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

PUBLIC MATTER

Counsel For The State Bar

Office of the Chief Trial Counsel
Maria J. Oropeza
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San Francisco, CA 94105

Bar # 182660

In Pro Per Respondent

Robert Tabor
1337 Howe Avenue, Suite 250
Sacramento, CA 94825

Bar # 169781

In the Matter Of:
Robert Tabor

Bar # 169781

A Member of the State Bar of California
(Respondent)

Case Number (s)

08-O-12718
09-O-14313

(for Court's use)

FILED

SEP 14 2010

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

Submitted to: **Settlement Judge**

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

ACTUAL SUSPENSION

PREVIOUS STIPULATION REJECTED

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 29, 1993.
- (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."

(Do not write above this line.)

- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: 2011, 2012 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

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

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

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice
- (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.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of three years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of one year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of two years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

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- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason:

- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

- (10) The following conditions are attached hereto and incorporated:

Substance Abuse Conditions Law Office Management Conditions
 Medical Conditions Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and

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perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

- (5) **Other Conditions:**

In the Matter of
Robert Tabor, Bar No. 169871

Case number(s):
08-O-12718; 09-O-14313

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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Robert Tabor

CASE NUMBER(S): ET AL. 08-O-12718

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

FACTS AND CONCLUSIONS OF LAW.

Statement of Facts: Count One (Case No. 08-O-12718)

1. Robert S. Tabor ("respondent") was admitted to the practice of law in the State of California on December 29, 1993, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. Respondent willfully violated Business and Professions Code § 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows.
3. At all relevant times, respondent maintained a Bank of America attorney client trust account number ending in 9213 (client trust account)
4. In October 2004, Richard Superstein employed respondent to represent him regarding a dispute between Superstein, the Santa Clara Pueblo Gaming Commission and the Santa Clara Development Corporation ("SCDC.")
5. On May 13, 2007, the parties settled their dispute and SCDC agreed to pay Superstein \$75,000 as part of the settlement.
6. At the time of settlement, respondent contended that Superstein owed respondent additional fees. Respondent and Superstein agreed that respondent would deposit the settlement funds, provide an accounting of the amount respondent was owed in fees and then disburse the remaining settlement funds to Superstein.
7. In May 2007, respondent received a \$75,000 settlement check from SCDC and deposited the check into the client trust account. The item was returned by the financial institution because the settlement draft was not funded.
8. Subsequently SCDC and Superstein decided that a wire transfer would be better. SCDC requested respondent's routing number and account number. Respondent inadvertently provided SCDC with his general account number ending with 1656.
9. On May 22, 2007, the wire transfer took place, and respondent's general account balance after the wire transfer was \$112,666.00.
10. Respondent never transferred Superstein's funds from the general account into the client trust account.
11. Respondent failed to deposit any of Superstein's funds in his attorney client trust account.

12. Respondent was entitled to collect approximately \$37,000 in attorney's fees from the settlement proceeds. The amount remaining from the settlement proceeds of approximately \$37,765.31 represented Superstein's portion of the settlement proceeds.
13. Respondent was obligated to maintain the approximately \$37,765.31 in the attorney client trust account until paid out for the use or benefit of Superstein.
14. Respondent failed to maintain any of Superstein's funds in the attorney client trust account.
15. Between May 2007 and January 2008, Superstein repeatedly requested that respondent provide him with an accounting and forward the remaining settlement funds to Superstein.
16. Although respondent received Superstein's requests for an accounting and his portion of the settlement funds, respondent failed to provide Superstein with an accounting or his settlement funds.
17. In approximately January 2008, respondent indicated to Superstein that respondent was owed approximately \$37,000 in fees. Respondent promised Superstein that he would send Superstein the balance of the funds, or approximately \$37,765.31. During their conversation, respondent admitted to Superstein that respondent had failed to place Superstein's funds in a trust account.
18. Between August 2007 and June 2008, respondent used Superstein's funds for his own personal use and benefit and not for the use and benefit of Superstein. From August 2007 through June 2008 respondent's general account balance fell below the \$37,765.31 he should have maintained for Superstein's benefit.
19. On June 11, 2008, respondent transferred \$37,000 from his general business account to his attorney client trust account. ~~The money respondent transferred from his general business account funded the check that respondent issued to Superstein as his settlement proceeds.~~
20. On June 11, 2008, respondent provided Superstein with a check for \$37,765.31, drawn on the attorney client trust account, an accounting and a copy of his client file.

