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ORIGINAL

PUBLIC MATTER

State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p><b>Eli D. Morgenstern</b> Senior Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2515 213-765-1334</p> <p>Bar # 190560</p>	<p>Case Number(s): 13-O-14433</p>	<p>For Court use only</p> <p><b>FILED</b> <i>[Signature]</i> <b>MAR 17 2015</b> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>James I. Ham</b> Pansky, Markle, Ham LLP 1010 Sycamore Ave, Unit 308 South Pasadena, CA 91030 213-626-7300</p> <p>Bar # 100849</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>BENJAMIN NATHANIEL STERNBERG</b></p> <p>Bar # 217300</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 3, 2001**.
- (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."



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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 years following the effective date of the Supreme Court Order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

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

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case
  - (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.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (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. **See page 12.**

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- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No prior discipline. See page 11.**  
**Pretrial Stipulation. See page 11.**  
**Pro Bono Activities and Community Service. See page 11.**

#### **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 present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of **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 **one year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

#### **E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

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- (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

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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:**

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In the Matter of: <b>BENJAMIN NATHANIEL STERNBERG</b>	Case Number(s): <b>13-O-14433</b>
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## Financial Conditions

### a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

### b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

### c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.



**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: Benjamin Nathaniel Sternberg

CASE NUMBER: 13-O-14433

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statute.

Case No. 13-O-14433 (Complainant: Taya King)

**FACTS:**

1. On June 19, 1989, Maurice King and Arlene F. King signed the "Fourth Amendment To and Complete Restatement of Maurice King and Arlene F. King Trust" (the "Restated Trust").
2. Under the terms of the Restated Trust, upon the death of the first to die Trustor, who was Mr. King, the husband of Mrs. King, the Restated Trust was to split into three different Trusts, with one of the trust identified as Trust A. Trust A was to contain the interests of the surviving trustor.
3. On April 19, 2007, Mrs. King executed a power of appointment for Trust A entitled the "Last Will and Testament of Arlene F. King" (the "Will" or "Trust A"). The Will appointed Randall King ("Randall") and Taya King ("Taya"), the adult children of Mr. and Mrs. King, as co-trustees of Trust A.
4. The Will also directed the funding of five separate subtrusts for the benefit of Mr. and Mrs. King's grandchildren, the children of Randall and Taya, so that each would be funded with at least \$150,000, including a trust for Taya's daughter, Alliya King ("Alliya"). These subtrusts were created and partially funded prior to Mrs. King's death on June 5, 2010. However, at the time of Mrs. King's death, Alliya's trust still required additional funds to reach the \$150,000 cap directed by the Will.
5. On November 29, 2011, Randall employed respondent and Alan Sternberg ("Sternberg") to represent him in his capacity as the co-trustee of Trust A. At all relevant times to the facts herein, attorney Steven Sosa represented Taya in her capacity as the co-trustee of Trust A.
6. In October 2012, Trust A marshalled one of its assets, an investment managed by Chesapeake Life, which was liquidated for cash in the net amount of \$579,847.80 (the "Chesapeake Funds").
7. On October 4, 2012, the Chesapeake Funds were deposited into the bank account for the Restated Trust at 1<sup>st</sup> Enterprise Bank.
8. Thereafter, a dispute arose between Randall and Taya as to the disbursement of the Chesapeake Funds.

9. On October 24, 2012, the court held a status conference in the matter titled *In Re The Matter of The Maurice and Arlene F. King Trust*, Los Angeles County Superior Court case nos. BP 131118 and BP131139 (the "King Trust matter"). At the status conference, the court directed the parties to meet and confer in order to reach an agreement regarding the disbursement of the Chesapeake Funds. After the status conference, the parties met and conferred and reached an agreement with respect to the distribution of the Chesapeake Funds.

10. On October 26, 2012, respondent prepared a document that he titled "Stipulation for Disbursement" (the "Stipulation"). On October 26, 2012, respondent and Sternberg, as co-counsel for Randall in his capacity as the co-trustee of Trust A; and Sosa, as counsel for Taya in her capacity as the co-trustee of Trust A, signed the Stipulation. The Stipulation was not filed with the court in the King Trust matter, as the court did not require it.

