

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Lori Brodbeck Contract Attorney 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1075 Bar # 291116	Case Number(s): 14-J-03437	For Court use only <div style="text-align: center;"> FILED JAN 02 2015 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Randolph Craig Smith Bar # 101375	Submitted to: Settlement Judge	
In the Matter of: RANDOLPH CRAIG SMITH Bar # 101375 A Member of the State Bar of California (Respondent)	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.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 1, 1981**.
- (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 (14) 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."



BR
10.22

(Do not write above this line.)

- (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. **See Attachment at page 9.**
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See Attachment at page 9.**
- (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 at pages 9-10.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

Misconduct for Personal Gain, see Attachment at page 10.

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:

Pre-trial stipulation. See Attachment at page 10.

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:**

notarization falsely stated Ms. Jo personally appeared before her. Ms. Jo did not authorize Respondent to place her name and signature on the release.

7. The insurer sent a \$13,000 check, and Respondent placed his signature and falsified Ms. Jo's signature on the back before he deposited the amount in the escrow account he held in the PNC Bank. On July 23, 2012, Respondent wrote to Ms. Jo that he received a settlement check and that she should contact him to distribute the amount to her. On August 2, 2012, Respondent sent a letter to Ms. Jo and included a check for \$10,400, which was drawn from Respondent's escrow account plus a copy of the \$13,000 check from the insurer. He also enclosed two copies of a document, titled Settlement Summary of Distribution Sheet. He requested Ms. Jo sign and return one copy in a self-addressed envelope and he explained his reasons for settling.

8. On August 7, 2012 Ms. Jo wrote to Respondent that his services were terminated and he was not to contact her. She had retained another attorney who would contact Respondent for the file and she did not know how he could send her a check in the settlement of her case. On August 9, 2012, Respondent acknowledged this letter from Ms. Jo and asked for the check back or if he should stop payment. On August 30, 2012, Ms. Jo's new attorney, wrote Respondent asking for the legal file and stated the insurer agreed to rescind the settlement for \$13,000.

9. Respondent admitted that, in committing the acts in paragraphs 5 through 8 above, he violated the Pennsylvania Rules of Professional Conduct, rules 1.2(a) [a lawyer shall abide by a client's decisions concerning the objectives of representation], 1.4(a)(2) [a lawyer shall reasonably consult with the client about the means of accomplishing those objectives], 1.4(b) [a lawyer shall reasonably explain to the client to make informed decisions regarding the representation], 4.1(a) [a lawyer shall not knowingly make a false statement of material fact or law to a third person], 8.4(a) [a lawyer commits professional misconduct if he knowingly assists or induces another to violate or attempt to violate the Rules of Professional Conduct], and 8.4(c) [a lawyer commits professional misconduct if he engages in conduct involving dishonesty, fraud, deceit, or misrepresentation.]

The Robert Haviland Matter

10. On January 14, 2013, Robert Haviland filed a *pro se* Post-Conviction Relief Act petition (PCRA) with the Court in connection with two criminal cases against him. The Judge appointed Mark Arnold Barket to represent Mr. Haviland.

11. The Commonwealth filed its answer to the PCRA, and after a hearing, Mr. Barket withdrew as counsel and filed a "no merit" letter. On March 15, 2013, the Court denied the PCRA petition and advised Mr. Haviland that any appeal would be due within 30 days. Mr. Haviland had previously retained Arthur Braitman, an attorney, for an automobile accident case that settled for \$37,500. Mr. Braitman still had possession of the settlement proceeds. Mr. Haviland had a phone conversation with Mr. Braitman and requested he find an experienced criminal attorney to deal with his PCRA appeal. Mr. Haviland authorized Mr. Braitman to use no more than \$1,000 of the settlement to retain the attorney by April 15, 2013.

