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| <b>State Bar Court of California</b><br><b>Hearing Department</b><br><b>Los Angeles</b><br><b>ACTUAL SUSPENSION</b>   |  |   |
|---|--|---|
| <p>Counsel For The State Bar</p> <p>Hugh G. Radigan<br/>Deputy Trial Counsel<br/>1149 South Hill Street<br/>Los Angeles, California 90015<br/>213-765-1206</p> <p>Bar # 94251</p> | <p>Case Number(s):<br/>08-O-14841<br/>09-O-10709<br/>09-O-11499<br/>10-O-00282</p> <p style="text-align: center; font-size: 1.2em;"><b>PUBLIC MATTER</b></p> | <p>For Court use only</p> <p style="text-align: center; font-size: 1.5em;"><b>FILED</b></p> <p style="text-align: center; font-size: 1.2em;"><b>JUL 12 2011</b></p> <p style="text-align: center;">STATE BAR COURT<br/>CLERK'S OFFICE<br/>LOS ANGELES</p> |
| <p>Counsel For Respondent</p> <p>Athur L. Margolis, Esq.<br/>2000 Riverside Drive<br/>Los Angeles, California 90039</p> <p>Bar # 57703</p>  | <p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br/>DISPOSITION AND ORDER APPROVING</p>                         |   |
| <p>In the Matter of:<br/>Todd E. Marsh</p> <p>Bar # 176065</p> <p>A Member of the State Bar of California<br/>(Respondent)</p>  | <p><b>ACTUAL SUSPENSION</b></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 April 7, 1995.
- (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 16 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two billing cycles following the effective date of the Supreme Court order.. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are 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.

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- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Respondent failed to represent to his clients that he had failed to protect the statute of limitations in the Ostwalt matter, and the fact that he delayed distributing settlement proceeds to two elderly clients while negotiating their medical liens in the Gaba matter, constitutes significant harm.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \$11,230.26 on April 7, 2011 in restitution to Maria Gaba without the threat or force of disciplinary, civil or criminal proceedings. Respondent paid \$1312.00 on April 7, 2011 in restitution to Florendo Gaba without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

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- (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:**

Respondent was embroiled in a difficult divorce and period of separation during the occurrence of the underlying events alleged within this Notice of Disciplinary Charges. Additionally, Respondent's wife was personally involved in the mishandling of Respondent's client trust account during that same period of marital discord.

Additionally, Respondent was admitted to practice on April 7, 1995 and has no record of prior discipline.

**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 three years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3)  **Actual Suspension:**
- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of eighteen months.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.  
 No Ethics School recommended. Reason: \_\_\_\_\_
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

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

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), 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 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:** Respondent is to submit the Ostwalt matter to binding fee arbitration with respect to the \$6,500.00 retainer for services with respect to the civil component of Ostwalt's matter within six months of the effective date of the Supreme Court order.

Within one year of the effective date of the discipline stipulation 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:                      Todd E. Marsh

CASE NUMBER(S):                      08-O-14841, 09-O-10709, 09-O-11499, and 10-O-00282

**FACTS AND CONCLUSIONS OF LAW.**

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

**CASE NOs. 08-O-14841 and 09-O-11499**

**FACTS:**

1. At all times herein mentioned, Respondent maintained a client trust account at Bank of America ("BOA"), account number xxxxxx2309 (the "CTA").<sup>1</sup>
2. On September 3, 2008, the ending balance in the CTA was \$602.03.
3. On September 8, 2008, check no. 1285 for \$500 to Jennifer Marsh was paid, bringing the balance in the CTA to \$102.03. Respondent had issued check no. 1285 on or about September 5, 2008.
4. On September 9, 2008, check no. 1286 to Jennifer Marsh for \$250 was presented for payment when the balance in the CTA was only \$102.03. BOA returned check no. 1286 unpaid due to insufficient funds in the CTA. Respondent had issued check no. 1286 on or about September 7, 2008.
5. On October 30, 2008, the ending balance in the CTA was \$254.03.
6. On October 31, 2008, Respondent deposited a \$3,500 check into the CTA. The check was from an account in the name of a revocable trust. At the time of the deposit, Respondent also withdrew \$1,000 in cash, bringing the ending balance in the CTA to \$2,754.03. Respondent did not wait a sufficient time for the \$3,500 check to clear before withdrawing \$1,000 in cash.
7. On November 4, 2008, the \$3,500 check deposited into the CTA on October 31, 2008 was returned due to insufficient funds in the maker's account, resulting in a negative balance of \$1,750.97. On November 4, 2008, check no. 1152 for \$500 to Todd Marsh and check no. 1153 for \$350 to Jennifer

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<sup>1</sup> The full account number is omitted for privacy purposes.

