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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER
Counsel For The State Bar Diane J. Meyers Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1496 Bar # 146643	Case Number(s): 12-O-11551-RAP	For Court use only <div style="text-align: center;"> FILED AUG 08 2014 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
Counsel For Respondent Arthur L. Margolis Margolis & Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996 Bar # 57703	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: Robert James Winkler Bar # 230566 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 **May 25, 2004**.
- (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 **18** 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."



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- (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: **the two billing cycles immediately following the effective date of the Supreme Court order in this matter.** (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. 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.
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, 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 Attachment to Stipulation at p. 14.**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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. **See Attachment to Stipulation at p. 14.**
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) ☒ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct. **See Attachment to Stipulation at p. 15.**
- (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 extraordinarily 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:

See Attachment to Stipulation at pp. 15-16.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **two 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 1.2(c)(1) 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 **four 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 **one 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 1.2(c)(1), 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 1.2(c)(1), 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.

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- (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:
- | | |
|--|---|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

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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: Robert James Winkler	Case Number(s): 12-O-11551-RAP
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Substance Abuse Conditions

- a. ☐ Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. ☒ Respondent must attend at least four (4) meetings per month of:
- ☒ Alcoholics Anonymous
 - ☐ Narcotics Anonymous
 - ☐ The Other Bar
 - ☐ Other program

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. ☐ Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. ☐ Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. ☐ Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

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Robert James Winkler

Case Number(s):
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Medical Conditions

- a. ☐ Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b. ☐ Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of _____ times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for _____ days or _____ months or _____ years or, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c. ☐ Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

Respondent shall obtain psychiatric or psychological help/treatment from his current treating psychiatrist at respondent's own expense a minimum of one time per month and must furnish evidence to the Office of Probation that respondent is so complying and provide the name of his current treating psychiatrist with each quarterly report. Help/treatment should continue immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for four years or the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist determines that there has been a substantial change in respondent's condition, respondent or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, by affidavit or under penalty of perjury, in support of the proposed modification.

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Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records relevant to his condition that is the subject of this matter. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

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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:
- 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: ROBERT JAMES WINKLER

CASE NUMBER: 12-O-11551-RAP

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. 12-O-11551 (Complainants: Nader Parsia, Soheil Taghipour and Saeed Taghipour)

FACTS:

1. On June 12, 2008, Nader Parsia ("Parsia"), Soheil Taghipour ("Soheil") and Saeed Taghipour ("Saeed") and their taxi company, Del Transportation, Inc. ("DTI") (collectively, "the clients"), filed a breach of contract action against Bobby Magami aka Seyed Babak Ghaemmaghani ("Magami"), as administrator for the Estate of Mahmood Ghaemmaghani, and the Estate of Mahmood Ghaemmaghani in the San Diego County Superior Court. Mahmood Ghaemmaghani ("Ghaemmaghani") had died on May 27, 2007. On August 10, 2007, a petition for probate of Ghaemmaghani's estate was filed in the San Diego County Superior Court.
2. On July 1, 2009, the clients employed Respondent to provide legal representation relating to their claims against Ghaemmaghani, including representation in the probate case, and entered into written contingency fee agreements with Respondent for the representation. Under the fee agreements, Respondent was entitled to 40 percent of the gross recovery, plus costs and expenses.
3. In March 2010, the clients entered into a stipulation for judgment to resolve their claims against Ghaemmaghani's estate. The stipulation provided that Parsia, Soheil, and Saeed would each receive approximately \$4,166 from Ghaemmaghani's estate and that DTI would receive no payment.
4. In September 2011, Respondent received a \$12,500 check from Magami, representing the funds belonging to Parsia, Soheil, and Saeed. From the \$12,500, Respondent was entitled to \$5,000 as fees (or 40 percent of \$12,500) and \$150 for reimbursement of costs and expenses under the terms of the contingency fee agreements. The balance of \$7,350 belonged to Parsia, Soheil, and Saeed.
5. On September 9, 2011, Respondent deposited the \$12,500 check into his client trust account at Bank of America, account number xxxx0124 (the "CTA"). Prior to the deposit, the balance in the CTA was zero.
6. Between September 12 and October 26, 2011, Respondent withdrew \$10,450 from the CTA by issuing checks to himself, including \$5,000 for his contingency fee and \$150 for his costs and expenses, reducing balance in the CTA to \$2,050 on October 26, 2011. Respondent withdrew the \$10,450 through gross negligence as he believed he was entitled to collect both a contingency fee from the judgment and an hourly fee to recover payment of the judgment and withdraw funds from the CTA

to pay his hourly fees, because the judgment was not likely to be paid without further effort by Respondent to enforce the judgment, and the clients were aware that Respondent was taking action to enforce the judgment through August 2011. However, his belief was unreasonable as his fee agreement with the clients did not authorize him to collect an hourly fee in addition to a contingency fee; Respondent had not obtained the clients informed written consent to additional hourly fees for his collection efforts or to withdraw funds from the CTA in excess of his contingency fee and costs; and Respondent had not communicated the amount of the hourly fees he was charging the clients at any time before he initiated his withdrawal of funds from the CTA to pay his hourly fee claim.

