



ORIGINAL

(Do not write above this line.)

**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

Counsel For The State Bar R. Kevin Bucher Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1630 Bar # 132003	Case Number(s): 13-O-13871-YDR 13-O-14262 13-O-14617 13-O-14953 14-O-02397 14-O-03590 15-O-10874	For Court use only <div align="center"> FILED JUL 16 2015 <i>AK</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div align="center"> PUBLIC MATTER </div>
In Pro Per Respondent Martin Ian Cutler 8500 Wilshire Boulevard, #916 Beverly Hills CA 90211 (858) 472-6331 Bar # 139536	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: MARTIN IAN CUTLER Bar # 139536 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **May 11, 1989**.
- (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 **15** 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".

78
7.7.15

- (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 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(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **13-O-10962, 13-O-11678**
 - (b) ☒ Date prior discipline effective **February 6, 2014**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 4-100(A), Business and Professions Code section 6068(i), and 6106.**
 - (d) ☒ Degree of prior discipline **60 days actual suspension.**
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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.

- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See attachment, page 11.**
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 11.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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.

(Do not write above this line.)

- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (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:

Pre-trial stipulation - See attachment, page 12.

Extreme emotional Difficulties - See attachment, page 12

D. Discipline:

(1) ☒ **Stayed Suspension:**

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

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 **two 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 **6 months**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 present 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.**
- ☐ No MPRE recommended. Reason: .
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .
- (5) ☒ **Other Conditions:** Respondent is scheduled to take the MPRE in August 2015 as a condition of his prior disciplinary probation. Taking and passing that examination will satisfy the MPRE condition attached to the present disciplinary probation.

During the period of probation, Respondent shall utilize the service of a "certified public accountant or other financial professional approved by the Office of Probation", in satisfying the Financial Conditions herein, specifically, the "Client Funds Certificate" provision.

(Do not write above this line.)

In the Matter of:
MARTIN IAN CUTLER

Case Number(s):
**13-O-13871; 13-O-14262; 13-O-14617, 13-O-14953;
14-O-02397; 14-O-03590; 15-O-10874**

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:

MARTIN IAN CUTLER

CASE NUMBERS:

13-O-13871; 13-O-14262; 13-O-14617, 13-O-14953;
14-O-02397; 14-O-03590; 15-O-10874

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-138781; 13-O-14262; 13-O-14617; 13-O-14953 (State Bar Investigation)

FACTS:

1. At all relevant times to the stipulated facts herein, Respondent maintained a client trust account at GBC International Bank (the "CTA"). At all relevant times to the stipulated facts herein, Respondent maintained only earned fees in the CTA, and no client funds.
2. Between June 21, 2013 and July 31, 2013, Respondent presented seven checks for payment against insufficient funds. On each such occasion, Respondent had issued the subject check before allowing deposits (consisting of earned attorney's fees) to clear the account.
3. On July 31, 2013, Respondent issued one check from the CTA to pay his personal expenses.
4. During the course of the State Bar's investigation of Respondent's misconduct herein, a State Bar investigator mailed numerous letters, between July 2013 and September 2013, to Respondent, each letter asking that he provide a written, substantive response to the allegations under investigation by the State Bar by a date certain. Respondent received but never responded to the letters sent by the State Bar investigator.

CONCLUSIONS OF LAW:

5. By depositing and maintaining earned fees in the CTA, and by issuing a check from the CTA to pay for his personal expenses, Respondent deposited funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).
6. By writing checks from his CTA when he knew or should have known there were insufficient funds in the account to cover the checks, Respondent committed acts involving moral turpitude, dishonesty, or corruption, in willful violation of Business and Professions Code section 6106.
7. By not providing a written, substantive response to the State Bar investigator's letters, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code 6068(i).

Case No. 14-O-02397; (Complainant: Maureen Kindred)

FACTS:

8. In February 2013, Maureen Kindred employed and Respondent to represent her in her marital dissolution matter. Respondent performed the services for which he was retained with regard to the marital dissolution.

9. In October 2013, Respondent agreed to perform further services including contacting the IRS on his client's behalf about her inability to pay tax penalties until she received her divorce settlement, and to negotiate a resolution of the dispute with the I.R.S. Respondent failed to perform these additional services.

10. During the course of the State Bar's investigation of Respondent's misconduct herein, a State Bar investigator mailed investigative letters, on May 28, 2014, July 18, 2014 and August 4, 2014, each letter asking that he provide a written, substantive response to the allegations under investigation by the State Bar by a date certain. Respondent received but never responded to the letters sent by the State Bar investigator.

CONCLUSIONS OF LAW:

11. By failing to perform the tax services for which he was retained in October 2013, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

12. By not providing a written, substantive response to the State Bar investigator's letters, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code 6068(i).

Case No. 14-O-03590 (Complainant: Carol Greene)

FACTS:

13. On March 13, 2013, Carol Greene retained Respondent to help her resolve a dispute with Union Bank regarding a deed of trust securing her home equity line of credit, paying Respondent \$2,000.

