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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Kristin L. Ritsema Supervising Trial Counsel Office of the Chief Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1235  Bar # 149966	<b>Case Number(s):</b> 10-O-04546	<b>For Court use only</b>  <div style="text-align: center;"> <b>FILED</b>  <b>JAN 11 2012</b>          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </div>
<b>In Pro Per Respondent</b>  David Kyle Law Offices of David Kyle 3941 S. Bristol, Suite D520 Santa Ana, CA 92704 (714) 444-2522  Bar # 55821	<div style="text-align: center;"> <b>PUBLIC MATTER</b> </div>	
<b>In the Matter of:</b> DAVID KYLE  Bar # 55821  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <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 June 29, 1973.
- (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 14 pages, not including the order.

(Effective January 1, 2011)

Actual Suspension



- (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 95-O-11454.
  - (b) ☒ Date prior discipline effective February 7, 2001.
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Failure to promptly provide accounting, in violation of rule 4-100(B)(3) of the Rules of Professional Conduct; and failure to promptly pay out funds to which a client was entitled, in violation of rule 4-100(B)(4) 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.
- (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.

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- (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.
- (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 has been candid and cooperative with the State Bar during the pendency of the disciplinary matter and is entering into this stipulation as to facts, conclusions of law and disposition to resolve this matter without the necessity of a trial.
- (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.

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- (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:**

According to Respondent, on April 3, 2008, when he transferred funds from his client trust account to his personal account, Respondent had a subjective belief that he was owed additional costs reimbursement from the Junie Aguirre case as authorized by the court's approval of the minor's compromise in that matter, and a portion of the transfer from the client trust account to the personal account was for the additional reimbursement in the Junie Aguirre case. This subjective belief is supported by Respondent's notation on March 19, 2008 on the memo line of client trust account check 2295, made payable to Respondent in the amount of \$75,000, that the check represented reimbursement for "partial costs." Unfortunately, Respondent has been unable to produce records that he is required to maintain pursuant to the rule 4-100(B)(3) and the Standards following rule 4-100(C) of the Rules of Professional Conduct and has acknowledged herein that he failed to maintain the required client ledger for the Junie Aguirre matter. However, Respondent had promised Junie Aguirre's mother, Felicia Valdez, that he would make every effort to have \$100,000 placed into an annuity for the benefit of Junie, even if it meant adjusting his fees and costs. When Respondent determined that insufficient funds remained in his client trust account to place \$100,000 into an annuity for Junie and additional funds were needed for that purpose, Respondent deposited funds from his personal account back into the client trust account to satisfy that need and keep his promise to Ms. Valdez. At the time that Respondent placed the \$100,000 in an annuity for Junie, he was only required to be maintaining \$97,007.78 in his client trust account on Junie's behalf as this was the amount remaining after the documented disbursements. So, Respondent paid \$2,992.22 of his own funds towards the purchase of the annuity for Junie. Ultimately, Respondent's client, Junie, was not harmed by Respondent's misconduct, and in fact Junie received an additional \$2,992.22 from Respondent for the purchase of the annuity.

**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:**

(Effective January 1, 2011)

Actual Suspension

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 ninety (90) 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:**

- (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:

☐ Substance Abuse Conditions

☐ Law Office Management Conditions

☐ Medical Conditions

☒ 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:

- (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:**

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In the Matter of: DAVID KYLE	Case Number(s): 10-O-04546
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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.



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

IN THE MATTER OF:                      DAVID KYLE

CASE NUMBER(S):                      10-O-04546

**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.

Case No. 10-O-04546 (State Bar Investigation)