7. It was not until on or about October 24, 2011, after Respondent informed Parsia in September 2011 that he would be disbursing funds to Parsia, Soheil and Saeed within a few days, that Respondent mailed a letter to Parsia, Soheil, and Saeed with his billing statement, reflecting work performed by Respondent between July 2010 and August 2011 toward collecting payment on the judgment. Respondent indicated in his billing statement that he was deducting \$5,000 as his 40 percent contingency fee from the \$12,500, and that he was charging an additional \$8,025 as hourly fees, and \$150 as costs and expenses. Respondent further indicated in his billing statement that he was reducing his total fees to \$10,700, leaving a net of \$1,650 from the \$12,500. Respondent also indicated in the letter that he was enclosing three checks, each in the amount of \$550, payable to Parsia, Soheil, and Saeed. However, the checks were either not received or not cashed by Parsia, Soheil, and Saeed.

8. Prior to Respondent's October 24, 2011 billing, Respondent had not provided any accounting to the clients reflecting any hourly fee incurred by the clients for Respondent's representation. The clients had not entered into any written agreement with respondent authorizing respondent to charge or collect \$8,025 as hourly fees over and above the \$5,000 contingency fee.

9. Beginning in October 2011, the State Bar received complaints against Respondent from Parsia, Soheil and Saeed about not receiving their share of the \$12,500. By letters dated November 4 and December 2, 2011, the State Bar requested Respondent to respond to Parsia's complaint. On December 5, 2011, the State Bar received Respondent's written response to the State Bar's letters, in which he maintained that he was entitled to both a contingency fee and an hourly fee for collecting the judgment from the \$12,500, and indicated that he had mailed a total of \$1,650 via three checks, each in the amount of \$550 to Parsia, Soheil and Saeed.

10. Between November 1 and December 12, 2011, and before \$1,650 was paid to Parsia, Soheil and Saeed via the three \$550 checks, Respondent withdrew another \$900 from the CTA by issuing checks to himself, reducing the balance in the CTA to \$1,150 on December 12, 2011.

11. On December 13, 2011, Saeed and Soheil sent a written request to Respondent for their share of the \$12,500 and Respondent replied that he would send checks the next day. On or about December 14, 2011, Respondent reissued three checks totaling \$1,650 from the CTA, each in the amount of \$550 to Parsia, Soheil, and Saeed, when the balance in the CTA remained at \$1,150. On December 16, 2011, Respondent withdrew another \$50 from the CTA by issuing a check to himself, reducing the balance in the CTA to \$1,100, or \$550 below the \$1,650 that Respondent should have maintained in the CTA according to his October 2011 accounting. However, none of the three \$550 checks had been cashed.

12. By December 16, 2011, Respondent misappropriated with gross negligence \$6,250 under the terms of his fee agreement with the clients or \$550 (\$1,650 - \$1,100) according to Respondent's accounting.

13. On February 9, 2012, the State Bar sent an email to Respondent requesting the status of the \$550 payment to Parsia who had indicated that he had not received the funds. On or about February 23, 2012, fee arbitration was initiated between Parsia and Respondent. At that time, Parsia acknowledged receiving \$550 from Respondent, which was paid via a cashier's check as the \$550 check from the CTA to Parsia was not cashed. The fee arbitration was not held because an agreement was reached regarding the additional amount Parsia would receive. Ultimately, the two \$550 checks to Soheil and Saeed were cashed on March 30, 2012, bringing the balance in the CTA to zero.

14. On or about August 14, 2012, Parsia received an additional \$2,513 as per the agreement reached with Respondent. On or about August 28, 2012, Respondent offered to pay Soheil and Saeed an additional \$2,241.22 each, which offer was subsequently accepted and Soheil and Saeed received the funds in or about September 2012.