12. Respondent has known Mr. Braitman since 1987. Mr. Braitman called Respondent, who agreed to represent Mr. Haviland for \$9,000 and to pay Mr. Braitman a 20% referral fee from the \$9,000. On April 10, 2013, Mr. Braitman wrote Mr. Haviland stating that he spoke with Respondent who agreed to represent Mr. Haviland for \$9,000 and requested that Mr. Haviland confirm that Mr. Braitman had permission to pay this amount. This letter was sent to Respondent, as well.

13. On April 11, 2013, Respondent received a \$9,000 check from Mr. Braitman's IOLTA account. Respondent deposited this amount to his IOLTA account in the PNC bank. On April 12, 2013, Respondent wrote a check to himself for \$7,200. On that date Respondent also wrote Mr. Haviland that, with his permission, Respondent would appeal in exchange for \$9,000; further services included a one-day visit with Mr. Haviland, obtaining copies of the entire file, and filing any subsequent appeals.

14. On April 13, 2013, Respondent wrote a check to Braitman for \$1,800, which was identified as a referral fee for the Haviland case. Mr. Braitman negotiated this check a few days later. Respondent failed to ascertain if Mr. Haviland objected to the referral fee and failed to obtain Mr. Haviland's informed, written consent to the immediate expenditure of the retainer. Respondent had already paid himself all of the funds before Mr. Haviland had expressly agreed to retain Respondent and before Respondent performed any legal services.

15. April 16, 2013, Mr. Haviland wrote Respondent that he had not authorized Mr. Braitman to pay Respondent \$9,000 and he requested the payment be returned immediately. Respondent received this letter. The next day, Mr. Haviland wrote Mr. Braitman stating he had not authorized him to pay Respondent \$9,000 and stated he wrote Respondent asking for a refund. Mr. Haviland also filed his *pro se* appeal and asked for an appointment of counsel. Counsel Julie A. Werdt was appointed.

16. Again on April 21, 2013, Mr. Haviland wrote Respondent stating he had already filed the PCRA appeal, that Respondent's \$9,000 fee was unreasonable, and that he was not willing to pay that amount. Mr. Haviland also wrote to Mr. Braitman reiterating he did not authorize the \$9,000 payment to Respondent and that he expected a refund of the amount. A third time, Mr. Haviland wrote Mr. Braitman and Respondent, stating he did not consent to the \$9000 payment to Respondent for the appeal, that he was satisfied with the court appointed counsel, and that he requested Mr. Braitman "regain control" of the \$9,000.

17. Roughly a week later, Mr. Braitman wrote Respondent confirming he left Respondent a voicemail regarding Respondent's representation on the appeal, that it became clear Mr. Haviland never hired Respondent, and that he was requesting Respondent return the \$9,000.

18. On September 3, 2013 Respondent wrote Mr. Braitman a check for \$7,200 payable to Mr. Haviland, stated he gave Mr. Braitman a 20% referral fee, and asserted his expectation that Mr. Braitman pay this to make Mr. Haviland whole. Respondent wrote this letter and refunded Mr. Haviland only after his defense attorney had a conference call with the Pennsylvania Disciplinary Counsel, Richard Hernandez.

19. Respondent admitted that, in committing the acts in paragraphs 10 through 18 above, he violated the Pennsylvania Rules of Professional Conduct, rules 1.5(b) [a lawyer who has not regularly represented a client shall communicate the fee to the client in writing before or within a reasonable time after commencing the representation], 1.5(e) [a lawyer shall not divide a fee with another lawyer unless the informed client does not object and the total fee is not illegal or clearly excessive], 1.15(e) [a lawyer shall promptly deliver to the client or third person property that client or third party is entitled to receive and shall promptly render a full accounting], 1.15(i) [a lawyer shall deposit into a Trust Account legal fees and expenses paid in advance by the client unless given informed, written consent to do otherwise], 1.16(d) [upon termination, a lawyer shall take reasonable steps to protect a client's interests, such as reasonable notice, surrendering papers and property, and refunding advance fees or expenses not incurred.]

The Misappropriation of Client Funds In the IOLTA Account

20. Respondent maintained an IOLTA account in the PNC Bank for the funds he held on his clients' behalf. Respondent had the sole signature authority for the IOLTA.

