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ORIGINAL

State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT

Counsel For The State Bar
Erin McKeown Joyce
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1149 South Hill Street
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Case Number(s):
12-O-12839-RAP

For Court use only

FILED

AUG 21 2013

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

Bar # 149946

In Pro Per Respondent

John Edward Engel
Law Offices of John Edward Engel
2173 Salk Avenue, Suite 250
Carlsbad, CA 92008

PUBLIC MATTER

Submitted to: **Settlement Judge**

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

Bar # 153043

DISBARMENT

PREVIOUS STIPULATION REJECTED

In the Matter of:
JOHN EDWARD ENGEL

Bar # 153043

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 7, 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 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."



ABD
8/19/13

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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):
- 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:
- (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 attachment to stipulation re facts, conclusions of law and disposition at page 7.
- (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.
- (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.
- (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.
- (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.

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Additional mitigating circumstances:

See attachment to stipulation re facts, conclusions of law and disposition at pages 7 and 8.

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D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.

- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOHN EDWARD ENGEL

CASE NUMBER: 12-O-12839

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified statute and Rule of Professional Conduct.

Case No. 12-O-12839 (Complainant: Joanne Harms)

FACTS:

1. On February 7, 2008, Joanne Harms employed Respondent to represent her in a personal injury matter (the "Harms legal matter"). Respondent and Harms executed a written attorney client agreement pursuant to which Respondent was entitled to a 40% contingency fee of the gross settlement amount.
2. Under the attorney client agreement, Harms was responsible for all costs incurred during litigation of the Harms legal matter.
3. On February 11, 2011, the Harms legal matter settled for \$185,000, \$50,000 to be paid by Crusader Insurance and \$135,000 to be paid by Farmers Insurance. On January 19, 2011, Respondent deposited a \$50,000 check from Crusader Insurance into his client trust account. On February 14, 2011, Respondent deposited a \$135,000 check from Farmers Insurance into his client trust account.
4. Respondent's attorney fees pursuant to the attorney client agreement totaled \$74,000. After paying the attorney fees, Respondent was required to maintain \$111,000 in his client trust account on behalf of Harms.
5. The total costs incurred during the Harms legal matter were \$11,081.95, of which Harms had paid \$8,000 prior to the settlement, leaving \$3,081.95 to be paid from the settlement.
6. After payment of costs, Respondent was required to maintain \$107,918.05 in his client trust account on behalf of Harms.
7. On March 10, 2011, the balance of Respondent's client trust account dropped to \$105,099.34. At that time Respondent had not disbursed any funds to, or on behalf of, Harms from the settlement proceeds of the Harms legal matter.
8. On April 14, 2011, Respondent disbursed \$20,000 to Harms from the client trust account. After that disbursement, Respondent was required to maintain \$87,918.05 in his client trust account for the benefit of Harms. On that date, the balance in Respondent's client trust account dropped to \$78,059.35.

9. On June 21, 2011, Respondent wrote check number 3061 to Harms from his client trust account for \$45,000. On that date, the balance in his client trust account was \$30,134.35.

10. On June 28, 2011, the bank dishonored check number 3061 since it was written against insufficient funds. At the time Respondent wrote check number 3061, he knew, or in the absence of gross negligence would have known, that there were insufficient funds in his client trust account to cover the check.

11. On or about June 29, 2011, Respondent disbursed \$30,000 to Harms from his client trust account. After that disbursement, Respondent was required to maintain \$57,918.05 in his client trust account for the benefit of Harms. On that date, the balance of Respondent's client trust account dropped to \$109.35.

12. Respondent intentionally misappropriated \$57,808.70 of Harms' settlement funds and used the funds for his own use. Respondent's misappropriation of Harms' settlement funds caused her significant financial hardship.

13. In late 2012, after Respondent was contacted by the State Bar as the result of a complaint lodged by Harms, Respondent paid to Harms the remainder of the settlement proceeds to which she was entitled.

CONCLUSIONS OF LAW:

14. By failing to maintain in his client trust account the funds Respondent was required to hold on behalf of Harms, Respondent failed to preserve client funds in a client trust account for the benefit of his client in wilful violation of Rule of Professional Conduct 4-100(A).

