

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Eli D. Mogenstern, DTC Office of The Chief Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1486 Bar # 190560	Case Number(s): 10-O-04747	For Court use only PUBLIC MATTER FILED AUG 03 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Robert G. Berke, Esq. Berke Law Offices 7236 Owensmouth Avenue, Suite D Canoga Park, CA 91303 Telephone: (818) 389-0596 Bar # 148957	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Lucinda Kay Moreno Bar # 136850 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 7, 1988.
- (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 (15) pages, not including the order.



- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (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
 - (b) ☒ Date prior discipline effective
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☒ Degree of prior discipline
 - (e) ☒ If respondent has two or more incidents of prior discipline, use space provided below:

See pages 12-13 for further discussion re prior record of discipline.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See page 13 for further discussion re: Harm.

- (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. See page 13 for further discussion re: Candor/Cooperation.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☒ **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature. See page 13 for further discussion re: Family Problems.
- (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.

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- (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:

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 Enriqueta Fonseca in the amount of \$ 116,679.60 plus 10 percent interest per year from 08/17/09. If the Client Security Fund has reimbursed Enrequita Fonseca 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 N/A days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

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In the Matter of: Lucinda Kay Moreno	Case Number(s): 10-O-04747
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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
Enriqueta Fonseca	\$116,679.60	08/17/09

- ☐ 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:
- 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.

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Nolo Contendere Plea Stipulations to Facts, Conclusions of Law, and Disposition

The terms of pleading nolo contendere are set forth in the Business and Professions Code and the Rules of Procedures of the State Bar. The applicable provisions are set forth below:

Business and Professions Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere will be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court will find the member culpable. The legal effect of such a plea will be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based.

Rules of Procedure of the State Bar, rule 5.56. Stipulations to Facts, Conclusions of Law, and Disposition

“(A) **Contents.** A proposed stipulation to facts, conclusions of law, and disposition must comprise:

[¶] . . . [¶]

(5) a statement that the member either:

- (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
- (b) pleads nolo contendere to those facts and misconduct;

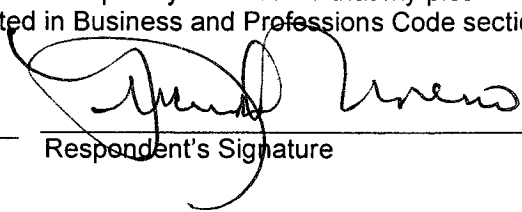
[¶] . . . [¶]

(B) **Plea of Nolo Contendere.** If the member pleads nolo contendere, the stipulation must also show that the member understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.”

I, the Respondent in this matter, have read the applicable provisions of Business and Professions Code section 6085.5 and rule 5.56 of the Rules of Procedure of the State Bar. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea will be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

August 1, 2011

Date


Respondent's Signature

Lucinda Kay Moreno

Print Name

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: LUCINDA KAY MORENO

CASE NUMBER: 10-O-04747

FACTS AND CONCLUSIONS OF LAW.

Respondent pleads nolo contendere to the facts set forth below. Respondent completely understands that a plea of nolo contendere must be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

Case No. 10-O-04747 (Complainant: Enriqueta Fonseca)

Facts:

1. Respondent is the third cousin of Manuel Fonseca ("Manuel"). Prior to Manuel's death on May 18, 1993, he was married to Enriqueta Fonseca ("Enriqueta"). Enriqueta is deaf and mute, unable to read or write, and significantly limited in her ability to communicate, including through sign language.
2. Manuel and Enriqueta have two sons, Martin Fonseca ("Martin") and Henry Fonseca ("Henry"). Martin and Henry have learning disabilities that have hindered their ability to learn sign language and communicate with their mother.
3. Beginning on or about July 13, 1985, Manuel received monthly retirement pension benefits from the Los Angeles City Employees' Retirement System ("LACERS").
4. Manuel also owned, and resided in, with Enriqueta and their sons, a home located at 6008 Northside Drive, in Los Angeles, California ("family home").
5. On July 16, 1985, the Fonseca Family Trust ("Trust") was created. The purpose of the Trust was to provide for Enriqueta's care and to pay for her living expenses and for the costs relating to the family home. Enriqueta is the income beneficiary, and Henry and Martin are remainder beneficiaries of the Trust.
6. After the Fonseca Family Trust was created, Manuel caused title to the family home to be transferred to the Trust.
7. Between on or about July 16, 1985, and on or about May 31, 2009, Manuel directed that his monthly retirement pension benefits from LACERS be automatically deposited in the Trust bank account at Wells Fargo Bank, account no. xxx-xxx8925¹ (the "Trust bank account").

