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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Shane C. Morrison Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1000 Bar # 284115	Case Number(s): 13-O-13951	For Court use only FILED JAN 12 2016 <i>JH</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Susan L. Margolis Margolis & Margolis LLP 2000 Riverside Dr Los Angeles, CA 90039 (323) 953-8996 Bar # 104629	PUBLIC MATTER	
In the Matter of: JAMES HALE HARMON Bar # 205081 A Member of the State Bar of California (Respondent)	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 24, 1999**.
- (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 **13** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **three billing cycles immediately following the effective date of the Supreme Court order in this matter.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **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.

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- (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.
- (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.
- (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. **See Attachment to Stipulation at p. 9.**
- (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. **See Attachment to Stipulation at p. 9.**
- (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. **See Attachment to Stipulation at p. 9.**
- (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

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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.
- (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-Filing Stipulation (see Attachment to Stipulation at p. 9).

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one year**.
- 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 **one year**, 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 **60 days**.
- 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.

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- (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 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:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAMES HALE HARMON

CASE NUMBERS: 13-O-13951

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-13951 (State Bar Investigation)

FACTS:

1. At all times relevant to this matter, respondent maintained a client trust account (acct. no. xxxx1143) and a general account (acct. no. xxxx0384) at Union Bank of California.
2. At all times relevant to this matter, respondent represented a husband and wife (hereinafter "the clients") in a joint claim for bodily injury against Encompass Insurance (hereinafter "the client matter").
3. On March 7, 2013, Encompass Insurance issued checks totaling \$30,000 for settlement of the client matter, which were thereafter deposited into respondent's client trust account.
4. By April 30, 2013, respondent had withdrawn \$11,416 (\$9,900 in attorney fees and \$1,516 in costs) from his client trust account in connection with the client matter.
5. Respondent did not attempt to make any disbursements to or on behalf of the clients until May 30, 2013. Respondent was therefore required to maintain a balance in his client trust account of \$18,584 (\$30,000 less \$11,416) on behalf of the clients until May 30, 2013.
6. Between May 23, 2013 and May 29, 2013, respondent issued several checks that were drawn upon his client trust account and which resulted in the balance in his client trust account dipping below \$18,584. None of those checks were issued in connection with the client matter. At close of business on May 29, 2013, the balance in respondent's client trust account was \$7,553.71.
7. On May 30, 2013, respondent attempted to distribute the clients' settlement funds to them by issuing two checks that were drawn upon his client trust account: check number 1729, in the amount of \$8,534, and check number 1730, in the amount of \$10,050.00.
8. On May 31, 2013, Union Bank of California issued reversals on the two checks (numbers 1729 and 1730) that had been presented for payment by the clients because there were insufficient funds in respondent's client trust account to pay them. As such, respondent remained obligated to maintain a balance in his client trust account of \$18,584 on behalf of the clients.

9. On June 3, 2013, respondent issued a check that was drawn on his client trust account and which resulted in the balance in his client trust account dipping further below \$18,584. That check was not issued in connection with the client matter. At close of business on June 3, 2013, the balance in respondent's client trust account was \$5,640.12, which was \$12,943.88 lower than it was required to be.

10. On June 11, 2013, respondent deposited funds from his general account into his client trust account. That same day, respondent wrote a letter to the clients wherein he apologized for the dishonored checks, explained that the situation resulted from an accounting error, and offered to reimburse the clients for any charges they may have incurred from their bank as a result of the dishonored checks. Enclosed with the letter were two replacement checks and a printout from Union Bank of California reflecting that the balance in respondent's client trust account as of June 11, 2013 was sufficient to cover the replacement checks.

11. On June 12, 2013, the clients' replacement checks were presented for payment and cleared.

12. On June 26, 2013, the State Bar contacted respondent for the first time regarding the insufficient funds activity in his client trust account in connection with the client matter.

13. From 2011 and at all times relevant to this matter, respondent failed to properly reconcile his client trust account, failed to keep a client trust account journal, and failed to maintain individual client ledgers or other records of client settlement funds that came into his possession, including settlement funds belonging to the clients in this matter. Such failures were grossly negligent and attributable to respondent's lack of knowledge about proper client trust accounting practices. In May 2013, respondent's gross negligence caused his client trust account balance to fall below \$18,584, which resulted in his drafting of two checks against his client trust account when there were insufficient funds to pay them.

