

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  <b>Susan I. Kagan</b> <b>Senior Trial Counsel</b> <b>180 Howard St.</b> <b>San Francisco, CA 94105</b> <b>(415) 538-2037</b>  <b>Bar # 214209</b>	<b>Case Number(s):</b> <b>12-O-17796 (inv.)</b> <b>13-O-11582</b> <b>14-O-00192 (inv.)</b>	<b>For Court use only</b>  <b>FILED</b>  <b>JAN 09 2015</b>  <b>STATE BAR COURT</b> <b>CLERK'S OFFICE</b> <b>LOS ANGELES</b>  <b>PUBLIC MATTER</b>
<b>Counsel For Respondent</b>  <b>Anthony P. Capozzi, Esq.</b> <b>1233 W Shaw Ave #102</b> <b>Fresno, CA 93711</b> <b>(559) 221-0200</b>  <b>Bar # 68525</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>In the Matter of:</b> <b>CARL ALFRED LINDSTROM, JR.</b>  <b>Bar # 88753</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

**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 **November 29, 1979**.
- (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."
- (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: **three (3) billing cycles following the effective date of the Supreme Court order.** (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 **84-O-415-SC. See attachment at p. 13.**
  - (b) ☒ Date prior discipline effective **January 3, 1986**
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **former Rules of Professional Misconduct, rules 8-101(A) and 8-101(B)(4) for failing to deposit advanced costs into a trust account and failing to promptly deliver the funds to the client as requested by the client.**
  - (d) ☒ Degree of prior discipline **Private Reprimand**
  - (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 at p. 14.**
- (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. **See attachment at p. 13.**
- (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.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☒ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature. **See attachment at page 14.**
- (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.

(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:**

**Community Service. See attachment at p. 14.**

**Remedial Measures. See attachment at p. 14.**

**Pretrial Stipulation. See attachment at p. 14.**

**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 1.2(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 **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 **six (6) months**.

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.
- (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 type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input 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 further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

**2014.** ☒ No MPRE recommended. Reason: **Respondent voluntarily took and passed the MPRE in March**

- (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:**

#### **FEE ARBITRATION CONDITIONS:**

##### **A. Respondent's Duty to Initiate and Participate in Fee Arbitration**

**Respondent must initiate fee arbitration with the State Bar of California's Mandatory Fee Arbitration Program within thirty (30) days from the effective date of this matter, including making any payment(s) and filing fees required to start the process. The fee arbitration will be for the \$7,875 in fees that were paid to respondent on behalf of Veronica Rocha on June 28, 2010. Respondent must not request more fees than have already been paid by, or on behalf of, Veronica Rocha.**

**Respondent must provide the Office of Probation with a copy of the conformed filing within forty-five (45) days from the effective date of this matter. Respondent must immediately provide the Office of Probation with any information requested regarding the fee arbitration to verify Respondent's compliance.**

**Respondent must fully and promptly participate in the fee arbitration as directed by the State Bar Mandatory Fee Arbitration Program. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration. Respondent understands and agrees that the Office of Probation may contact the Mandatory Fee Arbitration Program for information.**

**Respondent must accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, respondent must abide by the arbitration award and forego the right to file an action seeking a trial de novo in court to vacate the award.**

##### **B. Disputed Funds Must be Held in Trust by Respondent**

**Respondent must keep the disputed funds in a separate interest-bearing trust account (not an IOLTA). If respondent has removed the disputed funds from trust, respondent must open a separate interest-bearing trust account and deposit the disputed funds into such account within fifteen (15) days from the effective date of discipline. Respondent must provide evidence, e.g. a copy of respondent's bank statement showing that the disputed funds have been placed in trust within thirty (30) days from the effective date of this matter, and a statement under penalty of perjury that the funds have remained in trust with each of respondent's quarterly and final reports.**

**C. Respondent's Duty to Comply with the Arbitration Award**

**Within fifteen (15) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, respondent must provide a copy of said award, judgment or stipulated award to the Office of Probation.**

**Respondent must abide by any award, judgment or stipulated award of any such fee arbitrator and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, respondent is to make full payment within thirty (30) days of the issuance of any such award, judgment or stipulated award. Respondent must provide proof thereof to the Office of Probation within thirty (30) days after payment.**

**To the extent that respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of this matter, respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been provided to the Office of Probation.**

