondent's ex-wife left the firm in September 2006, Ms. B replaced her as bookkeeper. Upon receipt of the first check from New Dimensions Escrow, Respondent requested Ms. B to place the check in his office safe, pending the opening of a special account at California Bank and Trust in Moreno Valley. Respondent already had a general account at that same bank.
5. Within a few days of the receipt of the first check from New Dimensions Escrow, Respondent filled out the forms necessary to open a special trust account at California Bank and Trust to hold the proceeds for which he alone would be signatory. Respondent gave the completed forms to his bookkeeper, Ms. B. Ms. B represented to him that the account was opened successfully. He accepted that the forms were properly processed with the bank and that an account was opened.
6. Respondent received two more checks from New Dimensions Escrow to hold for the community, on April 20, 2007 in the sum of \$1,952.04 and on April 25, 2007 in the sum of \$4,289.35. The total of the three checks was therefore \$60,423.44.
7. Respondent directed Ms. B to deposit the two subsequent checks into the new special/trust account. He did not independently verify that this had been done. In fact, all checks were deposited by Ms. B into Respondent's general account, for which there was a rubber deposit stamp.

8. On May 22, 2007, Mrs. Savastano complained to the State Bar that Respondent was refusing to account for or to release the funds to her. Since entitlement to the money was an issue pending in the court, the complaint was closed at that time.
9. On May 23, 2007, Respondent sent a letter to the attorneys representing Mr. and Mrs. Savastano, stating, among other things, that he had established a special account for the funds. At about that time, Respondent requested that his bookkeeper, Ms. B, provide him documentation of the special account. She provided to him what appeared to be a bank statement dated May 1, 2007, reflecting an account FBO (for benefit of) Nicholas Savastano. Although the statement did not reference Mrs. Savastano. Respondent accepted it was genuine. He did not then seek any further confirmation related to the account.
10. On May 30, 2007, Respondent sent a letter to Mr. Savastano's attorney, Toby Bowler ("Bowler") and to Mrs. Savastano's attorney, John Spurgeon ("Spurgeon") stating that he was startled to see that Mrs. Savastano was alleging he had not opened a special trust account for the proceeds of the three New Dimension Escrow Checks. Although Respondent did not make any independent verification that the account was opened, nor personally assured that the funds had been properly deposited into that account, Respondent asserted that the statement by Mrs. Savastano was "blatantly untrue." His statement was based on the misinformation he had at the time.
11. Respondent requested that Ms. B send proof of the deposit to Spurgeon with his May 30, 2007 letter. Mrs. Savastano states that no proof was, in fact, included with that letter.
12. A hearing was set before the Court on June 13, 2007. At that hearing, the Court, pursuant to a request by Bowler on behalf of Mr. Savastano, ordered \$30,000.00 held by Respondent to be disbursed to Mr. Savastano. Respondent advised the court, based upon another representation from Ms. B, that he did not yet have checks on the special/trust account and that it would be a few days before he could make the disbursement.
13. Believing that his bookkeeper had requested the bank to transfer the funds to his general account, since there were no checks on the special account, Respondent instructed her to prepare a general account check for his signature for the \$30,000.00. The check was dated June 14, 2007. Respondent signed the check. Mr. Savastano received it and it cleared the bank. The balance of the Savastano monies remaining in Respondent's possession was, as of this date, \$30,423.44.
14. Another hearing was set for June 29, 2007. On June 27, 2007, Respondent sent a letter to Spurgeon, Mrs. Savastano's attorney, and faxed several documents, including the false bank statement previously shown to Respondent by Ms. B.
15. Based on what he had been told by Ms. B, Respondent reiterated his belief that the funds were in the account and that the May 1 false bank statement was the only one presently available.
16. Spurgeon advised that the bank statement did not provide adequate information, and, on that same date, June 27, 2007, Respondent requested from Ms. B every piece of paper related to the special/trust account. He began preparing a declaration for her signature regarding the funds, and the dates of the deposits into the special/trust account, while Ms. B. delayed in providing him additional documents. He was about to contact the bank representatives himself, when Ms. B advised him that she needed to speak with him.