CONCLUSIONS OF LAW:

14. By failing to maintain a balance of \$18,584 in his client trust account on behalf of the clients, at a time when the clients were entitled to funds totaling \$18,584 that had been deposited into his client trust account on their behalf, respondent wilfully violated Rules of Professional Conduct, rule 4-100(A).

15. By failing to maintain complete records of the clients' \$30,000 in settlement funds that came into his possession and were deposited into his client trust account, respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3).

16. By gross negligently misappropriating \$12,943.88 that the clients were entitled to receive, respondent committed an act involving moral turpitude, dishonesty or corruption, and thereby wilfully violated Business and Professions Code section 6106.

17. By issuing two checks that were drawn upon his client trust account on May 30, 2013, when he was grossly negligent in not knowing that there were insufficient funds in his trust account to pay them, respondent committed an act involving moral turpitude, dishonesty or corruption, and thereby wilfully violated Business and Professions Code section 6106.

AGGRAVATING CIRCUMSTANCES.

None.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline (Std. 1.6(a)): Respondent was admitted to practice on November 24, 1999. Respondent had practiced law for over 13 years without a prior record of discipline when the misconduct herein occurred. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr 41 [attorney's practice of law for more than 17 years considered mitigating even when misconduct was serious].) The fact that respondent has taken objective steps to prevent future misconduct, namely voluntarily attending Client Trust Accounting ("CTA") School and overhauling his trust accounting practices, suggest that his misconduct is aberrational. Respondent's absence of any prior record of discipline over many years of practice coupled with the present misconduct, which is not likely to recur, is a mitigating circumstance.

Spontaneous Candor and Cooperation (Std. 1.6(e)): Prior to the initiation of any proceedings by the State Bar, respondent contacted the clients affected by the misconduct, explained the reason the clients' settlement checks had not cleared, acknowledged his accounting error, apologized for the dishonored checks, and reissued their settlement checks.

Remorse and Recognition of Wrongdoing (Std. 1.6(g)): Within two weeks of issuing the dishonored checks, and prior to the initiation of any proceedings by the State Bar, respondent contacted the clients affected by the overdrafts, issued replacement checks after confirming he had transferred sufficient funds from his general account to his trust account, and offered to reimburse any charges incurred by the clients as a result of the dishonored checks. Respondent also voluntarily attended CTA School. Finally, respondent changed his trust accounting practices and now regularly reconciles his client trust account and maintains the proper ledgers and journals.

Pre-Filing Stipulation: Respondent is entitled to mitigating credit for entering into this stipulation as to facts, conclusions of law, and disposition, thereby obviating the need for trial, saving State Bar resources, and evidencing recognition of wrongdoing. (*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 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).)

Respondent’s course of conduct in this matter constituted multiple violations of the State Bar Act and the Rules of Professional Conduct. Standard 1.7(a) provides that where a member 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 under Standard 2.11, which provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law. Although not the most severe sanction applicable to respondent’s misconduct, it is important to note that, under Standard 2.1(b), actual suspension is the presumed sanction for misappropriation involving gross negligence.

Here, although respondent’s misconduct related directly to the practice of law, his misappropriation occurred within a relatively narrow timeframe, was the result of his gross negligence in managing his trust account, and was not the result of any deceitfulness or ill intent. Respondent also took prompt steps to rectify his misconduct before significant harm could inure to his clients. Additionally, the misconduct affected a single client matter. Finally, respondent’s misconduct is mitigated by several factors: lack of a prior record of discipline, spontaneous candor and cooperation, remorse and recognition of wrongdoing, and entering into this stipulation. As such, disbarment is not warranted in the present matter and discipline at the low end of the range set forth in Standard 2.11 is consistent with the primary purposes of discipline.

In determining the appropriate level of discipline under the Standards, we look to the decisional law for guidance. (*In re Morse* (1995) 11 Cal.4th 184, 207.)

“An attorney who deliberately takes a client’s funds, intending to keep them permanently, and answers the client’s inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception. Although lack of evil intent does not immunize an attorney’s conduct from discipline [Citation], the attorney’s good faith is an important consideration in determining the degree of discipline to be imposed. Disbarment would rarely, if ever, be an appropriate discipline for an attorney whose only misconduct was a single act of negligent misappropriation, unaccompanied by acts of deceit or other aggravating factors. Thus we have ordered discipline as light as 30 days of actual suspension when the misappropriation resulted from negligence and other mitigating factors were present. [Citation.]” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