Conclusions of Law: Count One (Case No. 08-O-12718)

21. By misappropriating the sum of \$37,765.31 from Superstein and failing to pay out any portion to Superstein, respondent committed acts of moral turpitude, dishonesty and corruption, a wilful violation of Business and Professions Code § 6106.

Statement of Facts: Count Two (Case No. 08-O-12718)

22. Respondent willfully violated Rules of Professional Conduct, rule 4-100(A), by failing to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows:
23. Count One is incorporated by reference as if fully set forth herein.

Conclusions of Law: Count Two (Case No. 08-O-12718)

24. By failing to deposit Superstein's funds in the attorney client trust account, respondent failed to maintain the balance Superstein's funds received for Superstein's benefit in a bank account labeled "trust account."

Statement of Facts: Count Three (Case No. 08-O-12718)

25. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4), by failing to pay promptly, as requested by a client, any funds in respondent's possession which the client is entitled to receive, as follows:
26. Count One and Two are incorporated by reference as if fully set forth herein.

27. In May 2007, respondent received Superstein's settlement proceeds.
28. Between June 2007 and January 2008, Superstein requested that respondent provide Superstein with his portion of the settlement proceeds.
29. Although respondent received Superstein's requests for an accounting and his portion of the settlement funds, respondent failed to provide Superstein with an accounting or his settlement funds.
30. In April 2008, Superstein employed attorney Illyssa Fogel to obtain his client file and settlement funds from respondent.
31. In April and May 2008, Fogel sent respondent three letters requesting that respondent return the settlement funds and client files to Superstein immediately. Respondent received the letters.
32. Thereafter, respondent failed to immediately provide Superstein with his settlement proceeds.
33. Respondent waited until June 2008 to pay Superstein.

Conclusions of Law: Count Three (Case No. 08-O-12718)

34. By failing to pay Superstein his portion of the settlement proceeds from May 2007 through June 2008, respondent failed to pay promptly, as requested by a client, funds in respondent's possession which the client is entitled to receive, a wilful violation of Rule of Professional Conduct, rule 4-100(B)(4).

Statement of Facts: Count Four (Case No. 08-O-12718)

35. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by failing to render appropriate accounts to a client regarding all funds coming into respondent's possession, as follows:
36. Between May 2007 and January 2008, Superstein repeatedly requested that respondent provide him with an accounting and forward the remaining settlement funds to Superstein.
37. Respondent received the requests for the accounting and settlement funds.
38. In April 2008, Superstein employed attorney Illyssa Fogel to obtain his client file and settlement funds from respondent.
39. In April and May 2008, Fogel sent respondent three letters requesting that respondent return the settlement funds and client files to Superstein immediately. Respondent received the letters.
40. On June 11, 2008, respondent provided Superstein with an accounting.

Conclusions of Law: Count Four (Case No. 08-O-12718)

41. By waiting until June 2008 to provide Superstein with an accounting, respondent failed to render appropriate accounts to Superstein regarding the funds coming into respondent's possession, a wilful violation of Rule of Professional Conduct, rule 4-100(B)(3)

Statement of Facts: Count Five (Case No. 09-O-14313)

42. Respondent wilfully violated Business and Professions Code, section 6103, by wilfully disobeying or violating an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, as follows:
43. Prior to February 2007, Michael Franchetti and Harlan Goodson maintained a law partnership.
44. On February 14, 2007, Franchetti died and was survived by his wife, Peg Franchetti.
45. Prior to February 2008, a dispute arose between Peg Franchetti and Goodson regarding the dissolution of the law partnership.