21. From July 15, 2008 through August 29, 2013, save for a few days or sporadic periods, Respondent failed to maintain fiduciary funds deposited in the IOLTA in an amount equal to the fiduciary funds entrusted to him. Respondent during this time knowingly misappropriated funds belonging to his clients, including the \$9,000 from Mr. Braitman.

22. In the second half of 2008, the largest amount below the expected balance entrusted to him on his clients' behalf was \$10,809.21. In 2009, the largest amount below the expected balance for his clients was \$30,812.91. In 2010, Respondent's IOLTA was as much as \$30,816.40 below the expected balance. In 2011, this amount was \$3,811.50. In 2012, the amount was \$8,096.19, and for a few months in 2013, it was \$8,997.60.

23. Before entering into a stipulation with the Pennsylvania Office of Disciplinary Counsel, Respondent made full restitution and paid what was owed to his clients in the amounts listed in the charges and documentary evidence offered by the Pennsylvania Disciplinary Office.

24. Respondent admitted that, in committing the acts in paragraphs 20 through 23 above, he violated the Pennsylvania Rules of Professional Conduct, rules 5.4(a) [a lawyer shall not share legal fees with a nonlawyer except in certain circumstances under subparagraphs (1) through (5)], 7.3(a) [a lawyer shall not solicit in person or by intermediary professional employment from a person with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is pecuniary gain], and 8.4(a) [a lawyer commits professional misconduct if he engages in conduct involving dishonesty, fraud, deceit, or misrepresentation.]

Improper Solicitation of Clients and Sharing Legal Fees with Non-Lawyers

25. In addition to his IOLTA account, Respondent maintained an account for his private practice at the PNC bank (hereinafter, "the operating account"). From 2008 through 2012, Respondent made total payments of \$93,121.13 to Sothia Kien, Charlie Ly, Eunjin Kim, and Eunice Cho for their soliciting his professional employment from various individuals not part of the Respondent's family, not in close personal relationships with Respondent, or not from a prior professional relationship with Respondent. These solicitations were in pursuit of personal injury cases.

26. From 2008 through 2011, Respondent made payments to Sothia Kien by checks from Respondent's IOLTA and the operating account totaling \$66,753.63.

27. In 2008, 2009, 2010, and 2012, Respondent made payments to Charlie Ly by checks from the IOLTA and the operating account totaling \$22,652.50.

28. In 2010 through 2012, Respondent made payments to Eunice Cho by checks from the Respondent's IOLTA and the operating account totaling \$1,525.

29. In at least three legal matters, Respondent shared legal fees with Sothia Kien for cases with clients Toan Ngoc Nguyen, Simon T. Nguyen, and Kinh Pham. In one legal matter, Respondent shared legal fees with Charlie Ly (the Chau Tran case). In one legal matter, Respondent shared legal fees with Eunjin Kim for the Bolam Sung and Soon Yong Sung matter.

30. Respondent admitted that, in committing the acts in paragraphs 25 through 29 above, he violated the Pennsylvania Rules of Professional Conduct, rules 1.2(a) [a lawyer shall abide by a client's decisions concerning the objectives of representation], 1.4(a)(2) [a lawyer shall reasonably consult with the client about the means of accomplishing those objectives], 1.4(b) [a lawyer shall reasonably explain to the client to make informed decisions regarding the representation], 4.1(a) [a lawyer shall not knowingly make a false statement of material fact or law to a third person], 8.4(a) [a lawyer commits professional misconduct if he knowingly assists or induces another to violate or attempt to violate the Rules of Professional Conduct], and 8.4(a) [a lawyer commits professional misconduct if he knowingly assists or induces another to violate or attempt to violate the Rules of Professional Conduct.]