**D. Fee Arbitration Conditions can be Satisfied by Respondent's Full Payment to Veronica Rocha**

**The Fee Arbitration Conditions can also be satisfied by Respondent's full payment of \$7,875 in fees that were paid to respondent on behalf of Veronica Rocha on June 28, 2010, plus interest of 10% per annum from June 28, 2010, within thirty (30) days from the effective date of this matter. Satisfactory proof of payment must be received by the Office of Probation within forty-five (45) days from the effective date of this matter.**

**If the Client Security Fund ("CSF") has reimbursed Veronica Rocha for all or any portion of the principal amount(s), respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs. To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to Veronica Rocha. Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d). Respondent must pay all restitution to Veronica Rocha before making payment to CSF. Satisfactory proof of payment(s) to CSF must be received by the Office of Probation within thirty (30) days of any payment.**

**E. Effect of Respondent's Failure to Comply with Fee Arbitration Conditions**

**Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court imposing additional discipline (with attendant costs) and conditions upon Respondent, including ordering respondent to pay back the full amount of \$7,875 paid to respondent on behalf of Veronica Rocha plus 10% interest from June 28, 2010.**

(Do not write above this line.)

In the Matter of: <b>CARL ALFRED LINDSTROM, JR.</b>	Case Number(s): <b>12-O-17796; 13-O-11582; 14-O-00192</b>
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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:                      CARL ALFRED LINDSTROM, JR.

CASE NUMBERS:                      12-O-17796; 13-O-11582; 14-O-00192

**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-17796 (Complainant: Nastehe Ahmed)

**FACTS:**

1. Prior to April 4, 2008, respondent was hired to represent Nastehe Ahmed in an employment discrimination matter. Thereafter, the attorney-client relationship became strained, but respondent continued to represent Ahmed in the employment discrimination matter.
2. On April 4, 2008, while representing Ahmed, respondent drafted and sent Ahmed a document entitled "Mutual Release Agreement" which contained the following provision: "**THE PARTIES** hereby represent and warrant that neither party shall make any claims to the California State Bar, any Government Agency, District Attorney's Office, any Court or Administrative Board against the other party..." (emphasis in original.)
3. Ahmed received the Mutual Release Agreement, but never signed it. Respondent later called the State Bar Ethics Hotline and inquired about the issue of having a client waive claims to the State Bar as part of a settlement. Upon learning that requesting such a waiver was improper, respondent thereafter withdrew the Mutual Release Agreement. The Mutual Release Agreement was never signed or acted on by Respondent or Ahmed.

**CONCLUSIONS OF LAW:**

4. By seeking an agreement from Ahmed that she not report misconduct to the State Bar or participate in a State Bar investigation, respondent sought agreement that professional misconduct would not be reported to the disciplinary agency and that the client would not cooperate with the investigation or prosecution conducted by the disciplinary agency in willful violation of section 6090.5 of the Business and Professions Code.

Case No. 13-O-11582 (Complainant: Madolyn Uriu)

**FACTS:**

5. At all times relevant herein, respondent did not maintain a client trust account. Prior to 2010, respondent closed his trust account based on irregularities in the account. Respondent later discovered

that many of the irregularities were caused by his ex-wife's handling of the account. Respondent maintained a general operating account, but was not reconciling the account on a regular basis and was not maintaining ledgers of the account. Respondent was repeatedly commingling personal expenses, business expenses and client funds in the account. On a daily basis, there were numerous debit card purchases and payments, making it virtually impossible to keep track of the account balance. Unbeknownst to respondent at the time, his ex-wife had been making withdrawals from the general operating account without his knowledge or consent. Respondent later reported his wife to the authorities for theft.

#### The Uriu matter

6. On June 4, 2010, Madolyn Uriu ("Uriu") hired respondent to represent her in the employment matter, *Uriu v. Kaiser*, Santa Clara County Superior Court Case No. 1-09-CV-155200 ("employment matter"). On the same date, the parties entered into a written contingency fee agreement. Under the terms of the fee agreement, Uriu agreed to pay respondent 50 percent of the gross recovery if the case settled within thirty days of mediation. Under the terms of the fee agreement, respondent required a "non-refundable retainer fee" of \$7,875. By law, the \$7,875 was not a true retainer, but instead, advanced fees.

7. On June 4, 2010, Uriu paid respondent advanced fees of \$7,875 with check no. 1008 and advanced costs of \$2,500 with check no. 1009. On the same date, respondent deposited the check for advanced costs into a general operating account instead of a client trust account.