46. Prior to February 2008, Goodson employed respondent to represent him regarding the partnership dispute.
47. On February 5, 2008, Peg Franchetti filed a lawsuit entitled Franchetti v. Goodson, Sacramento County Superior Court, case number 34-2008-00002835, to settle the partnership dispute.
48. Thereafter, respondent failed to properly respond to Franchetti's complaint and on December 10, 2008, the court entered Goodson's default.
49. In January 2009, Goodson employed attorney Ravinder Mehta to set aside the default.
50. On February 18, 2009, respondent submitted a declaration in support of Goodson's motion to set aside the default. Respondent stated in his declaration that he failed to take any action to defend Goodson, permitted Goodson's default to be entered, failed to inform Goodson of his failure to perform and failed to inform Goodson that the court entered Goodson default.
51. On February 25, 2009, the court granted Goodson's motion to set aside the default judgment and ordered respondent to pay sanctions to Peg Franchetti of \$13,668.34 within 30 days, or by March 27, 2009, to cover the costs she incurred in taking Goodson's default. Respondent was properly served with the February 25, 2009 order.
52. Soon after February 25, 2009, respondent was aware of the February 25, 2009 order requiring him to pay Peg Franchetti a sanction of \$13,668.34.
53. Thereafter, respondent failed to pay Peg Franchetti any funds.
54. On April 23, 2009, the court issued a further order requiring respondent to pay sanctions of \$13,668.34 to Peg Franchetti. Respondent was properly served with the April 23, 2009 order imposing the ~~\$13,668.34~~ in sanctions.
55. Soon after April 23, 2009, respondent was aware of the April 23, 2009 order requiring him to pay Peg Franchetti a sanction of \$13,668.34.
56. Thereafter, respondent failed to pay Peg Franchetti any funds.
57. On April 23, 2009, the court ordered respondent to pay the Client Security Fund \$1,000 by May 30, 2009 since respondent failed to timely pay Franchetti. Respondent was properly served with the April 23, 2009 order imposing the \$1,000 in sanctions.
58. Soon after April 23, 2009, respondent was aware of the April 23, 2009 order requiring him to pay the Client Security Fund a sanction of \$1,000.
59. Thereafter, respondent failed to pay the Client Security Funds any funds.
60. Respondent willfully disobeyed the Sacramento County Superior Court February 25, 2009 order to pay Franchetti, the April 23, 2009 order to pay Franchetti and the April 23, 2009 order to pay the Client Security Fund.
61. In January 2010 respondent paid the sum of \$21,461.09 to Franchetti in full satisfaction of the sanctions and interest.
62. On June 25, 2010 respondent paid the sum of \$1,000 to the Client Security Fund in full satisfaction of the sanctions.

Conclusions of Law: Count Five (Case No. 09-O-14313)

63. By wilfully disobeying the Sacramento County Superior Court orders, respondent disobeyed orders of a court requiring him to do an act connected with or in the course of respondent's profession which he ought in good faith to do, a wilful violation of Business and Professions Code § 6103.

Statement of Facts: Count Six (Case No. 09-O-14313)

64. Respondent wilfully violated Business and Professions Code, section 6068(o)(3), by failing to report to the agency charged with attorney discipline, in writing, within 30 days of the time respondent had knowledge of the imposition of any judicial sanctions against Respondent, as follows:
65. Count Five is incorporated by reference as if fully set forth herein.
66. Soon after February 25, 2009, respondent was aware that the court imposed sanctions against him in the amount of \$13,668.34.
67. Soon after April 23, 2009, respondent was aware that the court imposed sanctions against him in the amount of \$1,000.
68. To date, respondent has failed to report to the State Bar the imposition of the sanctions against him.

Conclusions of Law: Count Six (Case No. 09-O-14313)

69. By failing to report the sanctions to the State Bar, respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time respondent had knowledge of the imposition of any judicial sanctions against respondent, a wilful violation of Business and Professions Code §6068 (O) (3).

Statement of Facts: Count Seven (Case No. 09-O-14313)

70. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:
71. Count Five is incorporated by reference as if fully set forth herein.
72. ~~In or about February 2008, respondent ceased performing services for Goodson by failing to take any action to defend Goodson and permitting Goodson's default to be entered.~~
73. Goodson was forced to employ new counsel to set aside the default.

Conclusions of Law Count Seven (Case No. 09-O-14313)

74. By failing to perform any legal services for Goodson after February 2008, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, a wilful violation of Rule of Professional Conduct, rule 3-110(A).