Marsh were presented for payment when the balance in the CTA was negative \$1,750.97. BOA returned check nos. 1152 and 1153 unpaid due to insufficient funds in the CTA. Respondent had issued check nos. 1152 and 1153 on or about November 2, 2008.

8. On February 19, 2009, the ending balance in the CTA was \$250.01.

9. On February 23, 2009, check no. 1178 for \$500 to Respondent was presented for payment when the balance in the CTA was only \$250.01. BOA returned check no. 1178 unpaid due to insufficient funds in the CTA. Respondent had issued check no. 1178 on or about February 20, 2009.

10. On February 25, 2009, check no. 1178 was again presented for payment when the balance in the CTA was only \$215.01. BOA returned check no. 1178 unpaid due to insufficient funds in the CTA.

11. Respondent issued check numbers 1152, 1153, 1178 and 1286 when he knew or was grossly negligent in not knowing that there were insufficient funds in the CTA to honor the checks.

12. Between September 2008 and March 2009, Respondent maintained personal funds in the CTA then issued checks for personal expenses, including but not limited to check nos. 832, 1152, 1153, 1160, 1162, 1164, 1167, 1179, 1282, 1285, 1286, 1288, 1292, 1295, 1296, 1297, 1298, and 1302.

### **CONCLUSIONS OF LAW:**

13. By issuing check numbers 1152, 1153, 1178 and 1286 from the CTA when he knew or was grossly negligent in not knowing that there were insufficient funds in the CTA to pay the checks, Respondent was grossly negligent and committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

14. By maintaining personal funds in the CTA then issuing checks from the CTA for personal expenses, Respondent wilfully deposited and commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.



**CASE NO. 09-O-10709**

**FACTS:**

15. In March 2004, Florendo Gaba (“Florendo”) and Maria Gaba (“Maria”) employed Respondent to represent them on a contingency fee basis in their personal injury claims arising from a January 2004 automobile accident. Under his fee agreement, Respondent was entitled to a minimum of 33-1/3% and a maximum of 50% of any settlement, depending upon the date of the settlement, as his fee.

16. On March 30, 2004, Respondent signed liens in favor of West Point Therapy (“WPT”) whereby he agreed to withhold such sums from any settlement he obtained for Florendo and Maria as necessary to adequately cover their medical expenses with WPT.

17. In January 2007, Respondent reached a policy-limit settlement of Maria’s claim for \$15,000 with Mercury Insurance (“Mercury”). Respondent informed Maria that his fee and her medical expenses needed to be paid with the settlement funds. Maria’s medical expenses were as follows:

| <u>Provider</u>           | <u>Amount</u>    |
|---------------------------|------------------|
| West Point Therapy        | \$ 3,467.00      |
| American Medical Response | \$ 630.00        |
| Antelope Valley Hospital  | \$ 5,130.19      |
| High Desert Hospital      | \$ 1,083.07      |
| Renaissance Imaging       | <u>\$ 912.00</u> |
|                           | = \$ 11,222.26   |

18. On January 11, 2007, Respondent deposited the \$15,000 settlement draft he received from Mercury on behalf of Maria into his client trust account at Bank of America, account number xxxxxx2309 (the “CTA”).<sup>2</sup>

19. Respondent issued check no. 929 from the CTA for \$500, payable to “Christina”. The check reflected in the memo section that it was related to Maria’s case. Check no. 929 was paid from the CTA

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<sup>2</sup> The full account number is omitted for privacy purposes.

on January 12, 2007, bringing the balance of the funds related to Maria's settlement in the CTA to \$14,500.

