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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Larry DeSha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336 Bar # 117910	Case Number(s): 09-O-12838-RAP	For Court use only <div style="text-align: center;"> FILED MAY 17 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center; margin-top: 20px;"> PUBLIC MATTER </div>
In Pro Per Respondent David Greenwald 2360 W. 23rd Street Los Angeles, CA 90018 (323) 377-1546 Bar # 129247	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: DAVID GREENWALD Bar # 129247 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 July 8, 1987.
- (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.



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- (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.
- (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 Stipulation Attachment, page 8.
- (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. See Stipulation Attachment, page 8.
- (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 Stipulation Attachment, page 8.
- (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:

Respondent has no prior record of discipline in over 21 years of practice prior to the misconduct herein. See Stipulation Attachment, page 8.

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

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of two (2) 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 sixty (60) days.
- 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 type="checkbox"/> Medical Conditions | <input 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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID GREENWALD
CASE NO.: 09-O-12838-RAP

WAIVER OF VARIANCE:

The parties waive any variance between the Notice of Disciplinary Charges filed on January 20, 2011 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

FACTS:

1. As of December 22, 2008, Respondent had one active client trust account at Bank of America, account no. XXXXX5787 ("CTA 5787"). The balance in the account that day was \$61.20.
2. Respondent made three deposits of personal funds of \$10,000.00 each into CTA 5787 on December 26, 2008, January 14, 2009, and February 12, 2009. From December 27, 2008 through February 13, 2009, Respondent wrote 23 checks against CTA 5787 to pay his personal expenses, in amounts ranging from \$24.77 to \$2,045.06, with total paid expenses in excess of \$7,000. He also authorized a total of \$670.00 in electronic debits to make monthly payments on his credit card from Target, for his payments due on February 3, March 3, and April 3, 2009. From January 8, 2009 through March 2, 2009, he made 12 payments to himself by CTA checks payable to himself or "Cash" for a total of \$11,440.00.
3. The balance in CTA 5787 as of March 31, 2009 was \$2,353.46, all of which belonged to Respondent.
4. As of January 1, 2009, Respondent had another client trust account at Bank of America, account no. XXXXX5370 ("CTA 5370"). The balance in the account that day was \$43.46.
5. On February 17, 2009, Respondent transferred \$8,930.00 to CTA 5370 from CTA 5787, raising the balance in CTA 5370 to \$8,973.46. All of these funds belonged to Respondent. Respondent made seven deposits of personal funds totaling \$97,069.58 into CTA 5370 between February 20, 2009 and June 3, 2009.
6. From February 23, 2009 through June 1, 2009, Respondent wrote 33 checks against CTA 5370 to pay his personal expenses, in amounts ranging from \$59.75 to \$10,000.00, for total paid expenses in excess of \$39,000. He also authorized at least eight electronic debits for personal expenses in excess of \$38,900. From January 8, 2009 through March 2, 2009, he made more than 30 other payments to himself by cash withdrawals totaling in excess of \$34,000.00.

7. The balance in CTA 5370 as of June 3, 2009 was \$17,938.11, all of which belonged to Respondent.

CONCLUSIONS OF LAW:

8. Respondent willfully violated rule 4-100(A) of the California Rules of Professional Conduct by his deposit of \$30,000.00 of personal funds into CTA 5787, while it was designated as a client trust account, by maintaining personal funds in the account, and by using the account to pay personal expenses.

9. Respondent willfully violated rule 4-100(A) of the California Rules of Professional Conduct by his deposit of more than \$106,000.00 of personal funds into CTA 5370, while it was designated as a client trust account, by maintaining personal funds in the account, and by using the account to pay personal expenses.