In *Edwards v. State Bar*, *supra*, 52 Cal.3d 28, the Supreme Court imposed one year of actual suspension after the attorney intentionally misappropriated \$3,000 from his client trust account to pay his mortgage. Edwards said he kept a "mental idea" of the balance in his client trust account and would not promptly withdraw funds as he earned them. (*Id.* at 33.) In mitigation, the Court found that Edwards' client was not harmed, he was candid with the State Bar, and he made full restitution prior to being notified about the State Bar complaint. In aggravation, the Court found that Edwards engaged in multiple acts of inappropriate record keeping, used funds for personal matters (additional uncharged misconduct - commingling), showed a lack of appreciation of the seriousness of his misconduct, and showed a lack of understanding of the significance of trust accounting. Although the amount misappropriated in *Edwards* was less than in the present matter, the present matter lacks all of the aggravating factors found in *Edwards* and, more importantly, the misappropriation in *Edwards* was intentional, whereas respondent's misappropriation was by gross negligence.

In *Howard v. State Bar* (1990) 51 Cal.3d 215, the Supreme Court imposed six months of actual suspension after an attorney misappropriated \$1,300 in client funds by directly depositing the settlement check into her personal account and thereafter spending the money for personal use. The only mitigation found by the Court was Howard's struggle with, and rehabilitation from, alcohol and cocaine addiction, and excessive delay in prosecution by the State Bar. The present case involves more money than was involved in *Howard*, but where the attorney in *Howard* intentionally misappropriated her client's funds, respondent misappropriated his clients' funds by gross negligence. There are also significantly more mitigating circumstances in the instant matter than were found in *Howard*. As such, a level of discipline less severe than that imposed in *Howard* is appropriate in the present matter.

In *Waysman v. State Bar*, (1986) 41 Cal.3d 452, the attorney was out of town for a multi-week trial when he received a settlement draft on behalf of a client. He remotely instructed his secretary to deposit the settlement check into his general account because it would clear faster. When Waysman returned from trial he found his secretary had paid herself from the general account and quit. The general account had also been used for various expenses and the entire settlement amount of \$24,000 had been spent. Waysman immediately informed the client and began making restitution payments approximately five months later. Waysman had no prior discipline over 14 years of practice and was suffering from alcoholism, from which he had since rehabilitated. Waysman received mitigation for spontaneously informing his client of the misappropriation and beginning restitution payments. The Court stated, "while [Waysman's] conduct certainly cannot be condoned, he appears to have acted without any intent to defraud his client. Although he 'misappropriated' the client funds in the sense that he wrongfully misused the money for his own office expenses, the stipulation and facts strongly suggest that it is likely that [Waysman] was simply negligent in supervising his office and financial affairs." (*Id.* at 458.) The Court found the misconduct aberrational and imposed six months of stayed suspension and one year of probation with no actual suspension.

The present matter involves less funds than were misappropriated in *Waysman*, but has similar factors in mitigation. Both respondent and Waysman spontaneously notified their clients of the misappropriation and took steps to make their clients financially whole. However, Waysman's misappropriation was the result of simple negligence, whereas respondent's misappropriation was the result of his gross negligence. So while a less severe sanction than the six-month period of actual suspension that was imposed in *Howard* is warranted in the present matter, the six-month period of stayed suspension that was imposed in *Waysman* would not be appropriate.

In light of the foregoing, discipline consisting of one year of stayed suspension and one year of probation with conditions including 60 days of actual suspension is appropriate to protect the public, the

courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 15, 2015, the prosecution costs in this matter are \$3,066. 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

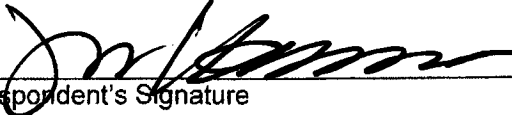
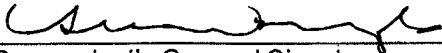

Pursuant to rule 3201, respondent may not receive MCLE credit for completion of Ethics School ordered as a condition of discipline. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: JAMES HALE HARMON	Case number(s): 13-O-13951
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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>12-22-15</u> Date	 Respondent's Signature	<u>James Hale Harmon</u> Print Name
<u>12-28-15</u> Date	 Respondent's Counsel Signature	<u>Susan L. Margolis</u> Print Name
<u>12/28/15</u> Date	 Deputy Trial Counsel's Signature	<u>Shane C. Morrison</u> Print Name

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In the Matter of:
JAMES HALE HARMON

Case Number(s):
13-O-13951

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

1/11/16


Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 12, 2016, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

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:

**SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
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- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SHANE MORRISON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 12, 2016.



Tammy Cleaver
Case Administrator
State Bar Court