11. The Stipulation authorized distribution of 50%, or \$290,414.71, of the Chesapeake Funds into respondent and Sosa's client trust accounts, respectively.

12. The Stipulation also provided, in relevant part, as follows:

"C. That upon receipt of the \$290,414.71 into Law Offices of Benjamin Sternberg, APC, Attorney Client Trust Account, Randy by and through his attorneys shall disburse funds as agreed and as follows:

(i) \$52,000 shall be set aside for funding of Aaliya [sic] King's trust account that has not yet been fully funded. This amount shall be payable to Aaliya King's Trust and sent to Steven C. Sosa, Esq. via mailed check, within five (5) days of receipt of the funds into *Law Offices of Benjamin Sternberg, APC, Attorney Client Trust Account; . . .*"

13. Pursuant to the Stipulation, respondent owed a fiduciary duty to the Alliya King Trust to release the \$52,000 to Sosa's client trust account in a timely manner upon respondent's receipt of Randall's portion of the Chesapeake Funds.

14. On October 30, 2012, \$290,414.71 was wired into respondent's client trust account at Bank of America. At no time did respondent mail a check to Sosa in the sum of \$52,000 made payable to Sosa's client trust account.

15. On December 11, 2012, the court in the King Trust matter suspended Randall and Taya as trustees and appointed Jason Rubin ("Rubin") as a successor trustee of Trust A.

16. By January 2013, respondent, with the consent of Randall, but contrary to the terms of the Stipulation, had applied the \$52,000 designated for the Alliya King Trust to Randall's attorney fees and costs.

17. On January 22, 2013, respondent met with Jonathan Park ("Park"), the attorney for Rubin in his capacity as the successor Trustee of Trust A. At the meeting, respondent informed Park that he used the \$52,000 designated for the Alliya King Trust to pay for Randall's attorney's fees and costs.

18. On March 27, 2013, Rubin was appointed as the administrator of Mrs. King's Estate.

19. In August 2013, respondent filed a pleading in the King trust matter wherein, among other things, he accounted for the \$52,000.

20. On December 1, 2013, Rubin, Randall, Taya, and the grandchildren reached a stipulation as to the administration of Mrs. King's Estate and the various related trusts. Pursuant to the stipulation, the proceeds of Randall's marital property, which was owned 50% by Trust A and 50% by the Randy King Trust, were to be used to, among other things, fund the Alliya King Trust.

21. On May 5, 2014, Taya, in her capacity as the acting trustee of Alliya's King Trust, received \$52,000 from Rubin, as Trustee of Trust A. In May 2014, the Alliya King Trust became fully funded.

#### CONCLUSIONS OF LAW:

22. By failing to release \$52,000 from Randall's portion of the Chesapeake Funds to Sosa's client trust account in accordance with the Stipulation, respondent breached the fiduciary duty that he owed to the Alliya King Trust, and thereby committed an act of moral turpitude in willful violation of Business and Professions Code, section 6106.

23. By utilizing the \$52,000 towards attorney's fees and costs, respondent misappropriated the funds which were supposed to be used to fund the Alliya King Trust, and thereby committed an act of moral turpitude in willful violation of Business and Professions Code, section 6106.

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Although respondent's misconduct is serious, he was admitted to the State Bar on December 3, 2001, and has no prior record of discipline. At the time of the misconduct, respondent had practiced law for approximately 11 years. Respondent is entitled to significant mitigation for his 11 years of discipline-free practice. (*Hawes v. State Bar* (1991) 51 Cal. 3d 587, 596 [over 10 years of practice before first misconduct given significant weight even though misconduct at issue was serious].)

**Pretrial Stipulation:** By entering into this stipulation, which serves to resolve this matter fully without the necessity of a disciplinary trial, respondent has demonstrated that he acknowledges his misconduct and saved 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].)

**Pro Bono Activities and Community Service:** Between 2007 and 2014, respondent acted as a judge pro tem with the Los Angeles County Superior Court. In addition, respondent provided evidence to the State Bar establishing that he has consistently provided pro bono legal services since becoming a member of the State Bar in 2001. Respondent also provided evidence to the State Bar that he is active

in the community at large. Respondent is a founder and Vice-Chairman of the Board of Directors for Angela's Angels, a non-profit organization that provides computers to children in Los Angeles area hospitals. Respondent is also active in his synagogue and several Jewish organizations. (See *Calvert v. State Bar* (1991) 51 Cal.3d 765, 785 [community service and pro bono activities are mitigating factors that may be entitled to considerable weight].)

