

(Do not write above this line.)

**State Bar Court of California  
Hearing Department  
San Francisco  
DISBARMENT**

<p>Counsel For The State Bar</p> <p>Erica L. M. Dennings Office of the Chief Trial Counsel 180 Howard Street San Francisco, Ca 94105</p> <p>Bar # 145755</p>	<p>Case Number(s): 10-N-10038 Investigation matter 09-O-17763</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>[Signature]</i></p> <p>MAY 05 2011</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Howard Melamed 319 Lennon Lane Walnut Creek, CA 94598-2418 (925) 932-0417</p> <p>Bar # 40962</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p><b>DISBARMENT</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Elizabeth Shivell</p> <p>Bar # 98471</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted May 29, 1981.
- (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 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."



(Do not write above this line.)

- (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):
- Costs to be awarded to the State Bar.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**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**
- (a)  State Bar Court case # of prior case 06-O-14100, 07-O-11220, 07-O-11328, 07-O-13670, 08-O-13493, 09-O-12089, 09-O-14217 (\$183838)
  - (b)  Date prior discipline effective September 8, 2010
  - (c)  Rules of Professional Conduct/ State Bar Act violations: 3-110(A), 3-700(D)(2), 4-100(B)(3), 4-100(A) of the Rules of Professional Conduct, and sections 6068(m), 6106, and 6090.5(a)(2) of the Business and Professions code.
  - (d)  Degree of prior discipline Two years, suspension, stayed, two years probation with conditions including actual suspension for one year and until she makes restitution.
  - (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. Respondent misappropriated more than \$50,000 in client funds.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Lynn Hudson was deprived of her funds for more than four years.

(Do not write above this line.)

---

- (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. Respondent cooperated throughout the disciplinary proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. Respondent confessed the misappropriation to Hudson, informed her about the Client Security Fund, and began making payments prior to the commencement of any disciplinary proceedings.
- (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. Respondent suffered from physical and psychological difficulties from 2005-2006 which contributed to her conduct. Respondent sought appropriate medical care and self-referred to the Lawyers Assistance Program to address the psychological issues. In 2008 respondent suffered a near fatal illness, a month long coma and lengthy recovery which delayed her ability to work and promptly repay funds to Hudson upon discovery of the missing trust funds. Respondent was in ongoing care from several physicians who diagnosed respondent with severe ulcerative colitis in the remainder of her colon, abdominal adhesion, five abdominal hernias, and several infections as a result of her impaired immune system. These conditions affected her ability to work full time. Respondent finally had extensive gastrointestinal

(Do not write above this line.)

---

surgery in Decemer 2010 and March 2011 to remedy these conditions. Respondent's condition directly affected her ability to meet the deadlines under rule 9.20.

- (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's computer with trust fund records was stolen from her home office in 2007 which hampered respondent's ability to manage her client trust account. Following her 2008 illness, respondent was unable to work full time until November 2008. As a result, respondent lost her home and her business, but nontheless made payments to Hudson from attorney fees awards and other income even before paying personal obligations.
- (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. Respondent was the guardian of a teenager whose gang activities included stealing respondent's home office computer with relevant client trust account records, impacting accurate accounting by respondent.
- (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. Respondent successfully completed the Lawyers Assistance Program as of November 22, 2010 to address issues underlying her misconduct and passed the Multistate Professional Responsibility Examination in November 2010.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

Respondent filed her California Rule of Court §9.20 declaration with the State Bar on January 24, 2011. Respondent was hospitalized for surgery between December 7 and 12, 2010, and did not return to work until January 14, 2011. Ms. Shivell was ill for 4 weeks before being admitted to the hospital. Her ill health which lead to surgery, and the surgery itself, prevented Ms. Shivell from filing her §9.20 declaration in a timely fashion. Ms. Shivell attempted to file her declaration in October, 2010 but it was rejected by the State Bar Court because it was not filled out correctly, which occurred due to her illness that affected her concentration.