17. At that time, Ms. B advised him that there was no special/trust account and that the remaining money for the Savastano matter was gone. Ms. B left the office. Respondent changed the locks. The next morning Respondent went to the bank. Respondent discovered that all the New Dimension Escrow Checks had been deposited into his General Account at California Bank and Trust and that his bookkeeper, Ms. B had taken from that account in excess of at least \$350,000.00, which included the balance of the funds for the Savastano community, \$30,423.44.
18. On June 28, 2007, Respondent filed a police report with the Riverside Police Department.
19. On June 29, 2007, Respondent advised the Court and counsel of the theft and the information he had to date with regard to it. He issued a personal check drawn on his personal account at Irwin Union Bank for \$30,000.00 to Mr. Savastano's attorney, Bowler, for deposit in Bowler's Special Trust Account. He paid over the balance, \$423.44 shortly thereafter also with his personal funds. The funds received by Bowler were later distributed pursuant to the Orders of the Court.
20. On July 20, 2007, Respondent filed a civil complaint against Ms. B. related to the theft in Riverside Superior Court. This complaint was not served and dismissed for jurisdictional and procedural reasons. Another civil complaint was filed by Respondent's counsel on his behalf in 2008 in the San Bernardino Superior Court. A judgment was entered upon default in September 2008 for in excess of \$1,000,000.00 against Ms. B, related to her thefts from Respondent, which included improper use not only of his general account and the funds related to the Marriage of Savastano but Respondent's credit cards.

Conclusions of Law

By his failure to adequately supervise his bookkeeper and the handling of the checks from New Dimensions Escrow, the Respondent failed to properly preserve the funds he was appointed as Special Master to hold on behalf of the Marriage of Savastano in willful violation of rules 3-110(A) and 4-100(A) and to maintain complete records as required by rule 4-100(B)(3) of those funds.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was January 25, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 25, 2009, the prosecution costs in this matter are \$1,983.00. 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.

MITIGATING CIRCUMSTANCES.

Respondent has practiced law for 21 years without prior discipline.

In mid-2003, four years, before the operative events underlying the complaint herein, Respondent employed Ms. B as a trainee and assistant in his office. She was an acquaintance of the family of Respondent's now former wife, Jeri Trump ("Trump"). Trump had been working as office manager for Respondent since 1999. She continued until September-October 2006, even after their amicable divorce.

In the time before she became Respondent's bookkeeper, Ms. B did well in the office, and Respondent came to rely on her more and more to handle all of its administrative and business aspects, as he had been accustomed to do with Trump. She also developed a friendship with Respondent's mother. Ms. B would often visit Respondent's mother at her apartment and attended his mother's funeral when she passed away. He also had a personal relationship with Ms. B. This confluence of circumstances enhanced his trust of her. He even told new and other members of his staff that Ms. B was one of his best friends and he trusted her completely.

When Trump determined to leave Respondent's employ in the fall of 2006, it was Ms. B that Respondent considered to replace her. Prior to employing her as bookkeeper, Respondent had long discussions with her about her skills and whether her work experience would make her a good fit. He had Trump train Ms. B in the weeks before Trump left.

When Trump left, and Ms. B took over the handling of the financial matters of the office, including the office business account(s). From and after the time that she took over in September-October 2006, there were no serious problems. He discussed his accounts with Ms. B on a regular basis. Ms. B. did not have signatory authority on any trust or general accounts; she did not have any authority to write checks on it or to make any withdrawals on any account. She was not a signatory on any special accounts he opened for his work as special master. When the first funds for the Savastano marital matter came to him, he did what had become custom and habit in opening special accounts—he had Ms. B bring him the paperwork to open the account and instructed her to see to its processing. Given his experience with and level of trust of Ms. B, he did not then have any concern about follow through by what had been, heretofore, to his knowledge a sound member of his staff.

In this context of his several years' experience with Ms. B, Respondent did not find her representations that there were no checks on the special account in time for the issuance of his first disbursement pursuant to the June 13, 2007 order unreasonable, nor her representations that she had sent proof to the Savastanos' counsel related to the deposit untrue. It did not occur to him that someone whom he trusted would forge a bank statement such that it looked as if a special account had properly been opened. Had he looked closer at the statement, he would have noticed that the fonts were irregular and that only Nicholas Savastano was listed "FBO" (for benefit of). Respondent recognizes that when Ms. B suggested and he accepted her suggestion to "transfer" \$30,000 of the funds from the special account into Respondent's general account from the special account, a large red flag was raised that required his independent verification. When Mrs. Savastano, through her counsel, expressed concern that there was no account (on or about May 30), Respondent recognizes that he should have contacted the bank himself, regardless of his trust in Ms. B, to be sure that there was one, rather than to assert (relying only on Ms. B and one bank statement) that all was well.

Another factor that influenced Respondent's level of reliance on Ms. B, was that Respondent had emergency surgery for a detached retina in November 2006 and three additional surgeries between that time and June 2007 which required him to be out of the office. In between these events, on May 30, 2007, Respondent had chest pains that required him to be hospitalized briefly, tested (the condition turned out to be severe esophageal spasm and not a heart attack) and required him to be out of the office for the first week of June 2007, just before the June 13, 2007 hearing in which the first order of disbursement was made.