**FACTS:**

1. At all times pertinent to these charges, Respondent maintained a client trust account at Bank of America, account number xxxxx-xx005 (only the last three digits of the account are being provided in light of privacy concerns) (hereinafter "Respondent's client trust account").
2. Respondent was one of the attorneys of record for plaintiff Raymond Junie Aguirre ("Junie"), a minor, in the matter entitled *Patricia Mary Aguirre, et al. v. City of West Covina, et al.*, United States District Court, Central District of California, Southern Division, case number SACV 03-00621 (the "civil case").
3. On or about February 19, 2008, Respondent filed a notice of an ex parte application for an order granting minor's compromise in the civil case on behalf of Junie, through his guardian ad litem—his mother, Felicia Valdez. In the ex parte application, Respondent sought an order approving a settlement in the amount of \$400,000 on behalf of Junie, with attorney's fees in the amount of \$200,000 plus actual costs expended to be deducted from the settlement amount and the balance of funds remaining to be placed into a blocked annuity until Junie reaches the age of 25.
4. On or about February 24, 2008, the court in the civil case issued an order granting the ex parte application for minor's compromise.
5. On or about February 26, 2008, Independent Cities Risk Management Authority issued and sent to Respondent check number 7389, dated February 26, 2008, in the amount of \$400,000 and made payable to David Kyle and Raymond Junie Aguirre c/o Felicia Rae Valdez, his guardian ad litem.

6. On or about March 6, 2008, Respondent received the settlement check in the amount of \$400,000 and deposited it into Respondent's client trust account on behalf of Junie.

7. Thereafter, Respondent made the following disbursements of Junie's settlement proceeds from his client trust account:

<u>Check</u>	<u>Date issued</u>	<u>Date posted</u>	<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>
2291	03/19/08	03/19/08	Robert Shtofman, Esq.	\$80,000	Attorney fees
2292	03/19/08	03/19/08	Richard Sullivan, Esq.	\$8,000	Attorney fees
2293	03/19/08	03/20/08	Richard Sullivan, Esq.	\$8,000	Attorney fees
2294	03/19/08	03/19/08	Respondent	\$100,000	Attorney fees
2295	03/19/08	03/19/08	Respondent	\$75,000	for "partial costs" per memo line
2296	03/19/08	03/28/08	Richard Sullivan, Esq.	\$4,000	Attorney fees
2316	unknown	05/22/08	Technical Associates, Inc.	\$475.86	Costs
2317	05/27/08	06/02/08	Robert Scott Shtofman, Esq.	\$19,998.74	Costs

8. The disbursements listed above totaled \$295,474.60. After making these disbursements, Respondent was required to maintain the remaining \$104,525.40 (\$400,000 less \$295,474.60) of Junie's settlement funds in Respondent's client trust account until its appropriate distribution on behalf of Junie.

9. However, Respondent failed to maintain \$104,525.40 in Respondent's client trust account on behalf of Junie. Although Respondent had not made any additional disbursements from his client trust account on behalf of Junie, by on or about June 2, 2008, the balance in Respondent's client trust account had dropped to \$89,561.40. The balance in Respondent's client trust account dropped below the \$104,525.40 that Respondent was to maintain on behalf of Junie as a result of Respondent's transfer on April 3, 2008 of \$152,657.70 from Respondent's client trust account to Respondent's personal account.

10. Thereafter, Respondent made the following additional disbursement of Junie's settlement proceeds from his client trust account:

<u>Check</u>	<u>Date issued</u>	<u>Date posted</u>	<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>
2281	07/11/08	07/18/08	Atkinson-Baker	\$7,517.62	Costs

11. After making this additional disbursement, Respondent was required to maintain the remaining \$97,007.78 (\$104,525.40 less \$7,517.62) of Junie's settlement funds in Respondent's client trust account until its appropriate distribution on behalf of Junie.

12. However, Respondent failed to maintain \$97,007.78 in Respondent's client trust account on behalf of Junie. As set forth above, by on or about June 2, 2008, the balance in Respondent's client trust account had dropped to \$89,561.40.

13. On or about November 25, 2009, Junie's mother and guardian ad litem, Ms. Valdez, signed an application for the annuity for Junie to be purchased with the remainder of Junie's settlement funds. Respondent had previously assured Ms. Valdez that he would make every effort to have \$100,000 placed into an annuity for the benefit of Junie even if it meant adjusting his fees and costs.

14. On or about November 30, 2009, Respondent issued check number 1383 from his client trust account made payable to Hartford Life Insurance Company in the amount of \$100,000 to purchase the annuity on behalf of Junie and mailed it and the annuity documents to Robert W. Johnson & Associates for further handling in acquiring the annuity for Junie.

15. On or about December 10, 2009, Respondent deposited \$15,000 from his personal account into Respondent's client trust account, bringing the balance in Respondent's client trust account to \$98,968.33.

