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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
Counsel For The State Bar  Diane J. Meyers 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1000  Bar # 146643	Case Number(s): 09-O-14555	For Court use only   <div style="text-align: center;"> <b>FILED</b>  <b>APR 25 2011</b>          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </div>	
In Pro Per Respondent  Scott Cummings McKee McKee Law Group 2550 N. Hollywood Way, Ste. 201 Burbank, CA 91505 (213) 210-8924  Bar # 154077	Submitted to: <b>Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING		
In the Matter of: Scott Cummings McKee  Bar # 154077  A Member of the State Bar of California (Respondent)	<b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		

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

#### **A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted October 17, 1991.
- (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 13 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."

(Effective January 1, 2011)



- (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 04-O-15360
  - (b) ☒ Date prior discipline effective August 23, 2005
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rule 3-700(A)(2) of the Rules of Professional Conduct
  - (d) ☒ Degree of prior discipline Private reproof
  - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court Case # of prior case: 07-H-11874

Date prior discipline effective: June 19, 2010

Rules of Professional Conduct/State Bar Act violations: Rule 1-110 of the Rules of Professional Conduct

Degree of prior discipline: a 60-day actual suspension, a two-year stayed suspension, and a five-year probation.

- (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.

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- (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. Because Respondent failed to satisfy Andrew Ellis's lien against the settlement, Ellis filed a small claims action against Respondent and his client, Ted Currall, in June 2008. In June 2009, Ellis obtained a judgment against Respondent and Currall, in the amount of \$7,500 (the jurisdictional limit) plus costs of \$239. Respondent satisfied the judgment by paying Ellis \$8,686 in March 2011, when he became financially able to pay the judgment and after Ellis complained to the State Bar in August 2009.
- (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. Respondent was candid and cooperative with the State Bar during its investigation of this matter.
- (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. Respondent admitted the misconduct when contacted by the State Bar during its investigation and further demonstrated recognition of wrongdoing by entering into this stipulation, thereby saving the resources of the State Bar.
- (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. In January 2003, Respondent was diagnosed with a debilitating and life-threatening illness. Respondent's illness also caused him to suffer from severe depression. In 2005, Respondent voluntarily sought medical care to treat his depression, however, he continued to suffer from depression at the time of his misconduct. His depression caused and contributed to his misconduct. Respondent has produced competent evidence showing that he no longer suffers from depression and that his illness is under control.
- (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. Respondent stopped working in 2004 because of his illness. Respondent did not have the income to meet his living expenses. His primary source of income was Social Security benefits of approximately \$900 per month. Respondent misappropriated funds belonging to Ellis because of the severe financial hardship that directly resulted from his illness.
- (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 provided letters from three character references--an attorney and employer of Respondent, and two businessmen and clients of Respondent--who know Respondent well, who are aware of Respondent's misconduct, and who attested to Respondent's good character. Further, Respondent's psychiatrist and psychotherapist expressed their opinion that Respondent's misconduct was aberrational.

**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 five 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 six 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.

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- (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: Effective June 10, 2010, Respondent was ordered to complete Ethics School in case no. 07-H-11874 (S181032) within one year of the effective date of the discipline.
- (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 checked="" 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: Effective June 10, 2010, Respondent was ordered to pass the MPRE in case no. 07-H-11874 (S181032) within one year of the effective date of the discipline.
- (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:**

G. Supporting Authority:

Standard 2.2(a), Standards for Attorney Sanctions for Professional Misconduct, provides that culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds 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 not be less than a one-year actual suspension, irrespective of mitigating circumstances.

If a member is found culpable of professional conduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. (Standard 1.7(b).) When considering the applicability of standard 1.7(b), the Court has placed great weight on whether or not there is a "common thread" among the various prior disciplinary proceedings or a habitual course of conduct which justifies disbarment. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 780.)

The appropriate sanction shall be the sanction imposed unless the net effect of the mitigating circumstances, by themselves and in balance with any aggravating circumstances, demonstrates that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a lesser degree of sanction is imposed. (Standard 1.6(b)(ii).)

While intentional misappropriation generally results in disbarment (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 37), the Court has stated that each case should be resolved on its own facts. (*In re Young* (1989) 49 Cal.3d 257, 268.). And the standards are to be used as guidelines rather than as "mandatory" sentences. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Generally, the Supreme Court has not recommended disbarment where the misconduct was directed towards a single client and the attorney had no other record of discipline. (*Boehme v. State Bar* (1988) 47 Cal.3d 448, 451-452; *Edwards v. State Bar*, supra, 52 Cal.3d at pp. 36-37, 39.)

