

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Sherrie B. McLetchie Deputy Trial Counsel 180 Howard Street San Francisco CA 94105 (415) 538-2297  Bar # 85447	<b>Case Number(s):</b>  09-O-11169-LMA	<b>For Court use only</b>  <b>FILED</b> <i>ADS</i>  JUL 25 2011  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO  <b>PUBLIC MATTER</b>
<b>Counsel For Respondent</b>  Phillip Feldman Law Office of Phillip Feldman 14401 Sylvan Street, Suite 208 Van Nuys CA 91401 (818) 986-9890  Bar # 40792	<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> George B. Altenberg  Bar # 117984  A Member of the State Bar of California (Respondent)		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 13, 1985.
- (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.



(Do not write above this line.)

- (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: (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. See "Facts", generally.
- (4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

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- (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. See "Facts Supporting Mitigating Circumstances".
- (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 "Facts Supporting Mitigating Circumstances".
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(Effective January 1, 2011)

Actual Suspension



(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 paid all the clients named in this stipulation their share of their settlement proceeds prior to being contacted by the State Bar.

Respondent dipped into his client trust account in order to fund the support of his pure-bred Arabian horses, an obsession which will be the subject of his ongoing psychotherapy.

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of two years.

i. ☒ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of 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 one year.

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:**

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- (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 checked="" type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions  |

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

(Effective January 1, 2011)

Actual Suspension

- (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:**
- (A) Respondent shall provide a full, true and correct copy of this Stipulation and Order and the order of the Supreme Court imposing the discipline stipulated to and ordered, to his psychiatrist not later than the effective date of the Supreme Court order.
- (B) Respondent shall not authorize any one to sign his signature in the course of the practice of law.
- (C) Despite any existing power of attorney from any existing clients, respondent shall not exercise his power of attorney to sign clients' names, including endorsing checks made out jointly to respondent and one or more clients.
- (D) Respondent shall not seek or accept any powers of attorney from clients.

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## 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 reproval), 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

- ☐ 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.

### 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:
- 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.



(Do not write above this line.)

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### Medical Conditions

- a. ☐ Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b. ☒ Respondent must obtain psychiatric ~~or psychological help~~ treatment from a duly licensed psychiatrist, ~~psychologist, or clinical social worker~~ at respondent's own expense a minimum of four times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. ~~Help~~ Treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for ~~xxxxxx days or xxxxxxx months or xxxxxx years or~~ the period of probation or until a motion to modify this condition is granted and that ruling becomes final.
- If the treating psychiatrist, ~~psychologist, or clinical social worker~~ determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, ~~psychologist, or clinical social worker~~, by affidavit ~~or~~ under penalty of perjury, in support of the proposed modification.
- c. ☒ Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

Respondent shall have his treating physician acknowledge in writing that he or she has read this full Stipulation and Order and the order of the Supreme Court.

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

IN THE MATTER OF:       GEORGE B. ALTENBERG

CASE NUMBER:           09-O-11169-LMA

**VARIANCE BETWEEN THE NDC AND STIPULATION**

Any variance between the language of the Notice of Disciplinary Charges filed June 1, 2011, and the language of this Stipulation is waived.

**FACTS AND CONCLUSIONS OF LAW**

**09-O-11169**

**Facts**

1. At all relevant times herein, respondent maintained a client trust funds account at Wells Fargo Bank (Account No. xxx-xxxx742; hereinafter "trust account" or "respondent's trust account").<sup>1</sup>

**Guadalupe Romero**

2. On November 13, 2008, respondent deposited \$19,950 in settlement funds into his trust account on behalf of his client, Guadalupe Romero ("Romero") and her minor child. From November 13, 2008, through February 10, 2009, respondent was required to maintain at least \$17,000 in his trust account on behalf of Romero.

3. Although respondent made no disbursement to or on behalf of Romero, beginning on November 14, 2008, the balance of respondent's trust account dipped to \$16,104.66, and did not rise to \$17,000 until November 18, 2008, when respondent deposited settlement funds received on behalf of another client, A.W.

4. Although respondent made no disbursement to or on behalf of Romero, beginning on November 19, 2008, the balance of respondent's trust account dipped to \$16,437.97, and did not rise to \$17,000 until November 25, 2008, when respondent deposited settlement funds received on behalf of another client, C.B.

5. Although respondent made no disbursement to or on behalf of Romero, beginning on December 8, 2008, the balance of respondent's trust account dipped to \$15,140.80, and did not rise to

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<sup>1</sup>The account number has been excluded to protect the account from identity theft.

\$17,000 until January 15, 2009, when respondent deposited settlement funds received on behalf of clients, M.C. and H.C.

6. Although respondent made no disbursement to or on behalf of Romero, beginning on January 16, 2009, the balance of respondent's trust account dipped to \$15,788, and did not rise to \$17,000 until February 10, 2009, when he paid Romero her share of the settlement proceeds.