8. On June 7, 2010, Uriu's former attorney in the employment matter sent a letter to respondent confirming their discussion that the former attorney would not assert a lien for attorney's fees, but expected reimbursement of \$3,747.50 at the conclusion of the case for filing fees and mediation costs that were advanced by the former attorney. Uriu later signed an authorization for disbursement of these costs to her former attorney.

9. On June 28, 2010, Uriu paid respondent advanced costs of \$2,100 with check no. 1012 to pay for deposition transcripts. On the same date, respondent deposited the check for advanced costs into a general operating account instead of a client trust account. Respondent then issued a check in the amount of \$2,092.45 from his general operating account to the court reporter to pay for deposition transcripts on behalf of Uriu. The check was negotiated on July 20, 2010. Uriu was never credited for the \$7.55 remaining from the original \$2,100 advanced as costs.

10. At no time did respondent expend the \$2,500 paid as advanced costs on June 4, 2010, or the \$7.55 remaining from the \$2,100 paid as advanced costs on June 28, 2010. As of September 15, 2010, the balance in respondent's general operating account fell below \$0. As of September 15, 2010, respondent misappropriated the \$2,507.55 paid by Uriu. In December 2014, respondent refunded the misappropriated funds to Uriu.

11. At a mediation in October 2010, Uriu agreed to settle the employment matter for a total of \$53,000. Of the \$53,000, \$12,500 represented back wages and \$40,500 represented settlement of the wrongful termination claim.

12. On November 3, 2010, the defendant in the employment matter sent two settlement checks. The first check in the amount of \$12,500 was made payable to Uriu for back wages. The second check

in the amount of \$40,500 was made payable to respondent and Uriu for settlement of the wrongful termination claim. On November 18, 2010, respondent deposited the \$40,500 settlement check into his general operating account instead of a client trust account.

13. On November 18, 2010, respondent provided Uriu with a document entitled "Settlement Breakdown / Analysis" providing Uriu with three different disbursement options. None of the options accounted for the \$7,875 paid as advanced fees or the \$4,600 (\$2,500 and \$2,100) paid as advanced costs. At no time did respondent provide an accounting of advanced fees and costs to Uriu.

14. Respondent did not earn the additional advanced fees of \$7,875 paid by Uriu on June 4, 2010. It was not until December 2014, that respondent refunded the \$7,875 in unearned fees to Uriu.

#### CONCLUSIONS OF LAW:

15. By failing to deposit \$2,500 in advanced costs, \$2,100 in advanced costs and \$40,500 in settlement funds into a client trust account, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

16. By misappropriating \$2,507.55 of Uriu's funds by gross negligence, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

17. By failing to provide an accounting of the \$7,875 paid as advanced fees and \$4,600 paid as advanced costs, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

18. By failing to refund \$7,875 in unearned fees to Uriu until December 2014, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

#### FACTS:

##### The Rocha matter:

19. On June 28, 2010, Veronica Rocha ("Rocha") hired respondent to represent her in educational issues for her son. On the same date, Uriu paid respondent advanced fees of \$7,875 on behalf of Rocha with check no. 1010 and advanced costs of \$500 with check no. 1011. Respondent never obtained Rocha's informed written consent to Uriu paying respondent's fees on her behalf.

20. On June 28, 2010, respondent deposited the check for advanced costs into a general operating account instead of a client trust account.

21. On February 8, 2011, Rocha terminated respondent's services and requested an accounting of unearned fees. Respondent received the request, but never provided an accounting to Rocha.

## CONCLUSIONS OF LAW:

22. By failing to deposit \$500 in advanced costs into a client trust account, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

23. By failing to provide an accounting of the \$7,875 paid as advanced fees and \$500 paid as advanced costs, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

24. By accepting the payment of fees from Uriu on behalf of Rocha without obtaining Rocha's informed written consent, respondent accepted compensation for representing a client from one other than the client without complying with the requirement that Respondent obtained the client's informed written consent in willful violation of rule 3-310(f) of the Rules of Professional Conduct.

