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State Bar Court of California
Hearing Department
San Francisco

Counsel For The State Bar Cydney Batchelor Deputy Trial Counsel 180 Howard St., 7 th Fl. San Francisco, CA 94105 Tele: 415/538-2204 Bar # 114637	Case Number (s) 09-O-11503 10-O-3041	(for Court's use) PUBLIC MATTER FILED <i>Rz</i> JAN 18 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Joel M. Ward, Esq. 10170 Culver Blvd. Culver City, CA 90232 Tele: 323/655-6644 Bar # 49156	Submitted to: STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: JOEL M. WARD Bar # 49156 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 **May 17, 1971**.
- (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 10 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: **2011 and 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 or a separate attachment entitled "Prior Discipline. **See attached**
- (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. **See attached**

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- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances

None

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

Additional mitigating circumstances

See attached

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one (1) 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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **three (3) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

(1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

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- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason:
- (8) 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.
- (9) 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 within one year. **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) **Other Conditions:**
- See attached**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: **JOEL M. WARD**

CASE NUMBERS: **09-O-11503; 10-O-3041**

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.

09-O-11503 (Client Trust Account)

Facts:

1. At all times mentioned, respondent maintained an attorney trust account at First Bank, entitled "Joel M. Ward, Esq. Client's Trust Account." The last four digits of the account were 2262.

2. During the periods January 1 through March 15, 2008, and January 1 through March 1, 2009, respondent failed to withdraw his personal funds from the account at the earliest possible time, but instead used the account for personal purposes. Specifically, respondent made 12 payments from the account for respondent's personal expenses unrelated to client matters during those periods of time.

3. Beginning in 2005, respondent began representing Ramon Amador in a fraud matter. The matter settled in March 2007. On December 31, 2008, respondent received and deposited into his client trust account \$5,000.00 on behalf of Amador. As of that date, respondent was required to maintain \$3,000.00 on behalf of Amador in his client trust account. Instead, on January 8, 2009, respondent made a cash debit on the client trust account in the amount of \$4,000.00, thereby misappropriating the funds. On January 10, 2009, respondent issued to Amador check number 2312 on his client trust account in the amount of \$3,000.00, and mailed it to him on January 12, 2009. When Amador tried to negotiate the check, it was returned for insufficient funds on February 19, 2009.

Conclusions of Law: By failing to withdraw his personal funds from the account at the earliest possible time, using his client trust account for personal purposes, making numerous payments from the account for respondent's personal expenses unrelated to client matters, and repeatedly commingling his personal funds into the client trust account, respondent commingled funds belonging to respondent in a bank account labeled "client's trust account," in willful violation of rule 4-100(A) of the Rules of Professional Misconduct. By failing to maintain the \$3,000.00 of Amador's funds in his client trust account pending Amador's negotiation of check 2312, respondent failed to maintain funds in trust in further willful violation of rule 4-100 of the Rules of

Professional Conduct. By misappropriating \$3,000.00 of Amador's funds intentionally or by gross negligence, respondent committed an act involving moral turpitude, in violation of section 6106 of the Business and Professions Code.

10-O-3041 (Gregorio Gatus)

Facts:

1. On February 23, 2009, respondent entered into an attorney client agreement with Rita Dinsay, Gregorio Gatus and Alfonso Aquino to represent them in a civil matter entitled *Cynthia Gatus, et al. v. Jose Baldonado, et al.*, Los Angeles County Superior Court case number BC400293 (the "first case"). Respondent obtained confidential information about Gatus material to the representation. The first case was concluded by May 1, 2009.

2. Subsequently, on November 4, 2009, respondent filed a libel and slander civil case on behalf of Rita Dinsay and other plaintiffs against Gregorio Gatus in the matter entitled *Rosalinda Nery, et al. v. Gregorio Gatus, et al.*, Los Angeles County Superior Court case number BC425347 (the "second case"). Thus, the interests of Dinsay and the other plaintiffs in the second case were adverse to respondent's client Gatus from the first case. Respondent continues as counsel for Dinsay and the other plaintiffs in the second case against Gatus as of the date this stipulation is signed.

3. Respondent failed ever to obtain Gatus' informed written consent to respondent representing Dinsay and the other plaintiffs against Gatus in the second case. In fact, Gatus strenuously objects to respondent representing Dinsay and the other plaintiffs against Gatus in the second case.