7. From November 13, 2008, until February 10, 2009, respondent did not notify Romero of his receipt of the \$19,000 in settlement of her case.

8. Beginning in December 2008, and continuing until February 10, 2009, Romero contacted respondent in person and by telephone on several occasions to ask whether he had received her settlement funds. On each of those occasions, respondent falsely told Romero that he had not received any settlement funds on her behalf.

Client J.P.

9. On November 13, 2008, respondent deposited \$900 in settlement funds into his trust account on behalf of his client, J.P. From November 13, 2008, through February 10, 2009, respondent was required to maintain at least \$475 in his trust account on behalf of J.P.

10. Although respondent made no disbursement to or on behalf of J.P., beginning on December 18, 2008, the balance of respondent's trust account dipped to \$250, and did not rise to \$475 until December 22, 2008, when respondent deposited settlement funds received on behalf of another client, J.W.

11. Although respondent made no disbursement to or on behalf of J.P., on December 31, 2008, the balance of respondent's trust account dipped to \$309.94.

12. Although respondent made no disbursement to or on behalf of J.P., on January 7, 2009, the balance of respondent's trust account dipped to \$332.94.

13. Although respondent made no disbursement to or on behalf of J.P., on January 12, 2009, the balance of respondent's trust account dipped to \$232.94.

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Client A.W.

14. On November 18, 2008, respondent deposited \$14,000 in settlement funds into his trust account on behalf of his client, A.W. From November 18, 2008, through December 3, 2008, respondent was required to maintain at least \$8,395.76 in his trust account on behalf of A.W.

15. Although respondent made no disbursement to or on behalf of A.W., on November 24, 2008, the balance of respondent's trust account dipped to \$8,167.97, and did not rise to \$8,395.76 until November 25, 2008, when respondent deposited settlement funds received on behalf of another client, C.B.

Client E.M.

16. On December 29, 2008, respondent deposited \$3,146 in settlement funds into his trust account on behalf of his client, E.M. From December 29, 2008, through February 12, 2009, respondent was required to maintain at least \$900 in his trust account on behalf of E.M.

17. Although respondent made no disbursement to or on behalf of E.M., on December 31, 2008, the balance of respondent's trust account dipped to \$1,362.30, and did not rise to \$3,146 until January 15, 2009, when respondent deposited settlement funds received on behalf of clients, M.C. & H.C.

18. Although respondent made no disbursement to or on behalf of E.M., on January 28, 2009, the balance of respondent's trust account dipped to \$3,045.29, and did not rise to \$3,146 until February 2, 2009.

19. Although respondent made no disbursement to or on behalf of E.M., on February 4, 2009, the balance of respondent's trust account dipped to \$2,093.09.

20. Although respondent made no disbursement to or on behalf of E.M., on February 10, 2009, the balance of respondent's trust account dipped to \$1,821.09.

Clients M.C. & H.C.

21. On January 15, 2009, respondent deposited \$22,500 in settlement funds into his trust account on behalf of his clients, M.C. and H.C. From January 15, 2009, through March 30, 2009, respondent was required to maintain at least \$13,500 in his trust account on behalf of M.C. and H.C.

22. Although respondent made no disbursement to or on behalf of M.C. and/or H.C., on January 20, 2009, the balance of respondent's trust account dipped to \$12,895.29, and did not rise to \$13,500 until February 6, 2009.

23. Although respondent made no disbursement to or on behalf of M.C. and/or H.C., on February 10, 2009, the balance of respondent's trust account dipped to \$1,821.09, and did not rise to \$13,500 until February 11, 2009.

24. Although respondent made no disbursement to or on behalf of M.C. and/or H.C., on February 17, 2009, the balance of respondent's trust account dipped to \$12,813.99, and did not rise to \$13,500 before M.C. and H.C. were paid their settlement proceeds in March 2009.

Commingling

25. Respondent deposited funds belonging to him into his trust account, thereby commingling these funds, as follows:

Date of Deposit	Amount of Deposit	Payor
1/5/09	\$300.00	Cash
2/2/09	\$6,682.10	Cash
2/5/09	\$6,000.00	Cash
2/6/09	\$9,000.00	Cash

Conclusions of Law

1. By not maintaining in his trust account those portions of settlement funds received on behalf of his clients to which his clients were entitled to receive, respondent wilfully violated Rule of Professional Conduct 4-100(A).

2. By misappropriating those portions of clients' funds that he was required to maintain in his trust account, respondent committed acts involving moral turpitude.

3. By depositing funds belonging to him into his trust account, respondent wilfully violated Rule of Professional Conduct 4-100(A).

4. By not promptly notifying Romero that he received her settlement funds on November 13, 2008, until he disbursed to Romero her share of the settlement funds on February 9, 2010, respondent wilfully violated Rule of Professional Conduct 4-100(B)(1).

