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State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION

Counsel For The State Bar	Case Number(s):	For Court use only
Susan I. Kagan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2037 Bar # 214209	10-O-05378	PUBLIC MATTER FILED AUG 30 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO kwiktag ® 018 037 780
In Pro Per Respondent Theodore A. Pinnock 712 Bancroft Rd #419 Walnut Creek, CA 94598 (858) 206-7931 Bar # 153434	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: THEODORE A. PINNOCK Bar # 153434 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 June 10, 1991.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 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."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☒ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
- ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) ☐ **Prior record of discipline** [see standard 1.2(f)]

(a) ☐ State Bar Court case # of prior case

(b) ☐ Date prior discipline effective

(c) ☐ Rules of Professional Conduct/ State Bar Act violations:

(d) ☐ Degree of prior discipline

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.

(2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See page 8.

(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. See page 8.

(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 8.

(4) ☒ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. See page 9.

(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. See page 8.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of two (2) years.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

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

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of three (3) 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:**

Attachment language (if any):

FACTS AND CONCLUSIONS OF LAW

Facts

1. In 1996, Respondent was hired by Nenette and Ray Wyatt to administer the Eric Wyatt Trust ("Trust") on behalf of their minor child, Eric Wyatt, who was confined to a wheelchair due to injuries sustained at birth. At all relevant times herein, Eric Wyatt was sole beneficiary of the Trust.

2. Prior to 2001, Respondent was appointed as Trustee of the Trust. As Trustee of the Trust, Respondent was authorized to maintain and manage the funds held on behalf of the Trust at Bank of America (Account No. xxxxx-xx522; hereinafter "Trust Account;" the account number has been excluded to protect the account from identity theft.) At all relevant times herein, Respondent was a fiduciary of the funds in the Trust Account held on behalf of the Trust.

3. On January 17, 2006, respondent was grossly negligent in withdrawing $4,000.00 from the Trust Account for his own use and benefit, thereby misappropriating the funds.

4. Prior to May 11, 2006, Eric Wyatt reached the age of maturity. On May 11, 2006, Eric Wyatt's court-appointed attorney filed a petition for termination of the Trust and for final accounting and distribution of the assets of the Trust in the matter, Eric Wyatt Trust, San Diego County Superior Court Case No. P-170033. On September 13, 2006, the court in Case No. P-170033 issued an order terminating the Trust and requiring Respondent to deliver all of the assets of the Trust and provide a final accounting of the assets of the Trust. Soon thereafter, Respondent received a copy of the court's September 13, 2006 order.

5. On October 18, 2006, Respondent filed a verified account and report of Trustee ("October 18, 2006 report") in Case No. P-170033. Under the disbursements section, Respondent falsely represented that the $4,000.00 withdrawn from the Trust Account on January 17, 2006, was paid to Ray Wyatt as "Attendant Care and Expenses." In truth and in fact, Respondent misappropriated the $4,000.00 from the Trust Account and did not pay any portion of those funds to Ray Wyatt. At the time of making the statement in the October 18, 2006 report, respondent knew it to be false.

6. On March 12, 2007, Eric Wyatt filed an objection to Respondent's accounting in Case No. P-170033. In the objection, Eric Wyatt noted that the $4,000.00 withdrawn from the Trust Account on January 17, 2006, was not received by him or his family. Soon thereafter, Respondent received a copy of Eric Wyatt's objection.

7. On May 27, 2007, Respondent returned the $4,000.00 to the Trust Account.

8. On May 30, 2008, Respondent filed a verified supplemental account and report of Trustee ("supplemental report") in Case No. P-170033. In the supplemental report, Respondent falsely stated as follows: "On January 17, 2006, $4,000.00 was erroneously deposited in Petitioner's [Respondent's] account by a Bank of America Employee." In truth and in fact, Respondent misappropriated $4,000.00 from the Trust Account. It was not caused by a bank employee's error. At the time of making the statement in the supplemental report, respondent knew it to be false.

Legal Conclusions

1. By misappropriating $4,000.00 from the funds held on behalf of the Trust in the Trust Account by gross negligence for his own use and benefit in violation of his fiduciary duties, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

2. By making knowingly false statements in the October 18, 2006 report and supplemental report, Respondent sought to mislead the judge or judicial officer by an artifice or false statement of fact or law in willful violation of Business and Professions Code section 6068(d).

PENDING PROCEEDINGS

The disclosure date referred to on page two, paragraph A (7) was August 10, 2011.

STATE BAR ETHICS SCHOOL

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the State Bar has informed respondent that as of August 10, 2011, the estimated prosecution costs in this matter are approximately $3,082.06. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES

AGGRAVATING CIRCUMSTANCES

Standard 1.2(b)(iv). Respondent's misconduct caused significant harm to his client.

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(i). Respondent has been practicing law since 1991, and has no prior record of discipline.

Standard 1.2(e)(iv). Respondent suffered from extreme physical disabilities which expert testimony would establish were directly responsible for the misconduct and have since been resolved.

Standard 1.2(e)(v). Respondent displayed spontaneous candor and cooperation to the State Bar during the disciplinary proceedings.

Standard 1.2(e)(vii). Respondent displayed remorse for his misconduct.

SUPPORTING AUTHORITY

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

Standard 2.6 requires that a violation of Business and Professions Code section 6068(d) shall result in disbarment or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

Misappropriations due to gross negligence generally result in a long actual suspension, even with an extensive showing of mitigation. (Howard v. State Bar (1990) 51 Cal.3d 215) [six months' actual suspension; mitigation including restitution and a history of alcohol and chemical dependency and psychological problems]; McKnight v. State Bar (1991) 53 Cal.3d 1025 [one year actual suspension; mitigation including a history of manic depression].)

The proper discipline for a violation of section 6068(d) is a period of actual suspension. (See Drociak v. State Bar (1991) 52 Cal.3d 1085 [30 days' actual suspension; no prior record of discipline]; Bach v. State Bar (1987) 43 Cal.3d 848 [60 days' actual suspension; prior public reproval]; see also In the Matter of Chesnut (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166 [six months' actual suspension; prior record of discipline]; In the Matter of Farrell (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490 [six months' actual suspension; prior record of discipline].)

Based on the mitigation, which outweighs the one aggravating circumstance, as well as the standards and case law, a 90-day actual suspension is the appropriate level of discipline in this matter.

(Do not write above this line.)

In the Matter of:	Case number(s):
THEODORE A. PINNOCK	10-O-05378

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.

8/21/11		Theodore A. Pinnock
Date	Respondent's Signature	Print Name
		N/A
Date	Respondent's Counsel Signature	Print Name
8/23/11		Susan I. Kagan
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
THEODORE A. PINNOCK	10-O-05378

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.)**

Aug. 30, 2011
Date

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 August 30, 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 San Francisco, California, addressed as follows:

THEODORE A. PINNOCK
712 BANCROFT RD #419
WALNUT CREEK, CA 94598

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

SUSAN I. KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 30, 2011.

Laine Silber
Case Administrator
State Bar Court