**Good Character (Std. 1.6(f)):** Respondent provided the State Bar with letters from a wide range of references, all of whom are aware of the full extent of respondent's misconduct, attesting to respondent's good character and commitment to the legal profession.

## **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 Silverton* (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 two 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 misappropriation of third-party funds. Standard 2.1(a) provides that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds, 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.

By virtue of the Stipulation, respondent agreed to set aside \$52,000 of Randall's portion of the Chesapeake Funds for the funding of the Alliya King Trust. By agreeing to do so, respondent became a fiduciary to the Alliya King Trust. (*Johnstone v. State Bar* (1966) 64 Cal. 2d 153, 155-156). Respondent was required to comply with the same fiduciary duties in dealing with the \$52,000 as if an attorney-client relationship existed between him and the Alliya King Trust. (*Id.*)

Respondent also agreed to transfer those funds to Sosa's client trust within five days of his receipt of Randall's portion of the Chesapeake Funds. By failing to disburse the \$52,000 to Mr. Sosa in conformity with the Stipulation, respondent misappropriated the funds in violation of the fiduciary duty that he owed to the Alliya King Trust. It is well settled that an attorney may be disciplined for a breach of fiduciary duty owed to a non-client. (*Worth v. State Bar* (1976) 17 Cal. 3d 337, 341.)

Respondent's breach of his fiduciary duty and misappropriation of funds constitutes serious misconduct. The California Supreme Court has repeatedly held that the "usual" discipline for willfully misappropriating client funds is disbarment. (*Edwards v. State Bar* (1990) 52 Cal.3d 28; *Howard v. State Bar* (1990) 51 Cal. 3d 215, 221; see also *Kelly v. State Bar* (1988) 45 Cal. 3d 649, 656 [intentional misappropriation generally warrants disbarment]; *Friedman v. State Bar* (1990) 50 Cal.3d 235, 244-245 [disbarment generally is warranted].)

However, the California Supreme Court has also stated that willful misappropriation "covers a broad range of conduct varying significantly in the degree of culpability." (*Edwards v. State Bar, supra*, 52 Cal.3d at p. 38.) Further still, the Supreme Court has indicated that in some misappropriation cases a discipline of less than disbarment is warranted where extenuating circumstances show that the misappropriation of entrusted funds is an isolated event involving a single client and other mitigating circumstances are present. (See *Edwards v. State Bar, supra*, 52 Cal. 3d 28, 36-37, 39 [Supreme Court imposed a discipline consisting of a one year actual suspension for an attorney who willfully misappropriated a client's settlement funds totaling approximately \$3,000 in light of the attorney's good faith in refraining from acts of deceit towards the client, making full repayment within three months after the misappropriation and before the attorney was aware of the complaint to the State Bar, cooperating candidly throughout the proceedings, and voluntarily taking steps to improve his management of entrusted funds]. See also *Boehme v. State Bar* (1988) 47 Cal.3d 448, 451-452 [Supreme Court imposed a discipline consisting of an 18-month actual suspension for an attorney who willfully misappropriated a client's settlement funds totaling \$1,901.32 in light of the attorney's single instance of misconduct in over 20 years of practice].)

The parties submit that disbarment is not needed in this case due to the facts and circumstances surrounding respondent's misconduct. The matter involves, what appears to be, an isolated instance of misconduct resulting from respondent's breach of the fiduciary duty that he owed to a third party. Although the misconduct is unjustifiable, the significant mitigating factors suggest that the misconduct is aberrational. At the time of the misconduct, respondent had practiced law for over 11 years without a prior record of discipline. Further, by admitting his misconduct and agreeing to the terms of this stipulation, including that he remain actually suspended until he provides satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law, respondent has taken the initial steps to demonstrate that he is willing to conform his future conduct to the ethical requirements of the profession of law. Moreover, although not a mitigating factor, it is important to note for the purposes of determining the appropriate level of discipline, that the Alliya King Trust was ultimately funded by another asset of Trust A. In view of these factors, combined with respondent's evidence of good character, commitment to the legal profession, and community service, the parties submit that a discipline consisting of a two year suspension, stayed, and two years' probation,

with conditions including a one-year actual suspension and until respondent complies with Standard 1.2(c)(1) will adequately serve the disciplinary goals of these proceedings.