### Case No. 14-O-00192 (State Bar Investigation)

## FACTS:

25. The facts contained in paragraph 5 are incorporated herein.

26. Prior to August 27, 2010, respondent represented Phoebe Alip ("Alip") in a personal injury matter. Prior to August 27, 2010, Alip agreed to settle the personal injury matter for \$100,000. On August 27, 2010, respondent received a check from the insurance company in the amount of \$100,000 made payable to respondent and Alip for settlement of the personal injury matter. On the same date, respondent deposited the \$100,000 settlement check into his general operating account instead of a client trust account. Thereafter, respondent paid Alip her portion of the settlement funds.

## CONCLUSIONS OF LAW:

27. By failing to deposit \$100,000 in settlement funds into a client trust account, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

## AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Respondent has one record of prior discipline (Case No. 84-O-415-SC). In 1985, Respondent stipulated to a private reproof for misconduct occurring in 1983. Respondent violated former rules 8-101(A) and 8-101(B)(4) of the Rules of Professional Conduct by failing to deposit a \$150 check in advanced fees and costs into his trust account and thereafter, failing to promptly refund the \$150.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's 11 separate acts of professional misconduct demonstrate multiple acts of wrongdoing.

**Significant Harm to the Client (Std. 1.5(f)):** Respondent deprived Uriu of her funds for more than four years, causing her significant harm.

#### **MITIGATING CIRCUMSTANCES.**

**Community Service:** Respondent has performed community service for the Filipino community and many different civic organizations from 1983 to present. From 1983 through 1988, respondent served as Commissioner for the Santa Clara County Social Services Advisory Committee. From 1985 through 1988, respondent served as Commissioner for the Santa Clara County Human Relations Committee. From 1987 through 1988, respondent served on the Santa Clara County Democratic Central Committee. In 1987, respondent founded the Fil-Am Caucus for the California Democratic Committee and from 1987 through 1992, respondent served on the Committee. From 1988 through 1990, respondent served as a Commissioner on the San Francisco District Attorney's Hate Crimes Commission. From 1989 through 1991, respondent served as a board member on the California State Board of Dental Examiners. From 1993 through 1996, respondent served as a board member of the Family Health Foundation. From 1994 through 1996, respondent served on the Legislative Committee for the National Association of Community Health Centers. From 2002 through 2003, respondent served as a board member and vice president of the California State Bar Board of Governors. From 2005 through 2008, respondent served as a commissioner on the California State Bar Commission on Judicial Nominees Evaluation. From 2014 to present, respondent serves as a legal advisor for the National Filipino Association. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [civic service and charitable work considered as evidence of good character].)

**Family Problems:** At the time of the misconduct, respondent was suffering from extreme difficulties in his personal life related to family law custody proceedings and criminal proceedings against third parties in which respondent's children were victims. (See *In re Naney* (1990) 51 Cal.3d 186, 197 [mitigation credit for marital problems if extreme and directly responsible for the misconduct].) Specifically, during the period in question respondent was involved in custody proceedings and obtained full custody of his three children. Respondent was also involved in criminal proceedings against a third party stemming from the allegations of a molestation of a family member. The custody and criminal proceedings placed a financial and emotional burden on respondent.

**Remedial Measures:** In 2011, respondent opened a client trust account and has since trained his staff in proper client trust account handling procedures. In 2014, respondent voluntarily took courses on professional responsibility and studied for and passed the Multi-State Professional Responsibility Examination (MPRE). Remedial measures taken by an attorney to come into compliance with ethical duties may be deemed mitigating. (See *In the Matter of Sullivan* (Review Dept. 1997) Cal. State Bar Ct. Rptr. 608, 613.)

**Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative 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 high professional standards; and preservation of public confidence in the legal profession. (*In re Morse* (1995) 11 Cal.4<sup>th</sup> 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.4<sup>th</sup> 81, 92, quoting *In re Brown* (1995) 12 Cal.4<sup>th</sup> 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 discipline 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).)

Respondent committed multiple 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 grossly negligent misappropriation of \$2,507.55 and provides: “Disbarment or actual suspension is appropriate for misappropriation involving gross negligence.”

Standard 1.8(a) also applies based on respondent’s prior record of discipline. Standard 1.8(a) provides: “If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.”