Conclusions of Law:

By failing to obtain Gatus' informed written consent to respondent representing the plaintiffs against Gatus in the second, after respondent had previously represented Gatus in the first case and obtained confidential information material to that representation, respondent violated rule 3-300(E) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was December 27, 2010.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards for Attorney Discipline 1.2(b)(i), 1.2(b)(ii), 1.2(e)(v), 1.3, 1.4(c), 1.5(b), 1.5(d), 1.6(a), 1.6(b)(ii), 1.7(b), 2.2(b), 2.8, and 2.10.

AGGRAVATING CIRCUMSTANCES.

Prior Discipline.

Discipline has been imposed against respondent on two prior occasions, as follows:

11/07/1993 (S026074): Respondent's received no actual suspension, but his probation in S026074 was extended for 6 months (State Bar case no. 92-P-20200). Information regarding the nature of the misconduct is unavailable to the State Bar at this time.

7/17/1992 (S026074): Respondent was actually suspended for 90 days and had 3 years stayed suspension on condition of a 3-year probation (State Bar case no. 86-O-12517). Information regarding the nature of the misconduct is unavailable to the State Bar at this time.

Multiple Acts of Misconduct. Respondent has stipulated to multiple acts of misconduct in two cases.

MITIGATING CIRCUMSTANCES.

Candor and Cooperation. Respondent has been cooperative and candid with the State Bar in the investigation and resolution of these cases.

Physical Problems: Respondent has provided the State Bar with documentary proof that he suffered serious physical problems that resulted in his hospitalization during the period January 2009 to April 2009, which was the time period of the Amador misappropriation.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Restitution to Amador: As soon as respondent was notified that check 2312 to Amador had been returned for insufficient funds, he immediately paid Amador in full. Thus, Amador suffered no financial harm.

No further CTA violations reported: There have been no further reports of client trust accounting improprieties since February 2009.

Prior discipline remote in time: Respondent is 77 years of age and was admitted to practice in 1971, which was 39 years ago. Although the prior impositions of discipline were not insignificant, they were remote in time to the misconduct stipulated to herein. The last act of misconduct in respondent's prior discipline occurred in 1992 and the first act of misconduct herein occurred 16 years later, in 2008.

STATE BAR ETHICS SCHOOL.

Insofar as respondent has agreed to attend State Bar Ethics School and State Bar Client Trust Accounting School as part of this stipulation, respondent may receive Minimum Continuing

Legal Education credit upon the satisfactory completion of State Bar Ethics and State Bar Client Trust Accounting Schools.

OTHER CONDITION NEGOTIATED BY THE PARTIES.

Client Trust Accounting School: Within 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.

Withdrawal from representation in civil case: Within 30 days of the effective date of the discipline herein, respondent will have notified his clients in the second case that he can no longer represent them in the case, will have returned their original client files and any unearned fees to them, and will have signed and filed a substitution of attorney with the civil court. Within 40 days of the approval of the effective date of the discipline herein, respondent will have provided written proof to the State Bar Office of Probation that he has complied with this condition, in a form acceptable to the Office of Probation. Respondent understands and agrees that his failure to comply with this condition may result in the revocation of his State Bar probation and/or the imposition of further discipline, including actual suspension or disbarment.

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In the Matter of JOEL M. WARD	Case number(s): 09-O-11503; 10-O-3041
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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>12/29/10</u> Date	<u>Joel M. Ward</u> Respondent's Signature	<u>JOEL M. WARD</u> Print Name
<u>1/3/11</u> Date	<u>[Signature]</u> Respondent's Counsel Signature	<u>N/A</u> Print Name
	<u>[Signature]</u> Deputy Trial Counsel's Signature	<u>CYDNEY BATCHELOR</u> Print Name

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In the Matter Of JOEL M. WARD	Case Number(s): 09-O-11503; 10-O-03041
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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:

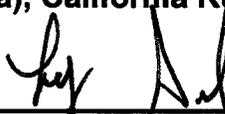
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 2, item A.(8) of the Stipulation, delete "2011 and 2012" and insert "2012 and 2013".

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.)**

January 18, 2011

Date



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 January 18, 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:

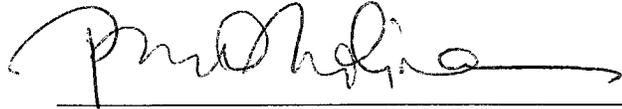
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JOEL M. WARD
JOEL M WARD
10170 CULVER BLVD
CULVER CITY, CA 90232

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

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 18, 2011.



Bernadette C.O. Molina
Case Administrator
State Bar Court