14. Ms. Greene was dissatisfied with Respondent's work and subsequently retained new counsel on August 7, 2013. Greene's new counsel sent Respondent multiple requests for an accounting of legal fees and a refund of unearned fees. Respondent has not provided an accounting to date, but has provided evidence he performed substantial work for Ms. Greene.

15. During the course of the State Bar's investigation of Respondent's misconduct herein, a State Bar investigator mailed two letters to Respondent, on August 13, 2014 and September 2, 2014, each letter asking that he provide a written, substantive response to the allegations under investigation by the State Bar by a date certain. Respondent received but never responded to the letters sent by the State Bar investigator.

CONCLUSIONS OF LAW:

16. By failing to provide a full accounting of fees to his client at the end of his employment and upon her request, Respondent intentionally, recklessly, or repeatedly failed to render appropriate accounts to his client, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

17. By not providing a written, substantive response to the State Bar investigator's letters, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code 6068(i).

Case No. 15-O-10874 (State Bar Investigation)

FACTS:

18. In August 2014, Respondent stipulated to a 60 day actual suspension with two years of probation in State Bar case no. 13-O-10932 (S214211), in a matter involving mismanagement of his CTA. The stipulation included probation conditions requiring him to file quarterly reports with the Office of Probation.

19. Respondent failed to complete conditions attached to his disciplinary probation, by failing to submit quarterly reports due October 10, 2014, January 10, 2015, and April 10, 2015.

CONCLUSIONS OF LAW:

20. By failing to submit quarterly probation reports due October 10, 2014, January 10, 2015 and April 10, 2015, Respondent failed to comply with conditions attached to a disciplinary probation, in willful violation of Business and Professions Code, section 6068(k).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline – Std. 1.2(b)(i) – Respondent has a prior record of State Bar discipline for similar misconduct as alleged in the present matter. On August 16, 2013, Respondent entered into a stipulation arising from misconduct between November 27, 2012 and February 27, 2013 involving writing nine checks from his CTA for personal expenses and writing seven NSF checks. He agreed to discipline including a one year stayed suspension and 60 days actual suspension.

Indifference – Std. 1.2(b)(v) – Respondent's failure to respond to reasonable inquiries, and his continuing misuse of his trust account, despite prior discipline for the same misconduct, is a clear showing of indifference toward atonement for his misconduct. His indifference is further exhibited by the fact that at the time he entered into his last stipulation, the State Bar had already received notice of, and was about to begin investigation of, the current misconduct.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent issued check no. 227 from the CTA to pay for his personal expenses; Respondent also issued seven checks from the CTA when he knew or should have known that there were insufficient funds in the account to cover the checks. Respondent also committed misconduct in two separate client matters, and failed to comply with his probation conditions. In addition, Respondent failed to participate in the State Bar's investigations. These multiple acts of misconduct are an aggravating circumstance. (See *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

MITIGATING CIRCUMSTANCES.

Extreme Emotional Difficulties – Respondent suffered extreme emotional problems at and around the time of his misconduct, as a result of being sole care giver for his wife, who suffers from aggressive metastatic cancer. His emotional difficulties were directly related to his misconduct and his lack of cooperation with the State Bar, leading him to neglect his professional responsibilities. (See *In the Matter of Spaith* (1990) 3 Cal. State Bar Ct. Rptr. 511 [marital problems and *similar difficulties* can be mitigating if they are extreme and are directly responsible for the misconduct].) Respondent admits he was distracted and was inattentive to deadlines, calendaring and financial management. Respondent has agreed to a CPA oversight and reporting condition as part of his probation in the present matter to address his financial issues. He has also changed his office practices, including using a computer calendaring system.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigation given for stipulating to facts and culpability].) However, this mitigation is deserving of reduced weight in light of respondent's failure to cooperate in the State Bar investigation.

AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re 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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

Standard 2.2(a) provides for a three month actual suspension in cases involving commingling in violation of rule 4-100 of the Rules of Professional Conduct, which is the minimum level of discipline

here. Standard 2.7 provides for disbarment or actual suspension for an act of moral turpitude, depending on the magnitude and extent to which the misconduct harmed or misled the victim and related to the member's practice of law. These are the most relevant applicable standards, all of which support significant suspension in the present matter.

Standard 1.8(a) provides for progressive discipline in cases involving a single prior State Bar discipline. Although respondent's prior misconduct regarding his CTA was similar to the present CTA misconduct, the aggravating force of his prior disciplinary record is somewhat diluted because the misconduct in the present case occurred before the stipulation in the prior matter was filed and discipline ordered. Despite the imposition of prior discipline, it does not carry with it as full a need for severity as if the misconduct in the present matter had occurred after respondent had been disciplined and had failed to heed that discipline. Thus, respondent's misconduct in the present matter, even though it is similar to the misconduct in the prior matter, does not reflect a failure on the part of respondent to learn from his prior misconduct. Nevertheless, the prior should be considered as a factor in aggravation, and the discipline in this matter should be greater than in the previous matter. (Stds. 1.2(b)(i), 1.8(a); (See *In the Matter of Bach*, supra, 1 Cal. State Bar Ct. Rptr 631, 646.)