Statement of Facts: Count Eight (Case No. 08-O-12718 & 09-O-14313)

75. Respondent willfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in disciplinary investigations pending against respondent, as follows:
76. Count One through Count Seven are incorporated by reference as if fully set forth herein.
77. On May 23, 2008, the State Bar opened an investigation regarding the Superstein matter.
78. On August 29, 2008, September 16, 2008 and October 14, 2008, a State Bar investigator sent respondent letters regarding the Superstein matter. The letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Superstein matter. Respondent received the letters.
79. At no time did respondent provide a written response to the allegations of misconduct in the Superstein matter.
80. On July 1, 2009, the State Bar opened an investigation regarding the Franchetti matter.
81. On September 11, 2009 and October 2, 2009, a State Bar investigator sent respondent letters regarding the Franchetti matter. The letters requested that respondent respond in writing to specified

allegations of misconduct being investigated by the State Bar in the Franchetti matter. Respondent received the letters.

82. At no time did respondent provide a written response to the allegations of misconduct in the Franchetti matter.

Conclusions of Law: Count Eight (Case No. 08-O-12718 & 09-O-14313)

83. By failing to provide a written response to the allegations regarding respondent's conduct in the Superstein and Franchetti matters or otherwise cooperate in the investigation of these matters, respondent failed to cooperate in disciplinary investigations, a wilful violation of Business and Professions Code § 6068(i).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was August 16, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 15, 2010, the prosecution costs in this matter are \$5,740.24. 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) states in pertinent part "culpability of a member of willful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of the funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed."

Standard 2.3 states in pertinent part "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 2.6 states in pertinent part "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."

Standard 2.4(b) states in pertinent part "culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client."

Misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities and generally warrants disbarment unless the most compelling mitigating circumstances clearly predominate. (*See Grim v. State Bar* (1991) 53 Cal. 3d 21, 29; *Chang v. State Bar* (1989) 49 Cal. 3d 114, 128; *Kelly v. State Bar* (1988) 45 Cal. 3d 649, 656; *Howard v. State Bar* (1990) 51 Cal. 3d 215, 221; *Gordon v. State Bar* (1982) 31 Cal. 3. 748, 757; *Friedman v. State Bar* (1990) 50 Cal. 3d 235, 244; *Weller v. State Bar* (1989) 49 Cal. 3d 670, 677; *Murray v. State Bar* (1985) 40 Cal. 3d 575, 583.)

In the Matter of Rex Allen Spaith (1996) 3 Cal. State Bar Ct. Rptr. 511 the Review Department disbarred Spaith despite finding mitigating circumstances. Spaith had no prior disciplinary record and had misappropriated the sum of \$40,000.00 from a client's personal injury settlement. Spaith misled the client for a period of one year about the location of the funds. Spaith presented evidence of financial difficulties during the period of misappropriation. The Review Department discounted the financial difficulties on the theory that the financial difficulties were not unforeseeable. The Court opined that unless the financial circumstances are completely unforeseeable or are caused by circumstances beyond the attorney's control, they should not be given significant mitigating weight.

In the Matter of Tindall (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, the Review Department deviated from recommending disbarment when mitigating circumstances are present. In *Tindall*, the respondent had misappropriated the sum of \$25,000.00, from one client over the course of 19 unauthorized withdrawals in eight months. Tindall had no prior disciplinary history. The Review Department imposed a three year actual suspension on Tindall. Tindall had argued that the \$25,000.00 that he had withdrawn were attorney fees. Tindall eventually admitted that he had used the funds for personal purposes.

Rule 4-100(b)(3) does not require a request from a client, the accounting is due at any time that the attorney receives funds for the benefit of the client. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, at 952, the Review Department stated: “[T]he obligation to ‘render appropriate accounts to the client’ found in rule 4-100(B)(3) does not require as a predicate that the client demand such an accounting. We therefore find respondent wilfully violated rule 4-100(B)(3) because he failed to render an accounting to Le or Ly.”

The time for reporting judicial sanctions runs from the time the attorney knows the sanctions were ordered, regardless of the pendency of any appeal. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.) The wilful violation of the reporting requirement of section 6068, subdivision (o)(3), does not require a bad purpose or an evil intent. All that is required is a general purpose of willingness to commit the act or omission. (*Ibid.*)

The failure to comply with court orders is not taken lightly because “obedience to court orders is intrinsic to the respect attorneys and their clients must accord to the judicial system.” (*In the Matter of Boyne*, (Review Dept. 1993) 2 Cal State Bar Ct. Rptr. 389.) The Review Department has usually imposed a private reproof for violations of Business and Professions Code section 6103 dealing with failures to pay sanctions or for failure to abide by a court order.

