


(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Lara Bairamian Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1338 Bar # 253056	Case Number(s): 13-O-14361-YDR	For Court use only <div style="text-align: center;"> FILED DEC 23 2014  STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Kevin Patrick Gerry 711 North Soledad Street Santa Barbara, CA 93103 (805) 899-2990 Bar # 129690	PUBLIC MATTER	
In the Matter of: EVAN TOD SUSSMAN Bar # 175176 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <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.

kwiktag® 183 822 081



A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 12, 1994**.
- (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 (11) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
 - (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 intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See Attachment to Stipulation, at page 8.**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(Do not write above this line.)

- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment to Stipulation, at page 8.**
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (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 subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

(Do not write above this line.)

Additional mitigating circumstances:

No Prior Discipline - See Attachment to Stipulation, at page 8.

Pretrial Stipulation - See Attachment to Stipulation, at page 8.

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: EVAN TOD SUSSMAN

CASE NUMBER: 13-O-14361

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-14361 (Complainant: Scott Aungst)

FACTS:

1. On May 19, 2011, Scott Aungst ("Scott") filed a Petition for a Dissolution of Marriage from Robin Aungst ("*Aungst v. Aungst*").
2. On July 14, 2011, Scott retained Respondent to represent him as successor counsel in *Aungst v. Aungst*.
3. While *Aungst v. Aungst* was pending, the parties agreed to sell the Aungst family residence.
4. On December 21, 2011, the Los Angeles Superior Court ordered that the proceeds from the sale of the Aungst family residence be placed in an interest bearing account controlled by Respondent. Each party was to receive \$20,000.00. Otherwise, no other disbursements could be made unless by court order.
5. On January 25, 2012, after escrow closed on the Aungst residence, the escrow funds in the amount of \$289,255.09 were distributed to Respondent. Respondent deposited the \$289,255.09 into a segregated client trust account ("segregated account").
6. On August 31, 2012, the Employment Development Department ("EDD") levied the segregated account in the amount of \$64,457.70. Respondent did not notify Scott of the levy.
7. On November 29, 2012, Respondent removed \$20,500 from the segregated account and placed the funds into his regular client trust account ("CTA"). This transfer was done without court order.
8. From November 29, 2012 to January 8, 2013, Respondent was required to maintain \$20,500 in his CTA on behalf of the Aungsts.
9. On January 4, 2013, Respondent's CTA dipped to \$19,847.56.

10. On January 9, 2013, with authorization, Respondent issued a \$13,000 check to expert witness Stan Katz, changing the amount required to be maintained in the segregated account from \$20,500 to \$7,500.

11. On June 11, 2013, Respondent's account dipped to \$69.61.

12. Between November 29, 2012 and August 1, 2013, Respondent deposited funds belonging to Respondent into his CTA, including but not limited to the following:

- a) Twenty checks from Stolar and Associates,
- b) Five checks from Scott Aungst, and
- c) Two checks from relatives of Respondent.

13. Between November 29, 2012 and August 1, 2013, Respondent paid out funds from his CTA account for the payment of personal expenses, including but not limited to the following:

- a) Eleven checks to Joseph Young,
- b) Eight checks to Waldorf Towers, and
- c) Two checks to Doheny Plaza Apartments.

14. On April 30, 2013, Scott terminated Respondent and retained attorney Charles Rosenberg ("Rosenberg") as successor counsel to Respondent.

15. On July 2, 2013, Rosenberg wrote Respondent a letter requesting that the trust funds from the sale of the Aungst family residence be transferred to Rosenberg. Respondent received the letter but did not release any portion of the \$7,500 that was required to be kept in Respondent's possession, to Rosenberg.

16. On July 22, 2013, Respondent's counsel sent Rosenberg an e-mail advising Rosenberg that Respondent deposited the proceeds from the sale of the Aungst family residence into a segregated account as ordered by the court and that, on August 31, 2012, the EDD levied \$64,382.70 from the segregated account. Respondent's counsel stated Respondent would forward a cashier's check in the amount of \$8,232.58 to Rosenberg.

17. On August 1, 2013, a third party loaned Respondent \$8,000 which Respondent deposited into his CTA.

18. On August 1, 2013, Respondent sent Rosenberg a cashier's check for \$8,232.38.

19. On December 11, 2013, the EDD returned the levied funds in the amount of \$64,382.70 to the segregated account, which Respondent wired to Rosenberg.