Here, respondent’s misconduct stems from his business accounting practices where he failed to deposit advanced costs into a trust account in the *Uriu* and *Rocha* matters and failed to deposit settlement funds into a trust account in the *Uriu* and *Alip* matters. Respondent was grossly negligent in misappropriating approximately \$2,500 of Uriu’s funds and it was not until recently that respondent refunded those misappropriated funds. Respondent also failed to provide an accounting to Uriu and Rocha and failed to promptly refund unearned fees to Uriu. In addition, in the *Rocha* matter, respondent accepted fees from a non-client without the client’s informed written consent and in the *Ahmed* matter, respondent sought to enter into a Mutual Release Agreement whereby the terms required that his client not report professional misconduct to the State Bar and not cooperate with the investigation conducted by the State Bar.

Respondent's misconduct is serious and aggravated by a prior record of discipline for similar trust account violations. Although remote in time, respondent's prior misconduct was serious enough that it would not be manifestly unjust to impose greater discipline in this matter. Respondent's misconduct is further aggravated by multiple acts of misconduct and significant harm to his client. In mitigation, respondent is entitled to credit for entering into a pretrial stipulation, family problems and community service. Respondent is also entitled to credit for remedial measures taken to ensure proper handling of entrusted funds. These remedial measures demonstrate that respondent is willing and able to conform his conduct in the future. On balance, discipline at the mid-range recommended in standard 2.1(b) is appropriate.

Case law is instructive. In *Brockway v. State Bar* (1991) 53 Cal.3d 51, the Supreme Court imposed a three-month actual suspension for a grossly negligent misappropriation of \$500. The attorney also failed to refund client funds and acquired an adverse interest in a client's property. In aggravation, the Court found indifference and a lack of candor. In mitigation, the Court found no prior record of discipline in 13 years of practice and good character.

Respondent's misconduct is more egregious than that in *Brockway* and there are more factors in aggravation- most significantly respondent's prior record of discipline for similar misconduct. Even though respondent has more mitigation than was present in *Brockway*, based on the nature of the misconduct and aggravating factors, discipline should be greater than that imposed in *Brockway*.

In light of the serious and repetitive nature of respondent's misconduct, a six-month actual suspension with a long probationary period is necessary to protect the public and will serve the purposes of attorney discipline.

#### **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
13-O-11582	Ten	Business and Professions Code section 6106.
13-O-11582	Thirteen	Rules of Professional Conduct, rule 3-700(D)(2)

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 26, 2014, the prosecution costs in this matter are \$7,453. 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 and State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

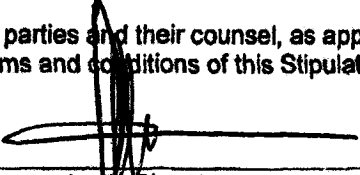

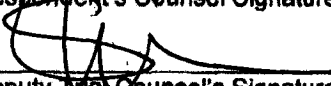


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In the Matter of: CARL ALFRED LINDSTROM, JR.	Case number(s): 12-O-17796; 13-O-11582; 14-O-00192
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### SIGNATURE OF THE PARTIES

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>12-5-2014</u> Date	 Respondent's Signature	<u>Carl A. Lindstrom, Jr.</u> Print Name
<u>12-5-2014</u> Date	 Respondent's Counsel Signature	<u>Anthony P. Capozzi, Esq.</u> Print Name
<u>12/19/14</u> Date	 Deputy Mar Counsel's Signature	<u>Susan I. Kagan</u> Print Name

(Do not write above this line.)

In the Matter of: CARL ALFRED LINDSTROM, JR.	Case number(s): 12-O-17796; 13-O-11582; 14-O-00192
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_____ Date	_____ Respondent's Signature	Carl A. Lindstrom, Jr. _____ Print Name
12-5-2014 _____ Date	<i>Anthony P. Capozzi</i> _____ Respondent's Counsel Signature	Anthony P. Capozzi, Esq. _____ Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	Susan I. Kagan _____ Print Name

(Do not write above this line.)

In the Matter of:  
CARL ALFRED LINDSTROM, JR.

Case Number(s):  
12-O-17796; 13-O-11582; 14-O-00192

### ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☒ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

Jan 8 2015



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 Los Angeles, on January 9, 2015, 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:

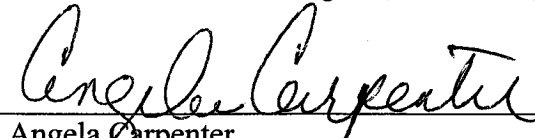
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ANTHONY PATRICK CAPOZZI  
1233 W SHAW AVE #102  
FRESNO, CA 93711

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

SUSAN KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 9, 2015.



Angela Carpenter  
Case Administrator  
State Bar Court