Disbursing funds from a client trust account to pay personal expenses constitutes a violation of the Rules of Professional Conduct, rule 4-100(A). (See *Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23 [rule 4-100 "bars use of the trust account for personal purposes"].) Accordingly, under standard 2.2(a), a three-month actual suspension would be the minimum level of discipline to be imposed in the instant matter.

In addition to the allegations of commingling and writing checks against insufficient funds, Respondent committed misconduct in two client matters. The Supreme Court has generally considered actual suspension an appropriate discipline where multiple instances of misconduct involving client inattention have occurred. (*Lester v. State Bar* (1976) 17 Cal.3d 547.) In *Calvert v. State Bar* (1990) 50 Cal.3d 344, the attorney was found culpable of unreasonable client neglect in a single client matter, including failure to perform, continued representation of her client though she knew she could not perform competently, and withdrew from employment without taking reasonable steps to avoid prejudice to the client. The Supreme Court found the attorney's breach of her duty to her client was significant, but did not agree with the review departments order of a six month actual suspension, lowering the actual suspension to 60 days.

The question is where, along a continuum of discipline ranging from 90 days to disbarment, discipline should be fixed. Respondent's practice suffered from his inattention for some time. His misconduct is serious and involves misuse of his client trust account, but that misuse did not result in any harm to clients. The charged moral turpitude for writing NSF checks is on the lower level of magnitude recognized by Standard 2.7.

The aggravating factors are balanced by Respondent's emotional difficulties related to his wife's struggle with cancer. Respondent admits he was distracted and was inattentive to deadlines and calendaring during the time period of his misconduct, due in part to his wife's ongoing illness and his work as her sole caretaker. All of Respondent's prior and present misconduct occurred during the time of his wife's illness. To assist in overcoming this distraction, Respondent has changed his office practices, including using a computer calendaring system. Respondent has also agreed to a CPA overview and reporting condition as part of his probation in the present matter to insure that his misconduct with his trust account is not repeated.

Respondent previously received a 60 day actual suspension, a deviation from the 90 day actual suspension provided for by Standard 2.2(a). In the present matter, greater discipline than that provided for by standard 2.2(a) is appropriate, given the misconduct in the two client matters, and considering the aggravating and mitigating circumstances. Balancing the various factors, a two-year suspension, stayed, with two years of probation, with the condition that Respondent be actually suspended for the first six months, will serve the purpose of Standard 1.1(a) in protecting the public, the courts, and the legal profession.

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>
14-O-02397	One	Rules of Professional Conduct, rule 4-100(B)(4)
14-O-02397	Two	Rules of Professional Conduct, rule 4-100(A)
14-O-02397	Three	Business and Professions Code, section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 6, 2015, the prosecution costs in this matter are \$5,543. 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 State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of
MARTIN IAN CUTLER

Case number(s):

13-O-13871; 13-O-14262; 13-O-14617, 13-O-14953; 14-O-02397;
14-O-03590; 15-O-10874

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 Fact, Conclusions of Law and Disposition.

7/7/15
Date

7-7-15
Date


Respondent's Signature

Martin Cutler
Print Name


Deputy Trial Counsel's Signature

R. Kevin Bucher
Print Name

(Do not write above this line.)

In the Matter of: MARTIN IAN CUTLER	Case Number(s): 13-O-13871; 13-O14262; 13-O-14617; 13-O-14953; 14-O-02397; 14-O-03590; 15-O-10874
--	--

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.

See attached Modifications to Stipulation.

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 July 14, 2015

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
Judge of the State Bar Court

MODIFICATIONS TO STIPULATION

1. On page 2 of the stipulation, at paragraph B.(1)(a), the first prior case number "13-O-10962" is MODIFIED to reflect the correct case number, which is: "13-O-10932."
2. On page 2 of the stipulation, at paragraph B.(1)(d), the period after "suspension" is replaced with a semi-colon, and the following language is added: "one year suspension, stayed; and two years' probation".
3. On page 9 of the stipulation, in the list of case numbers above the heading "Facts," "13-O-138781" is deleted, and in its place is inserted "13-O-13871".
4. On page 10 of the stipulation, at numbered paragraph 8, line 1, "agreed" is inserted after "Respondent" and before "to".
5. On page 11 of the stipulation, "Indifference" is deleted as an aggravating circumstances, as it is inconsistent with the language in the first full paragraph on page 13.
6. References to standards refer to the standards in effect prior to revisions which became operative on July 1, 2015. Although the parties did not sign the stipulation until after July 1, 2015, the court finds it appropriate to apply in this matter the standards effective January 1, 2014-June 30, 2015.

-X-X-X-

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 July 16, 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:

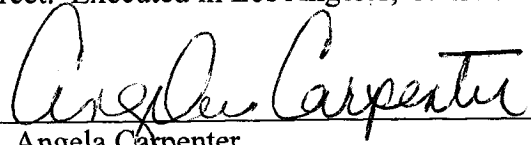
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MARTIN I. CUTLER
8500 WILSHIRE BLVD STE 916
BEVERLY HILLS, CA 90211

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

RONALD BUCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 16, 2015.


Angela Carpenter
Case Administrator
State Bar Court