CONCLUSIONS OF LAW:

20. By failing to inform Scott that on August 31, 2012, the EDD levied \$64,382.70 held on behalf of the Aungsts from Respondent's segregated account, Respondent failed to keep Scott reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

21. By failing to comply with the court's December 21, 2012 order that Respondent not make any disbursements from proceeds from the sale of the Aungst family residence unless by court order, Respondent disobeyed or violated an order of the court requiring Respondent to do or forbear an act connected with or in the course of Respondent's profession which Respondent ought in good faith to do or forbear, in willful violation of Business and Professions Code section 6103.

22. By depositing funds belonging to Respondent into Respondent's CTA and by paying out funds from Respondent's CTA for the payment of personal expenses, Respondent deposited or commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

23. By failing to maintain \$20,500 in the general client trust account on behalf of the Aungsts between November 29, 2012 through January 8, 2013 and by failing to maintain \$7,500 on behalf of the Aungsts between February 2, 2013 through July 30, 2013, Respondent failed to maintain client funds in a client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

24. By misappropriating \$7,430.39 of the Aungsts' funds, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

25. By not returning the \$7,500 that was in Respondent's possession to Scott until August 1, 2013, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent's misconduct significantly harmed Scott who was deprived of his funds until Respondent obtained funds from his parents to replenish the misappropriated funds and until the EDD returned the levied funds to Respondent.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's current misconduct involves six (6) counts of misconduct in one (1) client matter.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although Respondent's misconduct is serious, he is entitled to mitigation for having practiced law for over 20 years without discipline prior to the commencement of the current misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby avoiding the necessity of a trial and saving the 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].) By entering into the stipulation, Respondent has acknowledged and accepted responsibility for his misconduct.

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).)

In this matter, Respondent admits to committing six acts of professional misconduct. Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to Respondent’s misconduct is found in Standard 2.1(a), which applies to Respondent’s violation of Business and Professions Code section 6106. Standard 2.1(a) provides that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.

Here, Respondent was initially required to maintain \$20,500 in his CTA on behalf of Scott, yet between December 10, 2012 and January 5, 2013, the balance in his CTA fell below this amount. When Respondent was required to maintain \$7,500 in his CTA on behalf of Scott, between February 2, 2013 and July 30, 2013, the balance in his CTA, again, fell below this amount. In fact, on June 11, 2013, Respondent’s account dipped to \$69.61. The amount of money Respondent misappropriated was not insignificantly small and there are no compelling mitigating circumstances.

Based on the seriousness of Respondent’s misconduct which includes acts involving moral turpitude, disbarment is the appropriate discipline for Respondent and the only way to adequately protect the public and the integrity of the legal profession.

Disbarment is also consistent with case law. The Supreme Court has imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, an attorney with over eleven years of practice and no prior record of discipline was disbarred for misappropriating approximately \$29,000 in law funds over an eight month period. In *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost \$7,900 from his law firm, coincident with his termination by that firm, and was disbarred.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 3, 2014, the prosecution costs in this matter are \$7,252. 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.

(Do not write above this line.)

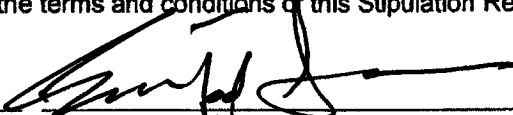
In the Matter of: EVAN TOD SUSSMAN	Case number(s): 13-O-14361
---------------------------------------	-------------------------------

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.

12-5-2014

Date



Respondent's Signature

Evan Tod Sussman

Print Name

12-5-14

Date



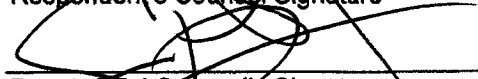
Respondent's Counsel Signature

Kevin Patrick Gerry

Print Name

12/5/14

Date



Deputy Trial Counsel's Signature

Lara Bairamian

Print Name

(Do not write above this line.)

In the Matter of: EVAN TOD SUSSMAN	Case Number(s): 13-O-14361
---------------------------------------	-------------------------------

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 Evan Tod Sussman 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.

Date

12-22-14


GEORGE E. SCOTT, JUDGE PRO TEM
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 December 23, 2014, I deposited a true copy of the following document(s):

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

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

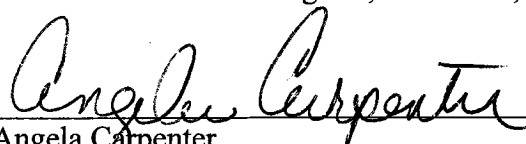
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

KEVIN P. GERRY
711 N SOLEDAD ST
SANTA BARBARA, CA 93103

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

LARA BAIRAMIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 23, 2014.



Angela Carpenter
Case Administrator
State Bar Court