Several of Respondent's staff who provided letters to the State Bar related to the circumstances surrounding the matter, advised that Ms. B specifically told them not to bring certain

matters or pieces of mail directly to Respondent but to have everything go through her. She gave them what sounded like legitimate reasons for this action, for example, that there would be less chance of something being missed in the office.

In that context, a comment made by one of the many character references (see below) for the Respondent, David Gregory, Esq. offers some insight into a single practitioner's thinking: "Being a private practitioner myself, I am fully aware of how our staff becomes very important to us and how we tend to grant them great discretion in dealing with office and other matters as they show competence and loyalty. I can see why Don believed that he should be able to trust (his bookkeeper) implicitly."

Nonetheless Respondent, who was not merely a private practitioner, but a special master tasked with protecting and preserving the funds of the Savastanos, understands the higher obligation of an attorney that makes his conduct herein problematic, notwithstanding his extensive mitigation.

Respondent has been frank in his recognition that his trusting delegation of opening special financial accounts to his bookkeeper, without independent verification of her actions and their propriety, his failure to be alerted by her questionable explanations, the little documentation she provided to him confirming the opening of a special/trust account was his failure, and his alone. Respondent is painfully aware that the non-delegable fiduciary duty is the reason that while he may trust, he also must verify what every staff member in his office is doing, particularly when it comes to money belonging to others. A number of his own references have referred to Respondent's acknowledgement of his "mistake to have delegated the responsibility" to Ms. B. (From the letter of Mark Mellor, Esq. April 21, 2008, as an example).

Respondent took immediate steps from and after June 27, 2007 to deal with the theft, which included replacing the remaining \$30,423.44 of the Savastano marital funds. He filed a police report the next day, June 28. He brought the forged statement to the bank for to review. (That he did not notice the different fonts or question that only Mr. Savastano's name was on the statement is, for the purposes of this stipulation only, arguably a combination of being blinded by trust in what he thought was a loyal employee and actual lack of visual acuity at the time.) He advised the court on the day of the hearing, paying out \$30,000.00 to Bowler's Special Account from his personal (not general) account. He paid the 423.44 in July 2007. He filed suit for fraud, breach of fiduciary duty, and negligence for approximately 1.2 million dollars and he obtained a judgment.

During the time this matter was being investigated by the Office of the Chief Trial Counsel, approximately 45-50 individuals, including lawyers, active and retired judges, mental health professionals, members of his office staff and even his ex-wife provided character letters, many of them detailed, expressing their belief, in part, that the matter herein was aberrational and that Respondent is a good and trustworthy member notwithstanding the failure personally to supervise the Savastano marital funds and the delegation and failure to supervise that provided a window of opportunity for a miscreant.

Despite the significant amount of funds involved, Respondent did not himself misappropriate them. This was done by an employee. Respondent did however set a stage. The Respondent's willful failure was the level of delegation to that over trusted employee; Respondent understands that however much one may trust staff, the ultimate responsibility for oversight, for knowing the details of the processing of a special/trust account and assuring the deposits and maintenance belongs not to the trusted staff person, but to the attorney/fiduciary. Fortunately, the Respondent was immediately able to restore the loss from his personal funds, even though he also lost significant sums from his general account in the amount of approximately \$300,000.00.

AUTHORITIES SUPPORTING DISPOSITION

Analysis of what is appropriate discipline begins with the Standards for Attorney Sanctions for Professional Misconduct which are guidelines for achieving greater consistency for misconduct of a similar nature (see, for example, *In re Young* (1989) 49 Cal. 3d 257, 267) and concern themselves with the protection of the public, the legal profession, the maintenance of high professional standards and the preservation of public confidence in the profession.

The standards, standing alone, would arguably warrant discipline, including actual time, because of the mishandling of client or third party funds. Case law varies widely depending on the particular facts involved, both before and after the standards.

Paraphrasing a succinct segment of the Supreme Court's analysis of the proper discipline in the *Matter of Morse* (1995) 11 Cal.4th 184, 209, decisions provide "some guidance" but the determination of what is appropriate really turns on the responses to two questions, 1. What did the member do wrong? 2. What discipline will most likely protect the courts, and the profession and/or deter the member from wrongdoing in the future?