¹ The complete account number has been omitted due to privacy concerns.

8. On June 19, 1993, after Manuel's death, Respondent was appointed a Successor Trustee of the Trust and agreed to serve in this position without compensation.

9. On December 11, 2003, Respondent caused Enriqueta to sign a grant deed conveying title to the family home out of the Trust and to Enriqueta by concealing the true nature, contents, and effect of the document from Enriqueta.

10. On December 19, 2003, Respondent caused Genisys Financial Corporation, a financial institution, to issue a \$75,000 loan under Enriqueta's name without Enriqueta's authorization. Prior to the loan, the Trust owned the family home free and clear of any encumbrances.

11. On December 21, 2003, an escrow company wired \$70,822.44, representing the net proceeds of a loan secured by the family home, to the Trust bank account.

12. On December 24, 2003, Respondent caused Enriqueta to sign a new Special Power of Attorney which purportedly gave Respondent power to dispose of Enriqueta's interest in the family home, by concealing the true nature, contents, and effect of the document from Enriqueta.

13. On January 12, 2004, Respondent caused Enriqueta to sign another grant deed, which conveyed title to the family home away from Enriqueta to Genisys Financial Corporation as security for the loan, by concealing the true nature, contents, and effect of the document from Enriqueta.

14. Respondent never informed Enriqueta or her sons about the loan or that title to the family home had been transferred away from the Trust and away from Enriqueta. Enriqueta never authorized or consented to Respondent disposing of, or placing encumbrances on, the family home.

15. In or about May 2005, there was a small living room fire at the family home, which caused smoke and fire damage to it. Thereafter, Respondent received \$30,000, a portion of the insurance proceeds from the damage claim. On or about October 12, 2005, Respondent deposited, or caused to be deposited, the \$30,000 in the Trust bank account.

16. Between December 31, 2003, and May 29, 2009, LACERS directly deposited a total of approximately \$140,815.85 in the Trust bank account.

18. Between January 2, 2004, and August 17, 2009, Respondent, without the knowledge or consent of Enriqueta or her sons, withdrew at least \$89,098.71 out of the Trust bank account and used the funds for her own personal use. The funds consisted of all of the loan proceeds, a significant portion of the insurance proceeds, and some of the pension benefits.

19. In addition, between November 8, 2004, and December 3, 2007, Respondent, without the knowledge of Enriqueta or her sons, issued checks from the Trust bank account made payable to Steven Ramirez ("Ramirez"), Respondent's common law husband, in the total sum of \$23,950. Respondent and Ramirez also used these funds for their own personal use.

20. In total, Respondent withdrew at least \$113,048.71 (\$89,098.71 + \$23,950) from the Trust Bank account for her personal use.

21. In or about 2005, Respondent spent approximately \$20,000 of Enriqueta's funds from the Trust Bank account to partially refurbish the living room that was damaged by the fire.

22. Between on or about March 24, 2004, and on or about December 4, 2007, Respondent issued checks from the Trust bank account to make payments on the loan, *i.e.*, Respondent used Manuel's pension benefits to make payments on the loan. In total, Respondent used approximately \$11,529.11 of Manuel's pension benefits to pay for the loan between March 2004 and December 2007.

23. After December 4, 2007, Respondent stopped making payments on the loan and allowed the loan to go into default.

24. At no time did Respondent inform Enriqueta or her sons that she had allowed the loan to go into default.

25. In or about January 2010, Henry and Martin learned about the foreclosure proceedings against the family home and immediately contacted Bank of America, the lender who had subsequently assumed the loan secured by the family home. During a series of conversations with Bank of America between January and February 2010, Henry and Martin learned for the first time that Respondent had caused a \$75,000 loan, secured by the family home, to be taken out under Enriqueta's name, and failed to make payments on the loan causing the loan to go into default. In or about January or February 2010, Henry and Martin also learned for the first time that Respondent had obtained insurance proceeds in connection with the living room fire.