20. From the \$15,000, Respondent was entitled to \$5,371.08, or \$5,000 as fees and approximately \$371.08 for advanced costs (\$320 for a filing fee, \$40 for a motion fee, and \$11.08 in postage).

21. Between January 22, 2007 and November 4, 2008, without disbursing any of the \$15,000 settlement to Maria or her medical providers, the balance in the CTA fell to negative \$1,750.97, or below the \$9,128.92 (\$15,000 - \$500 - \$5,371.08) that should have remained in the CTA on behalf of Maria and her medical providers.

22. Respondent was grossly negligent by not maintaining \$9,128.92 in the CTA between January 22, 2007 and November 4, 2008.

23. On January 30, 2008, Respondent settled Florendo's claims with Mercury for \$2,500.

24. On June 17, 2008, Respondent deposited the \$2,500 settlement draft he received from Mercury on behalf of Florendo into the CTA.

25. From the \$2,500, Respondent was entitled to \$833.33 as fees. Florendo owed \$1,312 to WPT on its lien.

26. Between July 14 and November 4, 2008, without disbursing any of the \$2,500 settlement to Florendo or WPT, the balance in the CTA fell to negative \$1,750.97, or below the \$1,666.67 (\$2,500 - \$833.33) that should have remained in the CTA on behalf of Florendo and WPT.

27. Respondent was grossly negligent in not maintaining \$1,666.67 belonging to Florendo and his medical providers by not maintaining that sum in the CTA between July 14 and November 4, 2008.

28. On December 16, 2007, Florendo and Maria sent a letter to Respondent. In the letter, they requested that he disburse Maria's share of the \$15,000 settlement and requested the status of the case. Respondent received the letter, but did not provide the status of the case to Florendo or Maria.

29. On March 13, 2008, Florendo and Maria sent a letter to Respondent. In the letter, they requested the status of the disbursement of the settlement funds and Maria's portion of the settlement. Respondent received the letter, but did not provide the status of the disbursement to Florendo or Maria.

30. In July or September 2008, Florendo and Maria contacted Respondent and he informed them that he would have their cases resolved by the end of 2008.

31. On January 12, 2009, Florendo and Maria submitted a complaint to the State Bar of California ("State Bar") regarding his failure to disburse their portion of the settlement funds.

32. On April 30, 2009, a State Bar investigator sent a letter to Respondent regarding the complaint of Florendo and Maria.

33. Respondent sent a letter to Maria, dated May 27, 2009. In the letter, Respondent indicated that he would waive all his fees and costs, except a filing fee of \$320, with respect to the \$15,000 settlement. He further indicated that he would immediately contact all the lien holders and attempt to negotiate the liens. With the letter, Respondent enclosed a cashier's check for \$3,777.74, representing Maria's portion of the \$15,000 settlement.

34. Respondent sent a letter to Florendo, dated May 28, 2009. In the letter, Respondent indicated that he was waiving his fee with respect to the \$2,500 settlement. He further indicated that he would contact WPT to negotiate its lien in the amount of \$1,312. With the letter, Respondent enclosed a cashier's check for \$1,188, representing Florendo's portion of the \$2,500 settlement.

#### **CONCLUSIONS OF LAW:**

35. By not maintaining at least \$9,128.92 in the CTA on behalf of Maria and her medical providers, Respondent was grossly negligent in failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of 4-100(A) of the Rules of Professional Conduct.

36. By mishandling the \$9,128.92 belonging to Maria and her medical providers, Respondent wilfully committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

37. By not maintaining at least \$1,666.67 in the CTA on behalf of Florendo and his medical providers, Respondent was grossly negligent in failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

38. By mishandling the \$1,666.67 belonging to Florendo and his medical providers, Respondent wilfully committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

39. By not responding to the letters of Florendo and Maria until in or about July or September 2008, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client in willful violation of Business and Professions Code section 6068(m).

40. By not disbursing any portion of the \$15,000 settlement to Maria until on or about May 27, 2009; by not disbursing any portion of the \$2,500 settlement to Florendo until on or about May 28, 2009; by not disbursing any portion of the settlements to WPT on behalf of Florendo and Maria; and by not satisfying the liens against the settlements in a timely manner, Respondent wilfully failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client or the clients' medical provider was entitled to receive in willful violation of rule 4-100(B)(4) of the Rules of Professional Conduct.