5. By not paying Romero her portion of the settlement funds until February 10, 2009, although they had been received November 13, 2008, and Romero had made several requests for the funds, respondent wilfully violated Rule of Professional Conduct 4-100(B)(4).

6. By repeatedly telling Romero during the period November 13, 2008, until February 10, 2009, that he had not received her settlement funds, respondent committed acts of moral turpitude.

### **PENDING PROCEEDINGS**

The disclosure date referred to on page 2, paragraph A(7), is July 5, 2011.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 1, 2011, the prosecution costs in this matter are approximately \$3,339.90. 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.

### **FACTS SUPPORTING MITIGATING CIRCUMSTANCES**

#### Cooperation

Respondent cooperated with the State Bar by entering into this stipulation.

#### Remorse

Respondent paid clients Romero, J.P., A.W., E.M. + M.C. and H.C. their entrusted funds prior to contact from the State Bar. Respondent reduced his fee to compensate Romero for lost interest.

### **AUTHORITIES SUPPORTING DISCIPLINE**

#### Standards for Attorney Sanctions for Professional Misconduct

#### **2.2 Offenses Involving Entrusted Funds or Property**

- (a) Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall be less than a one-year actual suspension, irrespective of mitigating circumstances.
- (b) Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

#### **2.3 Offenses Involving Moral Turpitude, Fraud, Dishonesty or Concealment**

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.

#### 1.6 Determination of Appropriate Sanction

(a) . . . If two or more acts of professional misconduct are . . . 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.

#### Case Law

In *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, the attorney misappropriated \$1,355.75, which was held not to be "insignificantly small" and was also found to have commingled funds. Lawhorn had only been admitted to practice for four years prior to his misconduct, but repaid his client in full. He was suspended for two years.

In *Lipson v. State Bar* (1991) 53 Cal.3d 1010, the attorney misappropriated \$8,400 through gross negligence. He had no prior record of discipline over 42 years of practice. He was suspended for two years and until proof of rehabilitation.

In *Mrakich v. State Bar* (1973) 8 Cal.3d 896, the attorney was suspended for one year and until he repaid restitution of \$2,600.

#### **WAIVER OF REFERRAL TO STATE BAR COURT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND/OR MENTAL HEALTH CONDITIONS**


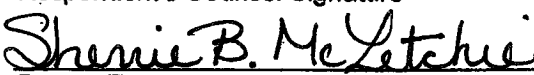
In signing this stipulation, respondent hereby acknowledges that the State Bar Court's separate program for respondents with substance abuse or mental health conditions has been fully explained to him, that he has had an opportunity to request to be considered for that program, and that he has specifically waived any such consideration.

(Do not write above this line.)

In the Matter of: George B. Altenberg	Case number(s): 09-O-11169-LMA
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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 Facts, Conclusions of Law, and Disposition.

<u>7/6/2011</u> Date	<u></u> Respondent's Signature	<u>George B. Altenberg</u> Print Name
<u>7-11-11</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Phillip Feldman</u> Print Name
		<u>Sherrie B. McLetchie</u> Print Name



(Do not write above this line.)

In the Matter of:  
George B. Altenberg

Case number(s):  
09-O-11169-LMA

### 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.

Date

7-7-11

Respondent's Signature

*Phillip Feldman*

George B. Altenberg

Print Name

Date

7-11-11

Respondent's Counsel Signature

*Sherrie B. McLetchie*

Phillip Feldman

Print Name

Date

Deputy Trial Counsel's Signature

Sherrie B. McLetchie

Print Name

(Do not write above this line.)

In the Matter of: GEORGE B. ALTBENBERG	Case Number(s): 09-O-11169-LMA
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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.

1. On page 4 of the stipulation, under the heading "Stayed Suspension," DELETE THE "X" in the box next to paragraph D(1)(a)(i) to remove the "and until" standard 1.4(c)(ii) condition.

2. A conclusions of law must specifically state the statute which respondent violated. That was not done in paragraph 2, on page 13. Therefore on page 13, in paragraph 2, under the heading "Conclusions of Law," after the words "moral turpitude," which are the last two words of the sentence, INSERT the following words, "in willful violation of Business and Professions Code section 6106."

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.)**

Date JUL 22, 2011

  
LUCY ARMENDARIZ  
Judge of the State Bar Court

## 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 San Francisco, on July 25, 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:

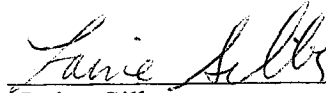
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

PHILLIP FELDMAN  
LAW OFFICES OF PHILLIP FELDMAN  
14401 SYLVAN ST STE 200  
VAN NUYS, CA 91401

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

SHERRIE B. MCLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 25, 2011.

  
\_\_\_\_\_  
Laine Silber  
Case Administrator  
State Bar Court