26. On March 4, 2010, Enriqueta, with the assistance of Henry and Martin, mailed a letter to Respondent requesting an accounting of the Trust and that all correspondences relating to the Trust be sent to them within thirty (30) days from the date of the letter. Respondent received the letter.

27. On or about March 5, 2010, Enriqueta, with the assistance of Henry and Martin, executed a Notice of Revocation of Power of Attorney ("Notice"), revoking the December 24, 2003, special power of attorney. The Notice was promptly recorded.

28. On or about March 11, 2010, Enriqueta, with the assistance of Henry and Martin, mailed a letter to Respondent demanding that she make a full payment of the loan to Bank of America. The letter also notified Respondent that Enriqueta and her sons had still not received an accounting of the Trust from her and requested that Respondent provide them with any and all documents that she had relating to the Trust and the Fonseca family. Respondent received the letter.

29. To date, Respondent has not provided Enriqueta or her sons with an accounting of the Trust or documents relating to the Trust or the Fonseca family.

30. On March 13, 2010, Respondent, with her own funds, paid \$15,160 to Bank of America, which made the loan payments current through February 2010. Thereafter, no further payments to Bank of America were made. To date, the Fonsecas are sixteen (16) months behind on the loan payments, and the loan is again in default. The Fonsecas, with the assistance of their attorneys, are negotiating with Bank of America to prevent a foreclosure of the family home.

Conclusions of Law:

By using funds from the Trust bank account for her own personal use, Respondent committed an act(s) involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code section 6106.

By causing a loan, secured by the family home, to be taken out under Enriqueta's name by means of deceit, by never informing Enriqueta or her sons about the loan or that title to the family home had been transferred away from the Trust and away from Enriqueta, by using Manuel's pension benefits to make payments on the loan, by allowing the loan to go into default, and by failing to inform Enriqueta or her sons that she had allowed the loan to go into default, Respondent committed an act(s) involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code section 6106.

By failing to provide Enriqueta and her sons with an accounting of the Trust's assets, Respondent breached her fiduciary duty to the Trust, to Enriqueta as the beneficiary of the Trust, and to Henry and Martin as the remainder beneficiaries of the Trust, thereby committing an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was August 1, 2011.

AGGRAVATING CIRCUMSTANCES.

1. Prior Record of Discipline

A prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has been a member of the State Bar since December 7, 1988, and has been disciplined on three prior occasions.

On August 25, 1994, Respondent was privately reproved for committing misconduct in the following six client matters:

92-O-12693
92-O-19839
93-O-10243
93-O-14613
93-O-18605
94-O-12907

Respondent's misconduct included violating: (i) Business and Professions Code section 6068(i) ("section"), by failing to cooperate in four State Bar investigations; (ii) section 6068(m), by failing to respond to reasonable status inquiries in all six matters; and (iii) rule 3-700(D)(1) of the Rules of Professional Conduct ("rule"), by failing to transfer promptly client files to new counsel in two of the matters.

On April 18, 1996, the California Supreme Court ordered (S051590), among other things, that Respondent be suspended from the practice of law for six months, that execution of the suspension be stayed, and that she be placed on probation for two years. Respondent's misconduct included violating:

(i) rule 1-110 of the Rules of Professional Conduct ("rule") by failing to comply with various conditions of the reproof identified above; (ii) rule 3-110(A), by failing to competently perform legal services; (iii) Business and Professions Code section 6068(i) ("section"), by failing to cooperate in a State Bar investigation; and (iv) section 6068(m), by failing to respond to reasonable status inquiries of a client. (Supreme Court Case No. S051590; State Bar Court Case Nos. 94-H-17758, and 95-O-11978.)

On August 31, 2001, the California Supreme Court ordered (S098496), among other things, that Respondent be suspended from the practice of law for six months, that execution of the suspension be stayed, and that she be placed on probation for one year. Respondent's misconduct consisted of failing to respond to reasonable status inquiries of a client in wilful violation of Business and Professions Code section 6068(m). (Supreme Court Case No. S098496; State Bar Court Case No. 00-O-13321.)