15. By writing check number 3061 against insufficient funds and misappropriating \$57,808.70 of Harms' settlement proceeds, Respondent committed acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES

Harm (Standard 1.2(b)(iv)): Harms did not receive her full portion of the settlement proceeds from Respondent which should have been paid in 2011, until late 2012, over a year later, which caused the client significant financial hardship. While the failure to promptly disburse client funds alone does not establish significant client harm as required under the Standard, in this case Harms did suffer significant financial injury due to the delay in payout out the misappropriated funds. (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 519–520 [in absence of additional facts, attorney's failure to promptly pay client funds constitutes genuine monetary injury].)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Prefiling Stipulation: Respondent met with the State Bar, admitted his misconduct, and entered this stipulation fully resolving this matter. Respondent's cooperation at this early stage has saved the State Bar significant resources and time. Respondent's stipulation to the facts, his culpability, and discipline is a mitigating circumstance. (*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].)

Additional Mitigating Circumstances: Although Respondent's misconduct was serious, Respondent has no prior record of discipline. Respondent was admitted in June 1991, twenty years before the onset of the misconduct. Even where the underlying conduct is deemed serious, Respondent's lengthy period of discipline free practice should be afforded mitigating weight. (*In re Brown* (1995) 12 Cal.4th 205, citing *Kelly v. State Bar*, (1991) 53 Cal.3d 509, 520 and Standard 1.2(e)(i) [where Supreme Court gave substantial mitigating weight to over 20 years of discipline free practice].)

AUTHORITIES SUPPORTING DISCIPLINE

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Standards for Attorney Sanctions for Professional Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; standard 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (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.)

Respondent admits to committing two serious acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more severe prescribed in the applicable standards.

The more severe sanction applicable to Respondent's misconduct is found in Standard 2.2(a) of the Standards for Attorney Sanctions for Professional Misconduct, for offenses involving entrusted funds. Under Standard 2.2(a), "[c]ulpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances."

Here, Respondent misappropriated over \$57,000 of Harms' settlement funds, and did not pay Harms her portion of the settlement funds until Harms contacted the State Bar, more than a year after Respondent misappropriated her funds. Although Respondent is entitled to some mitigation for his nearly two decades of discipline-free practice, this fact is not sufficiently compelling to warrant a deviation from Standard 2.2(a). Respondent also deserves some mitigation for entering into this Stipulation. But, again, this fact is not sufficiently compelling to warrant a deviation from Standard 2.2(a).

The case law also supports the recommended discipline. The California Supreme Court has written that "[m]isappropriation generally warrants disbarment unless 'clearly extenuating circumstances' are present." (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1035.) The California Supreme Court has also

stated that, "In all but the most exceptional cases, we must impose the harshest discipline for such a breach in order to safeguard the citizenry from unethical practitioners." (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128; *In Re Naney* (1990) 51 Cal.3d 186; *In Re Kaplan* (1991) 52 Cal.3d 1067; and *Kelly v. State Bar* (1988) 45 Cal.3d 649 [misappropriation warrants disbarment in absence of clearly mitigating circumstances].)

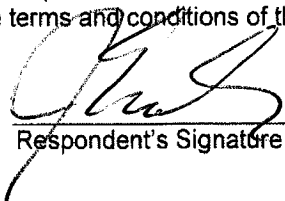
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In the Matter of: JOHN EDWARD ENGEL	Case number(s): 12-O-12839
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SIGNATURE OF THE PARTIES

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.

Aug 14, 2013
Date



Respondent's Signature

John Edward Engel
Print Name

Date

Respondent's Counsel Signature

Print Name

August 19, 2013
Date



Deputy Trial Counsel's Signature

Erin McKeown Joyce
Print Name

(Do not write above this line.)

In the Matter of: JOHN EDWARD ENGEL	Case Number(s): 12-O-12839
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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.

08-21-2013
Date


RICHARD A. PLATEL
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 21, 2013, I deposited a true copy of the following document(s):

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

in a sealed envelope for collection and mailing on that date as follows:


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

JOHN E. ENGEL
LAW OFFICES OF JOHN E ENGEL
2173 SALK AVE STE 250
CARLSBAD, CA 92008

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

ERIN JOYCE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 21, 2013.



Angela Carpenter
Case Administrator
State Bar Court