While it has been long recognized that an attorney cannot be held responsible for every detail of his office function, "where fiduciary violations occur as the result of serious and inexcusable lapses in office procedure, they may be deemed 'wilful' for disciplinary purposes, even if there was no deliberate wrongdoing." This statement comes from the pre-standards case of *Palomo v. State Bar* (1984) 36 Cal.3d 785, and the precept continues today. (And see also, *Layton v. State Bar* (1990) 50 Cal.3d 889, wherein in part the member blamed his secretary for a failure in handling a estate's monies). Respondent herein did not directly or personally cause the mishandling of the funds by his staff. However, he allowed everything to pass through her and because he insisted on his trust of her, he did not personally verify anything of what he was being told or shown, even when there came to be reason to do so. While he did not suggest the transfer of money from the purported special account to the general account to pay the initial \$30,000.00 pursuant to the Court's June 13, 2007 order, it was clearly a "red flag" that something was wrong, particularly since Respondent had seen only one statement. He should have been in charge, and writing a check from a general account even if he believed the special account funds were transferred to it, and thought there was a "paper trail" was improper. He simply accepted everything that he was told by Ms. B, a non-attorney in the office. This was Respondent's office, and as said, also in a case that pre-dates the standards, *Vaughn v. State Bar* (1972) 6 Cal.3d 847, he bore and he bears the responsibility for the events that occurred even if he did not intentionally direct their accomplishment. *Vaughn* was also related to a trust account, involved less money than in the case at bar. Mr. Vauhn received a public reproof. These and other cases both before and after the standards make it clear that the kind of carelessness involved herein, even arguably "gross" negligence warrants discipline.

With Mr. Layton, the attorney speculated as to the conduct of the secretary he blamed in part for the misconduct and he received 30 days' actual time. In this case, Respondent filed a police report as to the loss and a civil lawsuit in which he prevailed on default for a significant sum that included his personal loss as a result of the staff person's conduct. There is independent evidence of actions by the

employee, and not mere speculation. Mr. Palomo who received stayed time, and had been previously privately reprovved, seems to have expressed a somewhat lukewarm remorse, whereas Respondent herein is most clear that it was his trust and delegation that led to the problem in the handling of the Savastano funds (as well as his own finances).

The receipt of the funds in the Savastano matter and the theft by a member of his staff occurred within the period between April and June 2007, a period of only two months. The day after the theft was confirmed, Respondent filed a police report. He advised the court and counsel the day after that at the June 29, 2007 court hearing. He sued the employee. He was having health problems related to his vision in particular during the operative period. He has a large number of testimonials by individuals who have been told of the circumstances surrounding the misconduct, lawyers, judges, his ex-wife, his staff members, a few mental health practitioners. He paid the funds pursuant to court order.¹

What Respondent did wrong was to delegate the responsibility, without checking, based upon trust, without verification or review of more than one (fabricated) statement. He appears now to have taken all reasonable steps to rectify the result. Respondent, a 61 year old man who served in the Navy for five years during the Vietnam War, has a long discipline-free history. He made efforts to deal with the fallout from the theft in his office, not only of the Savastano funds but of his own monies and he recognizes his failure. Given these, and all the other mitigating factors, a public reprovval, (otherwise a deviation from the standards and an arguably low level response given the sum of money involved), is the disposition, in this case, that adequately protects the public and the profession, deters Respondent from future similar wrongdoing and provides the permissible purpose of his rehabilitation.

STATE BAR ETHICS SCHOOL AND CLIENT TRUST ACCOUNTING CLASS.

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

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¹ The complainant asserts that she is entitled to some or all of the funds; she has hired counsel with regard to trying to collect those funds. It appears from a disciplinary point of view only that Respondent properly turned money over to Mr. Savastano's attorney based upon what he understood to be the court ordered dispositions.

In the Matter of DONALD BRADLEY CRIPE	Case number(s): 08-0-10682
A Member of the State Bar	

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

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

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

d. Client Trust Accounting School

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

In the Matter of
DONALD BRADLEY CRIPE

Case number(s):
08-0-10682

A Member of the State Bar

Law Office Management Conditions

- a. Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/**SIX (6)** months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **SIX (6)** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

(Do not write above this line.)

In the Matter of DONALD BRADLEY CRIPE	Case number(s): 08-0-10682
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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.

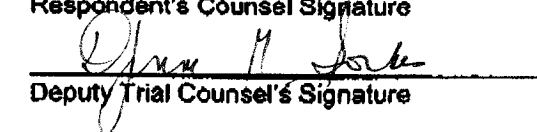
2/4/2010
Date

2/8/2010
Date

2/14/2010
Date


Respondent's Signature


Respondent's Counsel Signature


Deputy Trial Counsel's Signature

DONALD BRADLEY CRIPE
Print Name

JOANNE EARLS ROBBINS
Print Name

DJINNA M. GOCHIS
Print Name

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(Do not write above this line.)

In the Matter Of DONALD BRADLEY CRIPE	Case Number(s): 08-0-10682
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department 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 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

March 2, 2010

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 March 2, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL

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:

**JOANNE EARLS ROBBINS
KARPMAN & ASSOCIATES
301 N CANON DR STE 303
BEVERLY HILLS, CA 90210**

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

DJINNA M. GOCHIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 2, 2010.



Tammy Cleaver
Case Administrator
State Bar Court