In the Matter of Respondent Y, (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, *Respondent Y* failed to report the sanctions ordered and failed to pay the sanctions in over a year. The Review Department's decision focused on whether *Respondent Y* had a reasonable time to comply with the sanction order. (See pg. 867) The hearing judge concluded that *Respondent Y* had far more than a year to comply with it and that his failure to do so under the circumstances was a wilful violation of section 6103, and the Review Department upheld the hearing judge's determination.

In the Matter of Respondent X (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, *Respondent X* had been admitted for 18 years and had no prior record of discipline, he was under great pressure in that his client and co-counsel disagreed with his principal approach to the basic settlement and the confidential terms which were a part of it; and that respondent held sincere beliefs that he was acting in support of sound public policy by revealing the confidential information to the judge in the airplane crash case. In addition the Review Department also considered *Respondent X's* unique nature of the violation and that respondent sought first to test by extraordinary writ the court order he violated.

In the Matter of Riordan (Review Dept 2007) 5 Cal State Bar Ct. Rptr. 41, bad faith is not a necessary element of section 6103. For disciplinary purposes, bad faith must be proved if the State Bar

alleges that respondent's noncompliance with court orders involves moral turpitude (*Maltman v. State Bar* (1987) 43 Cal. 3d 924) Riordan claimed that he did not comply with the Court's orders because he had a good faith belief that his draft AOB was insufficient to adequately protect Turner's interests and that Sanger had assumed the task of filing the AOB. The Review Department rejected this defense, because respondent's belief in the merit or lack of merit of his brief is simply irrelevant to the issue of whether he made a good faith effort to comply with the Supreme Court's orders. Respondent had an affirmative duty to comply with the Court's orders and he could not simply disregard them and sit back and wait for contempt hearings, before complying with or explaining why he cannot obey a court order.

MITIGATING CIRCUMSTANCES.

No prior record of discipline: Respondent has been admitted since 1993 and has no prior record of discipline.

Restitution: On June 11, 2008, respondent has paid the full sum of the misappropriated funds to Mr. Superstien.

Emotional Difficulties: At the time of the stipulated acts of professional misconduct respondent suffered from extreme emotional difficulties which were directly responsible for the misconduct.

STATE BAR ETHICS SCHOOL.

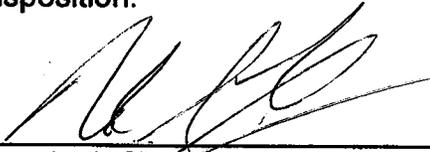
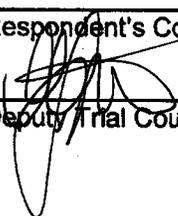
Because respondent has agreed to attend State Bar Ethics School and Client Trust Account School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School and Client Trust Account School.

(Do not write above this line.)

In the Matter of Robert Tabor, Bar No. 169781	Case number(s): 08-O-12718; 09-O-14313
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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>7/24/10</u> Date	 Respondent's Signature	<u>Robert Tabor</u> Print Name
<u>8/25/10</u> Date	 Deputy Trial Counsel's Signature	<u>Maria J. Oropeza</u> Print Name

(Do not write above this line.)

In the Matter Of ROBERT TABOR Bar No. 169781	Case Number(s): 08-O-12718; 09-O-14313
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ORDER

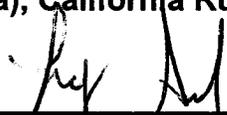
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
 - The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
 - All Hearing dates are vacated.
1. On page 2 of the Stipulation, at paragraph A.(8), "2011, 2012" is deleted, and in its place is inserted "2012 and 2013."
 2. On page 4 of the Stipulation, at paragraph D.(2), regarding the length of the probation period, "one year" is deleted, and in its place is inserted "three years."
 3. In the caption on page 7 of the Stipulation, "Bar No. 169871" is deleted, and in its place is inserted "Bar No. 169781".

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

September 14, 2010

Date



Lucy Armendariz
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 14, 2010, I deposited a true copy of the following document(s):

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

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

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

**ROBERT S. TABOR
LAW OFFICE OF ROBERT S TABOR
1337 HOWE AVE #250
SACRAMENTO, CA 95825**

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

MARIA J. OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 14, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court