Respondent has provided four letters of reference attesting to her good character. These references are aware of the full extent of her misconduct.

**D. Discipline: Disbarment.**

**E. Additional Requirements:**

- (1) **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.
- (2)  **Restitution:** Respondent must make restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_. If the Client Security Fund has reimbursed \_\_\_\_\_ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than \_\_\_\_\_ days from the effective date of the Supreme Court order in this case.
- (3)  **Other:** Because the misconduct in case number 09-O-17763 occurred at the same time as the misconduct in case numbers 06-O-14100(\$183838) et al, pursuant to In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, the effective date of disbarment shall be September 8, 2010, which is the date her actual suspension began. That is, respondent shall be given credit for the time she has already been actually suspended since September 8, 2010.

Attachment language (if any):

ATTACHMENT TO  
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ELIZABETH L. SHIVELL (#98471)

CASE NUMBER(S): Investigation matter 09-O-17763, 10-N-10038

**FACTS AND CONCLUSIONS OF LAW.**

Investigation matter 09-O-17763

Facts

Prior to December 2005, respondent represented Lynn Hudson (aka D'Arrigo) in a dissolution and child custody matter. In 2005, the family home belonging to Hudson and her former spouse was sold. In December 2005, \$56,740.52 from the house sale was transferred to respondent and was to be held in trust pending resolution of various financial issues between the parties. Respondent deposited the check from the title company into her client trust account at Bank of America, account number 16646-xxxxx. (The last digits of the account number are deleted to protect privacy). Thereafter, respondent received two checks in the amount of \$723.97 and \$19,409.45 from the sale of the home. These two checks were paid to Hudson. Hudson was entitled to at least \$56,740.52 of the funds. Thereafter, respondent used the money for her own use and benefit and did not disburse any of the \$56,740.52 to Hudson until January 2008. In or about late 2007, respondent admitted to Hudson that she had misappropriated her funds but that she would pay her back. Respondent began regular payments in January 2008 except for the months she was hospitalized for a near fatal illness in 2008 and in rehabilitation thereafter. In 2008 and 2009, Hudson communicated with respondent on several occasions concerning payment of the funds she was entitled to. Between January 8, 2008 and September 2009, respondent paid Hudson \$18,950.00. Hudson previously agreed to pay respondent attorney's fees of \$19,409.45 from the proceeds of the sale of the home, which was verified in court pleadings. On December 22, 2010, respondent paid Hudson \$28,569.22 which was the balance owing Hudson plus interest, per the calculations of respondent's forensic accountant.

Conclusions of Law

By misappropriating at least \$56,749.52 of her client's funds, respondent committed an act or acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

By not disbursing any of Hudson's funds for three years after receiving them, respondent failed to promptly pay funds her client was entitled to receive in willful violation of rule 4-100(B)(4) of the rules of Professional Conduct.

///

///

Case no. 10-N-10038

Facts

On or about August 9, 2010, the California Supreme Court filed a disciplinary order in State Bar Court case number 06-0-14100 et al (Supreme Court Case Number S183838).

The disciplinary order required respondent to comply with California Rule of Court 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the order. The order also suspended respondent from the practice of law.

The order became effective thirty days after it was filed (California Rules of Court, rule 9.18(b)), and at all times subsequent has remained in full force and effect. Notice of the rule 9.20 order was properly served upon respondent in the manner prescribed by California Rule of Court 9.18(b) at the address respondent maintained with the State Bar in accordance with Business and Professions Code section 6002.1 subdivision (a).

Respondent received actual notice of the Supreme Court order as follows:

- (a) On or about August 9, 2010, the Supreme Court mailed a copy of the order, which respondent received shortly thereafter;
- (b) On or about August 24, 2010, the State Bar's Office of Probation mailed respondent a letter, which respondent received shortly thereafter, reminding respondent of her duty to comply with rule 9.20;
- (c) On or about November 4 and 5, 2010, respondent had telephonic conversations with the Office of Probation concerning her duty to comply with rule 9.20.

