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State Bar Court of California
Hearing Department
San Francisco
DISBARMENT

<p>Counsel For The State Bar</p> <p>Heather E. Abelson Deputy Trial Counsel 180 Howard Street, San Francisco, CA 94105 (415) 538-2357</p> <p>Bar # 243691</p>	<p>Case Number(s): 13-O-10195</p> <p>PUBLIC MATTER</p>	<p>For Court use only</p> <p>FILED <i>JP</i></p> <p>OCT 23 2013</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>William Austin Cooper W. Austin Cooper, a Prof Corp 2573 Campden Way Sacramento, CA 95833 (916) 923-7442</p> <p>Bar # 30652</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: WILLIAM AUSTIN COOPER</p> <p>Bar # 30652</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 22, 1960.
- (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 (9) pages, not including the order.

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- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) **ORDER OF INACTIVE ENROLLMENT:**
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
- (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.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See "Facts Supporting Aggravating Circumstances" in the Stipulation Attachment at p. 7.
- (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. See "Facts Supporting Aggravating Circumstances" in the Stipulation Attachment at p. 7.
- (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.

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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:

No Prior Discipline - See "Facts Supporting Mitigating Circumstances" in the Stipulation Attachment at p. 7.
Pre-Filing Stipulation - See "Facts Supporting Mitigating Circumstances" in the Stipulation Attachment at p. 7.

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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: WILLIAM AUSTIN COOPER

CASE NUMBER: 13-O-10195

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. 13-O-10195 (Complainant: Lien Hoang)

FACTS:

1. On January 7, 2011, Respondent was hired by Hoang to represent Hoang in the bankruptcy matter *In re Waid*, Case No. 05-39178, United States Bankruptcy Court for the Eastern District of California ("bankruptcy matter").
2. On January 7, 2011, Respondent and Hoang agreed that Respondent would be compensated by a contingency fee of 33.33% of any settlement or judgment in the bankruptcy matter.
3. On June 23, 2011, Respondent deposited into his Client Trust Account ("CTA"), on behalf of Hoang, a settlement check in the amount of \$38,000 from the bankruptcy matter.
4. From June 23, 2011 through at least July 11, 2011, Respondent was required to maintain at least \$25,334.60 (\$38,000 less attorney's fees of \$12,665.40) in his CTA on behalf of Hoang.
5. On July 11, 2011, the balance in Respondent's CTA dropped to \$21,591.16.
6. As of July 11, 2011, Respondent misappropriated at least \$3,743.44 of Hoang's funds for his own use and benefit.
7. From August 26, 2011, through at least May 29, 2012, following disbursements made from the \$38,000 settlement check by Respondent, Respondent was required to maintain the remainder of \$2,500 of Hoang's funds in his CTA.
8. On May 29, 2012, the balance in Respondent's CTA was - \$155.00.
9. As of May 29, 2012, Respondent misappropriated \$2,500 of Hoang's funds, for his own use and benefit.

CONCLUSIONS OF LAW:

10. By failing to maintain \$3,743.44 in his CTA on behalf of Hoang from June 23, 2011 through at least July 11, 2011, and by failing to maintain \$2,500 in his CTA on behalf of Hoang from August 26,

2011 through at least May 29, 2012, Respondent willfully 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 wilful violation of Rules of Professional Conduct, rule 4-100(A).

11. By misappropriating a total of \$6,243.44 of Hoang's settlement funds, Respondent committed acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code, section 6106.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Indifference (Std. 1.2(b)(v)): Respondent demonstrated indifference by forcing Hoang to file a small claims action against Respondent to recover Hoang's funds.

Lack of Candor and Cooperation (Std. 1.2(b)(vi)): During the course of the State Bar's investigation, Respondent demonstrated a lack of candor and cooperation by opening a second trust account in an attempt to mislead the State Bar into believing that Respondent maintained the funds on behalf of Hoang.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.2(e)(i)): Although Respondent's misconduct is serious, he is entitled to mitigation since he was admitted to the State Bar in June 1960 and has no prior record of discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pre-filing Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel, prior to the filing of a Notice of Disciplinary Charges, 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 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, Stds. for Atty. Sanctions for Prof. 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; std. 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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent committed four acts of professional misconduct. Standard 1.6 (a) requires that where a respondent commits 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 or most severe prescribed in the applicable standards.

The most severe sanction is found in Standard 2.2(a) which applies to Respondent's misappropriation of \$6,243.44 of Hoang's settlement funds. Standard 2.2(a) provides that "[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 one-year actual suspension, irrespective of mitigating circumstances."

The Standard requires disbarment unless the misappropriated funds were insignificantly small, or the most compelling mitigation circumstances predominate. Neither of these situations is found in this case. First, \$6,243.44 is not an insignificant amount of money. (*See e.g., Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of \$1,355.75 deemed significant but Supreme Court].) Second, Respondent's mitigation, consisting of only a lack of prior discipline and Respondent's agreement to enter into a pre-filing stipulation, is not compelling. Further, Respondent's misconduct is substantially aggravated by a lack of candor and cooperation with the State Bar as evidenced by Respondent's attempt to mislead the State Bar with regards to the second Client Trust Account, and demonstrated indifference toward rectification with Hoang as evidenced by the small claims action Hoang brought against Respondent. Accordingly, there is no reason to deviate from the discipline required by Standard 2.2 in this case. Thus, disbarment is warranted.

Case law also supports disbarment. In *Grim v. State Bar* (1991) 53 Cal.3d 21, 29, the Supreme Court disbarred an attorney for misappropriating \$5,546, notwithstanding finding mitigation for good character and cooperation with the State Bar. The attorney's misconduct was aggravated by several factors including, a prior private reproof for commingling, multiple acts of misconduct, indifference, lack of cooperation with the victim of the misconduct, and refusal to account for funds held in trust. (*Id.* at 26, 34.)

Here, Respondent's misconduct is more egregious than that of the attorney in *Grim*. Respondent misappropriated more money than the attorney in *Grim*. Respondent's misconduct is mitigated by the same number of factors as in *Grim*. And, notwithstanding the fact that there were more aggravating circumstances in *Grim* than are present in this case, the aggravating circumstances in this case are significantly egregious since Respondent refused to return entrusted funds to his client and attempted to mislead the State Bar during the State Bar's investigation.

Balancing all of the appropriate factors, disbarment is consistent with the applicable Standards and case law.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 25, 2013, the prosecution costs in this matter are \$3,036.25. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: WILLIAM AUSTIN COOPER	Case Number(s): 13-O-10195
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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.

10/23/13
Date


PAT E. McELROY
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 San Francisco, On October 23, 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 San Francisco, California, addressed as follows:

WILLIAM AUSTIN COOPER
W AUSTIN COOPER, A PROF CORP
2573 CAMPDEN WAY
SACRAMENTO, CA 95833

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

Heather E. Abelson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 23, 2013.


Laurretta Cramer
Case Administrator
State Bar Court