**DISMISSALS.**

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
13-O-14433	THREE	Business and Professions Code, section 6068(a)
13-O-14433	FOUR	Rules of Professional Conduct, rule 4-100(B)(3)
13-O-14433	FIVE	Rules of Professional Conduct, rule 4-100(A)
13-O-14433	SIX	Rules of Professional Conduct, rule 4-100(B)(4)

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of February 9, 2015, the prosecution costs in this matter are \$5,543. The discipline costs are to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the Supreme Court Order herein. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**EXCLUSION FROM MCLE CREDIT**

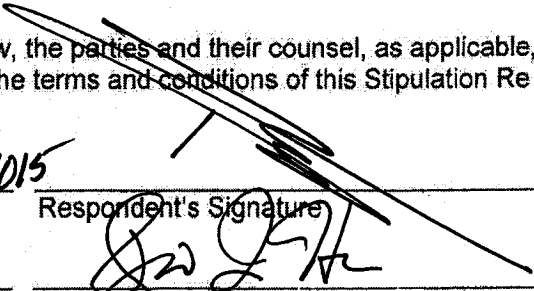
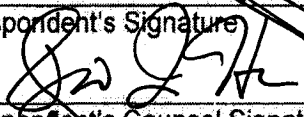
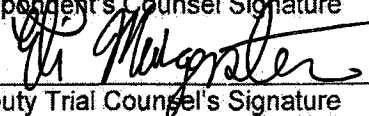
Pursuant to rule 3201, respondent may not receive MCLE credit for completion of State Bar Ethics and Client Trust Accounting Schools. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: BENJAMIN STERNBERG	Case number(s): 13 O-14433
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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>FEBRUARY 20, 2015</u> Date	 Respondent's Signature	<u>Benjamin N. Sternberg</u> Print Name
<u>2-20-2015</u> Date	 Respondent's Counsel Signature	<u>James I. Ham</u> Print Name
<u>2-23-2015</u> Date	 Deputy Trial Counsel's Signature	<u>Eli D. Morgenstern</u> Print Name

(Do not write above this line.)

In the Matter of: BENJAMIN NATHANIEL STERNBERG	Case Number(s): 13-O-14433
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### 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.)**

3-16-15  
Date

  
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 March 17, 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:

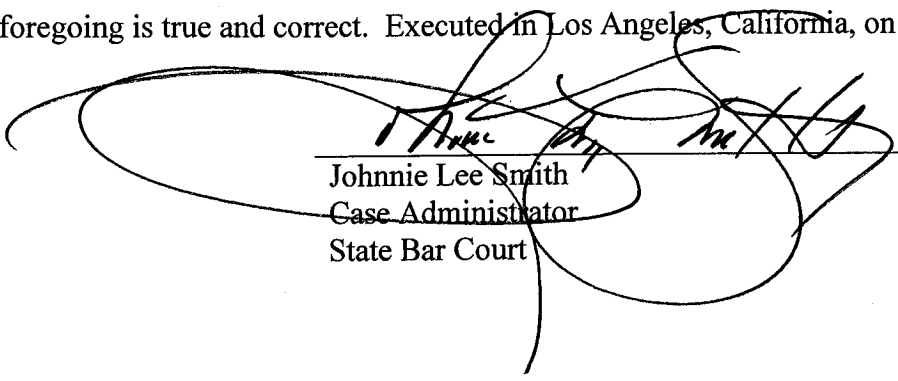
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JAMES IRWIN HAM  
PANSKY MARKLE HAM LLP  
1010 SYCAMORE AVE UNIT 308  
SOUTH PASADENA, CA 91030**

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

**ELI MORGENSTERN**, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 17, 2015.



\_\_\_\_\_  
Johnnie Lee Smith  
Case Administrator  
State Bar Court