2. Multiple Acts of Misconduct

In her capacity as Trustee of the Trust, Respondent committed multiple acts of misconduct. (Std. 1.2(b)(ii). Respondent schemed to acquire loan proceeds by using the family home as security, and concealed her scheme from the Fonsecas. Respondent also used funds from the Trust bank account to make payments on the loan, defaulted on the loan and allowed the loan to go into default without informing the Fonsecas. Respondent also withdrew funds from the Trust bank account, and used the funds for her own personal use. To date, Respondent has not accounted for the funds which she withdrew from the Trust bank account.

3. Harm

Respondent's multiple acts of moral turpitude have caused serious harm the Fonsecas, a significant aggravating circumstance. (Std. 1.2(b)(iv).)

MITIGATING CIRCUMSTANCE.

1. Candor and Cooperation

Respondent's stipulation to the facts, her culpability, and her disbarment is a mitigating circumstance. (Std. 1.2(e)(v). See also, *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521.)

2. Family Problems

During the period in which the misconduct in this matter occurred, Respondent's common law husband was experiencing medical problems. (Std. 1.2(e)(iv).)

OTHER FACTORS IN CONSIDERATION.

In determining the amount of restitution owed by Respondent to Enriqueta Fonseca (see pages 5 and 6), the State Bar credited Respondent for the payment that she made to Bank of America in March 2010.

AUTHORITIES SUPPORTING DISCIPLINE.

1. Standards

Standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct ("Standards") provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Standard 2.2(a) provides that culpability of a member of wilful misappropriation of entrusted funds 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.

Standard 2.3 provides that culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client, or another person, or of concealment of a material fact to a court, client, or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Here, the amount of funds that Respondent misappropriated is not insignificant. The contrary is true. Further, Respondent committed other, multiple acts of moral turpitude which caused serious harm to Enriqueta and her sons. In addition, Respondent has been disciplined on three prior occasions. The mitigating circumstance discussed above is not sufficiently compelling to justify a deviation from the Standards. The parties submit that Respondent's misconduct, and the aggravating circumstances surrounding the misconduct, warrant disbarment.

2. Case Law

The Supreme Court has repeatedly held that disbarment is the usual discipline for the wilful misappropriation of funds. (*See, Grim v. State Bar* (1991) 53 Cal.3d 21; *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221; and *Chang v. State Bar* (1989) 49 Cal.3d 114, 128).)

In *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, the attorney committed acts of moral turpitude by his seven year self-dealing with over \$500,000 of investment funds he was asked by the client to handle, and by unilaterally paying himself nearly \$450,000 in management and legal fees. The Review Department recommended that the attorney be disbarred.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed her that as of August 1, 2011, the prosecution costs in this matter are \$2,797. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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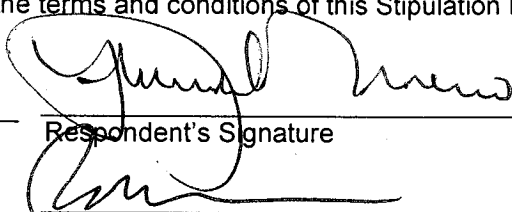
In the Matter of: LUCINDA KAY MORENO	Case number(s): 10-O-04747
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SIGNATURE OF THE PARTIES

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.

08/01/11

Date



Respondent's Signature

LUCINDA KAY MORENO

Print Name

08/01/11

Date

Respondent's Counsel Signature



ROBERT G. BERKE

Print Name

08/01/11

Date

Deputy Trial Counsel's Signature



ELI D. MORGENSTERN

Print Name

(Do not write above this line.)

In the Matter of:
LUCINDA KAY MORENO

Case Number(s):
10-O-04747

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

8/3/11



Judge of the State Bar Court
Judge Donald F. Miles

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 August 3, 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:

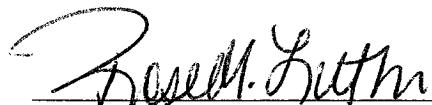
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ROBERT G. BERKE, ESQ.
BERKE LAW OFCS
7236 OWENSMOUTH AVE STE D
CANOGA PARK, CA 91303

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

ELI MORGENSTERN, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 3, 2011.



Rose Luthi
Case Administrator
State Bar Court