In cases where the Court has not disbarred attorneys for wilful misappropriation of client funds, there were a variety of extenuating circumstances warranting lesser discipline. In some cases, the attorney had presented evidence of compelling mitigating circumstances relating to the attorney's background or character or to unusual difficulties the attorney was experiencing at the time of the misconduct, which tended to prove that the misconduct was aberrational and thus unlikely to recur. (E.g., *Howard v. State Bar* (1990) 51 Cal.3d 215, 222 [rehabilitation from alcoholism and drug dependency]; *Weller v. State Bar* (1989) 49 Cal.3d 670, 675 [emotional strain; character testimonials]; *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [stress of marital problems; long, unblemished record of legal practice]; *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132 [long, unblemished record; illness; relocation of practice].)

"An attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception." (*Edwards v. State Bar*, supra, 52 Cal.3d at p. 38.) However, "the lack of an evil intent does not immunize the attorney's conduct from a finding of moral turpitude." (*Fitzsimmons v. State Bar* (1983) 34 Cal.3d 327, 331.)

In the Matter of Dyson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280 involved Dyson's misappropriation of about \$4,700 in trust funds subject to a medical lien in one client matter. Dyson commingled the funds in his personal account, and delayed payment to the doctor for a year and a half after demand for payment. Dyson's restitution of the misappropriated funds was not a mitigating factor as the payment was made after a State Bar complaint was filed and the lienholder threatened to sue Dyson. (Id. at p. 287.) His lack of prior discipline was not a significant mitigating factor because he had only been in practice for eight years. (Ibid.) His pro bono activities were also given little weight in mitigation. (Ibid.) The Review Department recommended and the Supreme Court imposed a one-year actual suspension against Dyson.

In *Bates v. State Bar* (1990) 51 Cal.3d 1056, an attorney misappropriated \$700.60 that he received from his client's medical expense insurance coverage. Bates failed to pay the client's portion of the funds received. He claimed that he was entitled to fees from the funds received. He concealed the misappropriation from the client's new attorney. There was significant harm to the client, and Bates failed to acknowledge his obligations to his client. He refused to make restitution until after the hearing department issued its decision. He claimed that his deception occurred in the course of heated exchanges with the new attorney. But the court concluded that his mood or animosity toward the other attorney did not matter. The court accepted the review department's finding that Bates's alcoholism was a mitigating factor. Bates presented evidence that he had his alcoholism under control. He had 14 years of discipline-free practice. Bates received a six-month actual suspension and a three-year stayed suspension.

Unlike Dyson and Bates, Respondent has a prior record of discipline, a private reproof and a 60-day actual suspension. However, the aggravating effect of Respondent's prior actual suspension is diminished because his present misconduct was committed before the actual suspension was imposed against him, and thus did not provide him with an opportunity to "heed the import of that discipline." (In the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136; In the Matter of Hagen (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171.) Also, the aggravating effect of Respondent's prior discipline is diminished as there is no common thread between Respondent's prior and present misconduct. Unlike Bates, Respondent's misappropriation was not surrounded by acts of deceit, but was aberrational, stemming from the extenuating circumstances of his illness and resulting financial difficulties. Respondent's mitigation is more compelling than the mitigation present in Dyson and Bates, and outweighs the aggravating factors present, demonstrating that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a six-month actual suspension is imposed.

#### H. PARTIAL WAIVER OF COSTS

Respondent acknowledges that as of March 30, 2011, the disciplinary costs in this matter are estimated at \$2,835.83 and that the costs may increase if this stipulation is rejected or if relief from the stipulation is granted due to the costs of further proceedings. The Office of the Chief Trial Counsel partially waives costs in this matter given Respondent's demonstrated financial need. The disciplinary costs are hereby reduced to \$1,400. Respondent is to pay such costs in equal amounts over the three membership billing cycles following the effective date of discipline in this matter. 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.



Attachment language (if any):

Respondent admits that the following facts are true and that he is culpable of the following violations:

FACTS:

1. In 2006, Respondent settled the personal injury claim of his client, Ted Currall ("Currall"), for \$175,000. Prior to the settlement, Currall had been represented by other attorneys in the claim, including Andrew Ellis ("Ellis"), and a personal injury lawsuit had been filed on behalf Currall in the Los Angeles County Superior Court entitled, Ted Currall v. Abraham Diaz Aguilar, et al., case number BC336779.

2. On September 1, 2006, Allstate Insurance Company issued a draft for \$165,000 pursuant to the settlement. The draft was payable to Currall; attorney Herbert Hafif; the law firm of Chain, Younger, Cohn & Stiles; Ellis; Respondent and Cedars-Sinai Hospital ("the payees"). There were liens against the settlement funds. Another \$10,000 draft was issued directly to Currall. Under Respondent's fee agreement with Currall, he was entitled to a maximum of 40% of the gross settlement as fees, as well as costs advanced on behalf of Currall.

3. On September 29, 2006, the court issued the following orders regarding the \$165,000 draft:

a. that the clerk of the court was to sign the draft on behalf of the payees;

b. that Respondent was to maintain a total of \$56,852.02 in his trust account pending resolution of the lienholders' claims, as follows:

(1) Andrew Ellis: \$12,500;

(2) Cedars-Sinai Medical Center: \$23,501.42;

(3) Law Offices of Herbert Hafif: \$20,517.73;

(4) Chain, Younger, Cohn & Stiles: \$332.87; and

c. that the balance of the settlement draft of \$108,147.98 was to be disbursed to Currall and Respondent according to the written fee agreement between them.