**CASE NO. 10-O-00282:**

**FACTS:**

41. On October 7, 2006, Craig Ostwalt ("Ostwalt") was in a physical altercation with his neighbors. On November 10, 2006, Ostwalt employed Respondent to obtain a restraining order against his neighbors, to provide pre-filing criminal defense counsel, and to represent him in a personal injury claim against his neighbors. Ostwalt had already filed a request for a temporary restraining order on November 9, 2006. In November 2006, Ostwalt paid Respondent an advance fee of \$3,500 for his representation relating to the restraining order and the pre-filing criminal defense, and an advance fee of \$6,500 for his representation relating to his personal injury claim.

42. Respondent did not file any personal injury lawsuit on behalf of Ostwalt, and did not otherwise preserve his claims for damages, before the statute of limitations expired on or about October 7, 2008 on Ostwalt's claims. However, on March 17, 2007, Ostwalt signed a verification for a personal injury lawsuit prepared by Respondent. The verification was to be filed with the personal injury lawsuit.

43. Respondent did not inform Ostwalt that he was not filing a personal injury lawsuit on his behalf before the expiration of the statute of limitations on Ostwalt's claims.

44. On October 29, 2008, Ostwalt sent an e-mail to Respondent . In the e-mail, Ostwalt requested the status of his personal injury case. Respondent responded by e-mail to Ostwalt on October 30, 2008, stating, "Please call monday (sic) so we can meet very soon."

45. On or about October 30, 2008, Ostwalt met with Respondent and provided him with copies of his medical bills.

46. On November 4, 2008, Ostwalt sent another e-mail to Respondent. In the e-mail, Ostwalt requested the status of his personal injury case. Respondent responded by e-mail to Ostwalt on November 5, 2008, stating, "Check with Christina @ the office. I'm thinking next Monday we can sit down? I'm on the road all the rest of this week."

47. In the Spring of 2009, Ostwalt discovered after talking to another attorney that no personal injury lawsuit had been filed on his behalf and that the statute of limitation had expired on his claims. After making this discovery, Ostwalt met with Respondent in the Spring of 2009 to discuss the status of his case. Respondent again asked Ostwalt for documents regarding his medical care.

48. Respondent concealed from Ostwalt the material fact that he had failed to file the personal injury lawsuit on his behalf.

49. Respondent's employment for Ostwalt's personal injury claim was effectively terminated when he failed to preserve Ostwalt's claims in October 2008 by filing a lawsuit on his behalf.

50. On November 23, 2009, Ostwalt sent a letter to Respondent. In the letter, Ostwalt requested a conformed copy of the lawsuit and information regarding Respondent's malpractice insurance. Respondent received the letter, but did not respond to the letter.

51. On December 10, 2009, Ostwalt sent a letter to Respondent. In the letter, Ostwalt requested his client file. Respondent received the letter.

52. On December 14, 2009, Respondent sent a letter to Ostwalt. In the letter, Respondent told Ostwalt that he would send the file to Ostwalt by the end of the week. Respondent did not send the file to Ostwalt.

53. Respondent did not earn the \$6,500 fee paid for his representation of Ostwalt in his personal injury claim as he did not preserve the statute of limitation on Ostwalt's claims.

### **CONCLUSIONS OF LAW:**

54. By not filing any personal injury lawsuit on behalf of Ostwalt, and by not otherwise preserving Ostwalt's claims for damages, before the statute of limitations expired on or about October 7, 2008 on Ostwalt's claims, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

55. By not informing Ostwalt that he was not filing a personal injury lawsuit on his behalf before the expiration of the statute of limitations on Ostwalt's claims, Respondent wilfully failed to keep a client reasonably informed of a significant development in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code section 6068(m).

56. By concealing from Ostwalt the material fact that he failed to file a personal injury lawsuit on his behalf, Respondent wilfully committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

57. By not sending the file to Ostwalt, Respondent wilfully failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

58. By not refunding any portion of the \$6,500 fee paid for Respondent's representation of Ostwalt in his personal injury claim, Respondent wilfully failed refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

### **PENDING PROCEEDINGS**

The disclosure date referred to, on page 2, paragraph A(7), was June 8, 2011.