16. On or about December 18, 2009, Respondent deposited \$1,500 from his personal account into Respondent's client trust account, bringing the balance in Respondent's client trust account to \$100,468.33.

17. On or about January 8, 2010, Respondent's client trust account check number 1383 made payable to Hartford Life Insurance Company in the amount of \$100,000 posted to Respondent's client trust account. Shortly thereafter, the annuity was issued on behalf of Junie.

18. Respondent has acknowledged that he failed to maintain a written ledger for the Raymond Junie Aguirre matter as required by the Standards following rule 4-100(C), which written client ledger should have set forth the name of the client; the date, amount and source of all funds

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received on behalf of the client; the date, amount, payee and purpose of each disbursement made on behalf of the client; and the current balance for the client.

#### CONCLUSIONS OF LAW:

1. By failing to maintain \$104,525.40 in Respondent's client trust account on behalf of Junie from on or about June 2, 2008 until on or about July 17, 2008, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

2. By failing to maintain \$97,007.78 in Respondent's client trust account on behalf of Junie after on or about July 17, 2008, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

3. By failing to maintain a written client ledger on behalf of Junie, Respondent failed to maintain complete records of all funds of a client coming into his possession as required by the Standards following rule 4-100(C), in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

#### PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was December 19, 2011.

#### AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct ("Standard" or "Standards") provides that the primary purposes of disciplinary proceedings and sanctions imposed upon a finding or acknowledgement of professional misconduct are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession.

Standard 1.6(a) provides that the appropriate sanction for an act of professional misconduct shall be the sanction set forth in the Standards for the particular misconduct found.

Standard 1.7(a) provides that if a member is found culpable of misconduct and has a prior record of one imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding absent circumstances that are not applicable here.

Standard 2.2(b) provides that culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100 of the Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property, shall result in at least a three-month actual suspension from the practice of law, irrespective of mitigating circumstances.

The Supreme Court gives the Standards "great weight," and will reject a recommendation consistent with the Standards only where the Court entertains "grave doubts" as to its propriety. (*In re Naney* (1990) 51 Cal. 3d 186, 190; *In re Silvertown* (2005) 36 Cal. 4<sup>th</sup> 81, 91, 92.) Further, although the Standards are not mandatory, it is well established that the Standards may be deviated from only when there is a compelling, well-defined reason to do so. (See *Aronin v. State Bar* (1990) 52 Cal. 3d 276, 291; *Bates v. State Bar* (1990) 52 Cal. 3d 1056, 1060, fn. 2.)

In this matter, the stipulated level of discipline is consistent with the Standards.

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In the Matter of:  
DAVID KYLE

Case number(s):  
10-O-04546

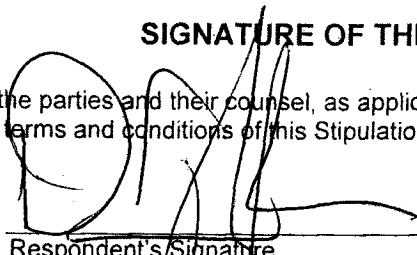
### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

Date

12/21/11

Respondent's Signature



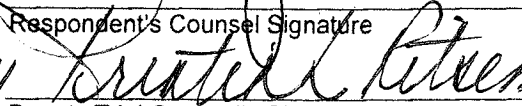
David Kyle

Print Name

Date

Dec. 22, 2011

Respondent's Counsel Signature



Print Name

Kristin L. Ritsema

Date

Dec. 22, 2011

Deputy Trial Counsel's Signature

Print Name

(Do not write above this line.)

In the Matter of:  
DAVID KYLE

Case Number(s):  
10-O-04546

### 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

01-11-12

  
RICHARD A. PLATEL  
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 January 11, 2012, 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:

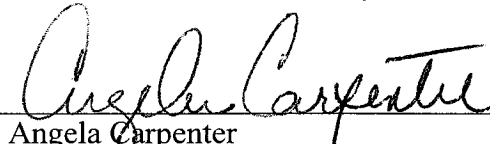
DAVID KYLE  
LAW OFC DAVID KYLE  
3941 S BRISTOL ST STE D520  
SANTA ANA CA 92704



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

KRISTIN RITSEMA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in <select city>, California, on January 11, 2012.



Angela Carpenter  
Case Administrator  
State Bar Court