4. On September 29, 2006, Respondent deposited the \$165,000 draft into his client trust account at Bank of America, account number xxxxxx0827 (the "CTA"). At the time of the deposit, the balance in the CTA was \$20 which was unrelated to Currall's matter.

5. Between October 2006 and February 2007, Respondent resolved and paid the liens of the Law Offices of Herbert Hafif and Chain, Younger, Cohn & Stiles in the aggregate sum of \$2,100.60 from the CTA, and disbursed \$88,696.42 to Currall from the CTA. Cedars-Sinai Medical Center waived its lien claim against the settlement funds.

6. On or about November 30, 2006, Respondent issued check number 113 from the CTA for \$500 to Ellis. The check represented partial payment of the \$12,500 due to Ellis from the settlement funds. Ellis cashed the check on January 25, 2007.

7. Between July 12, 2007 and February 1, 2008, Respondent withdrew \$12,000 from the CTA, without paying the balance of \$12,000 due to Ellis and without resolving Ellis's lien against the settlement funds. Consequently, the balance in the CTA fell to \$11,274.01 on July 12, 2007 and continued to fall and remain below \$12,000 until the balance in the CTA fell to \$0 on February 1, 2008.

8. Between July 12, 2007 and February 1, 2008, without resolving Ellis's lien against the settlement funds, Respondent intentionally misappropriated \$12,000 of the settlement funds to meet his personal expenses while he was suffering from a debilitating and life-threatening illness, without an honest, reasonable, or good faith belief that he was entitled to the \$12,000, but without any evil intent or intent to permanently deprive Ellis of the funds due to him.

#### CONCLUSIONS OF LAW:

1. Respondent owed a fiduciary duty to Ellis to maintain \$12,000 in the CTA on behalf of Ellis, until Ellis's lien against the settlement funds was resolved. By not maintaining \$12,000 in the CTA on behalf of Ellis between July 12, 2007 and February 1, 2008, Respondent failed to maintain the balance of funds received for the benefit of a client, and a third party to whom Respondent owed a fiduciary duty, and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation of rule 4-100(A) of the Rules of Professional Conduct.

2. By intentionally misappropriating \$12,000 of the settlement funds, without an honest, reasonable, or good faith belief that he was entitled to the \$12,000, Respondent committed an act involving moral turpitude, in wilful violation of section 6106 of the Business and Professions Code.

3. By not maintaining \$12,000 in the CTA on behalf of Ellis between July 12, 2007 and February 1, 2008 and by not resolving Ellis's lien against the settlement funds, Respondent disobeyed or violated an order of the court requiring him to do an act in the course of Respondent's profession which he ought in good faith to do, in wilful violation of section 6103 of the Business and Professions Code.

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In the Matter of: Scott Cummings McKee	Case Number(s): 09-O-14555
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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 reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ 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:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

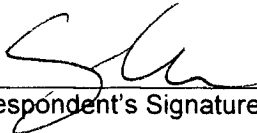
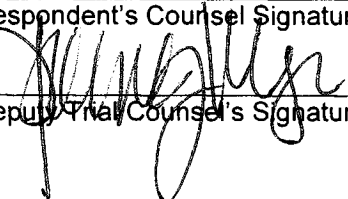
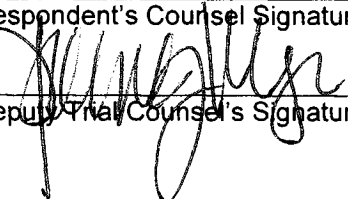
- ☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

In the Matter of: Scott Cummings McKee	Case number(s): 09-O-14555
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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>4-7-11</u> Date	 Respondent's Signature	<u>Scott C. McKee</u> Print Name
<u>4/7/11</u> Date	 Respondent's Counsel Signature	<u>Diane J. Meyers</u> Print Name
<u>4/7/11</u> Date	 Deputy Trial Counsel's Signature	<u>Diane J. Meyers</u> Print Name

(Do not write above this line.)

In the Matter Of SCOTT CUMMINGS MCKEE	Case Number(s): 09-O-14555
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### ORDER

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

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

1. On page 4 of the stipulation, an "X" is inserted in the box next to paragraph D.(1)(b).

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.)**

Date

4/21/11

  
\_\_\_\_\_  
RICHARD A. HONN  
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 Los Angeles, on April 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 Los Angeles, California, addressed as follows:  
  
SCOTT C. MCKEE  
MCKEE LAW GROUP  
2550 N HOLLYWOOD WAY STE 201  
BURBANK, CA 91505
- ☐ 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:

Diane J. Meyers, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 25, 2011.



Cristina Potter  
Case Administrator  
State Bar Court