### **AUTHORITIES SUPPORTING DISCIPLINE**

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct provides in pertinent part that, "[t]he primary purposes of disciplinary proceedings ... are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

The following Standards apply to these matters:

Standard 1.6(a) provides that, "The appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Standard 2.2(b) provides for at least a three month actual suspension where culpability for commingling entrusted funds with personal property is found, irrespective of mitigating circumstances.

Standard 2.3 provides for actual suspension or disbarment for an act of moral turpitude, fraud, or intentional dishonesty toward a client or concealment of a material fact from a client.

Standard 2.6 provides for disbarment or suspension depending upon the gravity of the offense or harm where culpability for violation of section 6068(m) is found.

Standard 2.4(a) provides for disbarment for culpability for a pattern of willfully failing to perform services demonstrating abandonment.

Standard 2.4(b) provides for reproof or suspension for culpability for a failure to perform services that does not constitute a pattern of misconduct or culpability of a member for willful failure to communicate with a client.

Standard 2.10 provides for reproof or suspension for culpability for a violation of the Rules of Professional Conduct not otherwise specified.

The Standards should be followed whenever possible. *In re Silverton* (2005) 36 Cal. 4th 81, 92. In consideration of the facts and circumstances present, the parties submit that the intent and goals of the Standards are met in this matter by the imposition of an eighteen month actual suspension, three year stayed suspension and three years probation.

### **COSTS OF DISCIPLINARY PROCEEDINGS**


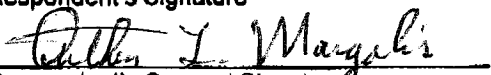
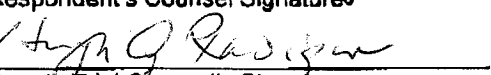
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 8, 2011, the prosecution costs in this matter are \$4,920.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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|------------------------------------|---|
| In the Matter of:<br>TODD E. MARSH | Case number(s):<br>08-O-14841; 09-O-10709; 09-O-11499; 10-O-00282 |
|------------------------------------|---|

**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 Facts, Conclusions of Law, and Disposition.

|                           |   |                                  |
|---------------------------|---|----------------------------------|
| <u>7-1-11</u><br>Date     | <br>Respondent's Signature           | TODD E. MARSH<br>Print Name      |
| <u>7/6/11</u><br>Date     | <br>Respondent's Counsel Signature   | ARTHUR L. MARGOLIS<br>Print Name |
| <u>July 8 '11</u><br>Date | <br>Deputy Trial Counsel's Signature | HUGH G. RADIGAN<br>Print Name    |



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| In the Matter of:<br>TODD E. MARSH | Case Number(s):<br>08-O-14841; 09-O-10709; 09-O-11499;<br>10-O-00282 |
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**ACTUAL SUSPENSION ORDER**

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

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

The heading of paragraph F(5) is modified to read: “**Other Conditions of Probation:**” and the conditions delineated in that paragraph are ordered to be conditions of probation.

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 5.58(E) & (F), 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.)**

7/12/11  
Date



Judge of the State Bar Court

**DONALD F. MILES**

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**DECLARATION OF SERVICE BY REGULAR MAIL**

**CASE NUMBER: 08-O-14841; 09-O-10709; 09-O-11499; 10-O-00282**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION**

in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below, addressed to:

**Arthur Margolis  
2000 Riverside Drive  
Los Angeles, CA 90039-3758**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**STATE BAR COURT – HEARING DEPARTMENT – LOS ANGELES**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: July 8, 2011

Signed: \_\_\_\_\_

  
Juli Jenewein  
Declarant

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 12, 2011, I deposited a true copy of the following document(s):

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

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

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

TODD EUGENE MARSH  
LAW OFC TODD E MARSH  
1125 W AVENUE M-14 #B  
PALMDALE, CA 93551

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

by overnight mail at , California, addressed as follows:

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

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

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

Hugh Gerard Radigan, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 12, 2011.

Cristina Potter  
Case Administrator  
State Bar Court