CONCLUSIONS OF LAW:

15. By not disbursing \$7,350 to Parsia, Soheil, and Saeed from the \$12,500 until in or about September 2012, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client was entitled to receive in willful violation of Rules of Professional Conduct 4-100(B)(4).

16. By not maintaining \$7,350 in the CTA on behalf of Parsia, Soheil, and Saeed between September 12 and December 16, 2011, Respondent wilfully 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 Rules of Professional Conduct 4-100(A).

17. By not maintaining \$7,350 in the CTA between September 12 and December 16, 2011, Respondent grossly negligently misappropriated \$6,250 (\$7,350 - \$1,100) belonging to Parsia, Soheil, and Saeed, and thereby committed an act involving moral turpitude, in willful violation of Business and Professions Code section 6106.

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)):

Respondent deprived his clients of their full share of the \$12,500 collected on the judgment, or \$7,350, for a substantial period of time. In September 2011, Respondent told Parsia, who needed the money to pay his living expenses, that he would receive his money within a few days and in December 2011, Respondent informed Soheil and Saeed that they would receive their funds, but Respondent delayed issuing full payment to the clients until August and September 2012, a year after he received the settlement funds and only after the clients submitted complaints to the State Bar against Respondent and after the initiation of fee arbitration with Parsia.

Multiple Acts of Misconduct (Std. 1.5(b)):

Respondent failed to maintain funds in trust due to grossly negligent misappropriation and failed to promptly disburse funds to three clients.

MITIGATING CIRCUMSTANCES.

Emotional/Physical Difficulties (Std. 1.6(d)):

Respondent's doctor, a general, forensic and addiction psychiatrist, established that he treated Respondent from February 1998 to August 2006 and from August 16, 2012 through the present for *major depressive disorder with mood swings and overwhelming anxiety with panic attacks*. Respondent's doctor established a nexus between Respondent's misconduct in this case and his medical condition, stating that Respondent's ability to think and function as an attorney were significantly impaired by his condition, which also affected his judgment and ability to function in all areas of his life. Respondent's medical condition led to his not paying attention to the balances in his CTA and to his belief that he was entitled to hourly fees. Respondent also received treatment through Psychiatric Centers at San Diego from approximately August 2010 to October 2011. The treatment included mood elevating antidepressant medications which caused Respondent increased anxiety, irritability, insomnia, agitation and other manic symptoms. The medications which had been prescribed very likely made his condition worse, and he self-medicated his severe and debilitating depression with drugs and alcohol. Respondent had been self-medicating periodically with alcohol and drugs for treatment of depression, but Respondent had been drug and alcohol free since June 28, 2012, and Respondent had been attending regular Alcoholics Anonymous ("AA") meetings and working with his AA sponsor.

In October 2012, Respondent became severely distraught and overwhelmed with fear and paranoia, in part because of increased stress caused by this State Bar matter pending against him. On October 10, 2012, Respondent was admitted to a hospital and diagnosed with a mental health disorder and depressed phase, alcohol dependence, in remission, and chemical dependency, in sustained remission. Respondent enrolled himself as an inactive member of the State Bar, effective December 3, 2012. Respondent was admitted to Prescott House, an extended treatment program, for treatment of a mental health disorder and chemical dependency for three months. Respondent completed the program in January 2013 and submitted to toxicology screens to prove that he was drug and alcohol free. Respondent then entered a residential treatment program at Casa Recovery and was hired as a house manager at the program in June 2013. In October 2013, Respondent became a house manager for sober living in Encinitas.

Respondent's doctor concluded that Respondent has made an excellent recovery and no longer poses a danger to the public. Respondent's inactive enrollment was terminated on March 26, 2014.

Additional Mitigating Circumstances:

1. Good Character.

Three attorneys and one general contractor who know Respondent through The Other Bar and/or Alcoholics Anonymous; one attorney who met Respondent while in law school and knows Respondent both professionally and socially; and one attorney who has known Respondent since high school and professionally, all of whom have regular contact with Respondent and whom are aware of Respondent's misconduct, attested to Respondent's honesty, integrity and good character. Respondent character references do not constitute a broad range of references from the legal and general communities, and therefore is entitled to limited weight in mitigation. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [three attorneys and three clients hardly constituted a broad range of references from the legal and general communities].)

2. No prior discipline.

Respondent was admitted on May 25, 2004 and has no prior discipline. (Standard 1.6(a).) However, his seven years of discipline free practice before the misconduct occurred while a mitigating factor, does not merit significant weight. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [seven and one-half years without prior discipline insufficient for mitigation]; *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 316 and *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295 [about eight years of discipline free practice before the start of the misconduct not entitled to significant weight in mitigation].)