The deadlines for complying with rule 9.20(a) and rule 9.20(c) expired on or about October 8 and 18, 2010, respectively.

Conclusion of Law

By not submitting her compliance declaration until January 24, 2011, Respondent violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear in wilful violation of section 6103 of the Business and Professions Code.

///

///

///

## **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was April 20, 2011.

## **AUTHORITIES SUPPORTING DISCIPLINE.**

### **SUPPORTING AUTHORITY**

Standard 2.2(a) requires disbarment for the willful misappropriation of entrusted funds. The standard suggests not less than a one-year actual suspension if the amount of funds is insignificantly small or if the most compelling mitigating circumstances clearly predominate. Neither of those circumstances exists in this matter.

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

Standard 2.3 requires an actual suspension or disbarment for a respondent that has committed an act of moral turpitude. Respondent committed multiple acts of moral turpitude.

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior proceeding was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Disbarment is the proper discipline for misappropriation, even when the respondent has no prior record of discipline. (See *In re Abbott* (1977) 19 Cal.3d 249 [disbarment for misappropriation of over \$29,000; no prior record of discipline]; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarment for misappropriation of approximately \$30,000 and lying to the State Bar; no prior record of discipline]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [disbarment for misappropriation of over \$7,000; no prior record of discipline]; *Kelly v. State Bar* (1988) 45 Cal.3d 649 [disbarment for misappropriation of approximately \$20,000; no prior record of discipline]; *In the Matter of Spaitth* (Review Dept. 1996) 3 Cal.State Bar Ct.Rptr. 511 [disbarment for misappropriation of approximately \$40,000 in one client matter; no prior record of discipline]; *In the Matter of Keuker* (Review Dept. 1991) 1 Cal.State Bar Ct.Rptr. 583 [disbarment for misappropriation of approximately \$66,000 in one client matter; no prior record of discipline].)

Based on the misappropriation alone, disbarment is the appropriate level of discipline in this matter.

Disbarment is the appropriate general standard for a wilful violation of rule 955. *Bercovich v. State Bar* (1990) 50 Cal.3d. 116, 131.



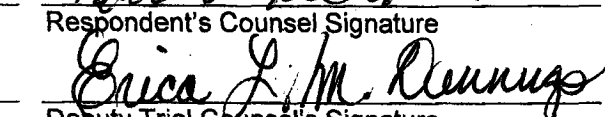


(Do not write above this line.)

In the Matter of: ELIZABETH L. SHIVELL (#98471)	Case number(s): 10-N-10038 Investigation Matter 09-0-17763
--	--

**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>4/15/11</u> Date	 Respondent's Signature	<u>Elizabeth L. Shivell</u> Print Name
<u>4/15/11</u> Date	 Respondent's Counsel Signature	<u>Howard Melamed</u> Print Name
<u>2 May 2011</u> Date	 Deputy Trial Counsel's Signature	<u>Erica L.M. Dennings</u> Print Name

(Do not write above this line.)

In the Matter of: ELIZABETH L. SHIVELL (#98471)	Case number(s): 10-N-10038 Investigation Matter 09-0-17763
--	--

**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>4/15/11</u> Date	 Respondent's Signature	Elizabeth L. Shivell Print Name
_____ Date	_____ Respondent's Counsel Signature	Howard Melamed Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	Erica L.M. Dennings Print Name

(Do not write above this line.)

In the Matter of:  
Elizabeth L. Shivell (SBN 98471)

Case Number(s):  
10-N-10038  
Investigation Matter 09-O-17763

### DISBARMENT 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.)**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

May 5, 2011

Judge of the State Bar Court

LUCY ARMENDARIZ

## 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 May 5, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

HOWARD RICHARD MELAMED  
319 LENNON LN  
WALNUT CREEK, CA 94598 - 2418

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

ERICA L. M. DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 5, 2011.



---

Bernadette C.O. Molina  
Case Administrator  
State Bar Court