AGGRAVATING CIRCUMSTANCES:

1. **Multiple Acts of Wrongdoing**

Respondent used CTA 5787 as a personal checking account from December 26, 2008 until April 3, 2009, a period of 14 weeks. During that time, he made three improper deposits of personal funds and made 38 payments or withdrawals for his personal expenses. He used CTA 5370 as a personal checking account from February 20, 2009 until June 3, 2009, a period of 14 weeks also. During that time, he made eight improper deposits of personal funds and made more than 60 payments or withdrawals for his personal expenses. [Standard 1.2(b)(ii).]

MITIGATING CIRCUMSTANCES:

1. **No Prior Discipline**

At the time of the first deposit of personal funds into CTA 5787 on December 26, 2008, Respondent had been a member of the State Bar of California for more than 21 years without an imposition of discipline. [Standard 1.2(e)(i).]

2. **No Harm**

Respondent's commingling of personal funds into the two client trust accounts caused no harm to clients, the courts, or the administration of justice. [Standard 1.2(e)(iii).]

3. **Candor/Cooperation**

On February 22, 2011, Respondent filed his response to the Notice of Disciplinary Charges, admitting all of the alleged material facts except for willfulness. He has subsequently cooperated fully with the State Bar during this proceeding, and has admitted the material facts, his culpability for misuse of the two client trust accounts, and the appropriate degree of discipline. [Standard 1.2(e)(v).]

SUPPORTING AUTHORITY:

Standards

Standard 2.2(b) requires at least a three month actual suspension, irrespective of mitigating circumstances, for any violation of rule 4-100(A).

Case Law

In *Heavey v. State Bar* (1976) 17 Cal.3d 131, attorney Heavey was found culpable of using his CTA to pay personal expenses "from time to time." During "nearly one full year," his CTA balance dropped 13 times below \$353.65 owed on behalf of one client. The California Supreme Court considered the commingling to be more serious than the misappropriations. There was one mitigating factor of no prior discipline in 30 years of practice, with no aggravating factors. The California Supreme Court imposed discipline of an actual suspension for 30 days, a stayed suspension for two years, and probation for two years.

Respondent's mitigating factors are essentially equal to that of attorney Heavey. Respondent has additional mitigation due to candor and no harm, but Heavey had a substantially longer period without prior discipline. Respondent has the aggravating factor of multiple acts of misconduct, which includes more than 90 improper CTA transactions during a period of less than six months.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, paragraph A.(7), was April 15, 2011.

COSTS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 14, 2011, the costs in this matter are \$2,296.00. 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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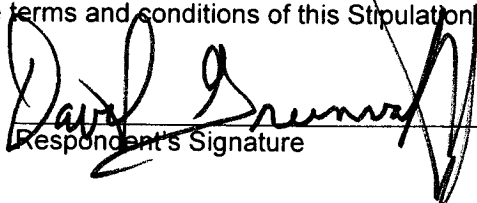
In the Matter of: DAVID GREENWALD	Case number(s): 09-O-12838-RAP
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SIGNATURE OF THE PARTIES

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.

May 3, 2011

Date



Respondent's Signature

David Greenwald

Print Name

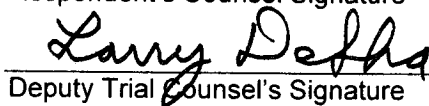
Date

Respondent's Counsel Signature

Print Name

May 3, 2011

Date



Deputy Trial Counsel's Signature

Larry DeSha

Print Name

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In the Matter of: DAVID GREENWALD	Case Number(s): 09-O-12838-RAP
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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 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

5/17/11

Judge of the State Bar Court

RICHARD A. HONN

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 May 17, 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:

DAVID GREENWALD
2360 W 23RD STREET
LOS ANGELES CA 90018

- ☐ 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:

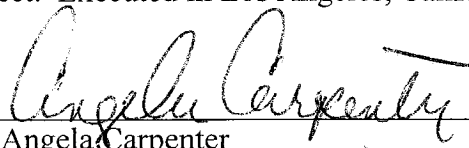
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ 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:

LARRY DESHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 17, 2011.



Angela Carpenter
Case Administrator
State Bar Court