3. Pre-trial stipulation.

Respondent has stipulated to facts and culpability prior to pre-trial proceedings in this matter, and thereby saved State Bar resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigating credit was given for entering into a stipulation as to facts and culpability]).

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing three acts of professional misconduct. Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.1(b), which applies to Respondent's misappropriation due to gross negligence. Standard 2.1(b) provides that disbarment or actual suspension is appropriate for misappropriation involving gross negligence.

Respondent's seven years of discipline free practice before the misconduct occurred while a mitigating factor, does not merit significant weight. Respondent's misconduct was related to Respondent's mental health disorder and related substance abuse issues. Respondent's mental health disorder is now under control and Respondent has demonstrated his sobriety for two years.

There was no evidence that Respondent's misconduct involved intentional dishonesty. Respondent's misconduct was aberrational, as Respondent's misconduct was isolated to the collection of one judgment which required an atypical amount of time (from the date of the stipulated judgment in March 2010 through August 2011) and resources, and his conduct was not consistent with his good character as attested to by his friends and colleagues. These mitigating factors, including Respondent's cooperation in reaching this stipulation, outweigh the aggravating factors of harm to clients and multiple acts of misconduct related to the same client matter.

Thus, a one-year actual suspension, a two-year stayed suspension and a four-year probation is warranted and is consistent with Supreme Court case law imposing one year of actual suspension for a grossly negligent misappropriation even where the attorney had committed other misconduct. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025 [one-year actual suspension, five-year stayed suspension and seven-year probation for grossly negligent misappropriation by withdrawing \$17,165, without verified and documented client authorization, as a combination of unjustified attorney fees and excess loan from client; aggravated by failure to pay restitution of half of the funds and mitigated by some good character, aberrational misconduct, and manic-depressive episode having profound impact on attorney's behavior and from which the attorney had been successfully recovering, but with no causal connection between the affliction and the actual misconduct].

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 23, 2014, the prosecution costs in this matter are \$5,405.07. 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.

EXCLUSION FROM MCLE CREDIT


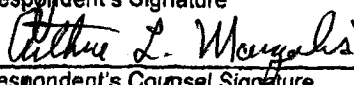
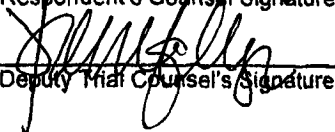
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: Robert James Winkler	Case number(s): 12-O-11551-RAP
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SIGNATURE OF THE PARTIES

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

<u>7-18-14</u> Date	 Respondent's Signature	<u>Robert J. Winkler</u> Print Name
<u>7/21/14</u> Date	 Respondent's Counsel Signature	<u>Arthur L. Margolis</u> Print Name
<u>7/23/14</u> Date	 Deputy Trial Counsel's Signature	<u>Diane J. Meyers</u> Print Name

(Do not write above this line.)

In the Matter of:
Robert James Winkler

Case Number(s):
12-O-11551-RAP

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.)**

August 7, 2014
Date



GEORGE E. SCOTT, JUDGE PRO TEM
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 August 8, 2014, 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:

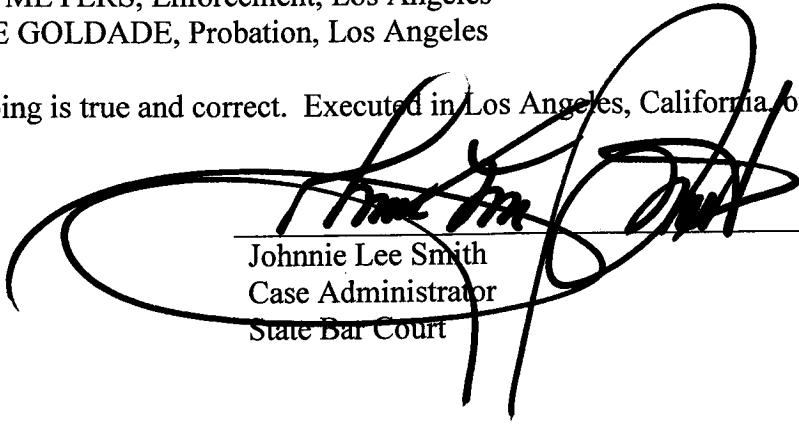
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

DIANE MEYERS, Enforcement, Los Angeles
TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 8, 2014.



Johnnie Lee Smith
Case Administrator
State Bar Court