CONCLUSIONS OF LAW:

31. As a matter of law, Respondent's culpability of professional misconduct determined in the proceedings in Pennsylvania warrants the imposition of discipline under the laws and rules binding upon Respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

32. By engaging in the acts above, Respondent committed the following equivalent violations of the California Business and Professions Code (the State Bar Act), Sections 6068(m) [a member shall promptly respond to reasonable status inquiries by the client or keep the client reasonably informed of significant developments in the matters of representation], 6103.5(a) [a member shall promptly communicate to the client all amounts, terms, and conditions of any written settlement offer], 6106 [a member's commission of an act of moral turpitude, dishonesty, or corruption constitutes a cause for disbarment or suspension], and 6152 [it is unlawful for a person to solicit any business for any attorneys in . . . any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever. It is also unlawful for any person to solicit another to commit or join in the commission of a violation of this rule.]

33. Respondent also committed the following equivalent violations of the California Rules of Professional Conduct, rules 1-120 [a member shall not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act], 1-320(A) [a member shall not share legal fees with a person who is not a lawyer except in circumstances described in subsection (1) through (4)], 1-400(C) [a solicitation shall not be made by or on behalf of a member to a prospective client with whom the member has no family or prior professional relationship], 2-200(A) [a member shall not divide a fee with another non-partner or associated lawyer unless the informed client consents in writing and the overall fee is not increased solely due to the division of fees and is not unconscionable], 3-510(A) [a member shall promptly communicate to the client all amounts, terms, and conditions of a written settlement offer], 3-700(A)(2) [a member shall not withdraw as counsel until he has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, upon giving due notice, and complying with the applicable laws and rules], 3-700(D) [upon termination, a member shall promptly release to the client all papers and property necessary to the client's representation and promptly refund any part of a fee paid in advance and not earned], 4-100(A) [all funds received or held for the benefit of a client by a member, including advances in costs and expenses, shall be deposited in a Trust Account

and shall not be comingled with the member's property or funds], and 4-100(B) [a member shall notify the client of receipt of the client's funds or other properties, shall identify and label the property promptly upon receipt, shall maintain a complete record of all funds and properties and render an account to the client, and promptly pay or deliver as requested said funds and property to which the client is entitled.]

AGGRAVATING CIRCUMSTANCES.

Trust Violations (Std. 1.5(e)): Respondent misappropriated funds entrusted to him within his Client Trust Account, to which he had a fiduciary duty to protect.

Harm (Std. 1.5(f)): Respondent's misappropriation and improper solicitation caused significant harm to his clients and to the public. He encouraged his employees to break the law (falsely notarizing and swearing to a material fact) and to violate the Pennsylvania Rules of Professional Conduct (through improper solicitation.) In 2010, Respondent's IOLTA account's funding was as much as \$30,816 beneath what Respondent was supposed to be holding for his clients. In 2013, his IOLTA account was nearly \$9,000 below what he owed to his clients. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 (Van Sickle harmed clients when depriving clients of funds that were needed); *In the Matter of Copren* (2005) 4 Cal. State Bar Ct. Rptr. 861, 864-66 (member harmed client by depriving her of \$750 in funds.)

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed multiple acts of misconduct which involved several different clients; many of the acts of misconduct were very serious in nature. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 105; *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263, 270.)

Misconduct for Personal Gain: Respondent intentionally violated the rules of professional conduct in order to make a personal gain. Respondent would take money held in trust for his clients to pay bilingual, non-lawyers to improperly solicit business for the Respondent through numerous personal injury matters. *In the Matter of Oheb* (2006) 4 Cal. State. Bar Ct. Rptr. 920, 938 (“[t]he fact that respondent intentionally engaged in the misconduct for personal gain and, in fact, personally profited from it are aggravating circumstances.”)

ADDITIONAL MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is stipulating to his discipline before filing of the charges and before trial has begun. (*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.)

In determining whether to impose a sanction 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).)

The most severe sanction applicable to Respondent’s misconduct is found in standards 2.1 (Respondent’s equivalent violation of Rules of Prof. Conduct, rule 4-100), 2.7 (Respondent’s equivalent violation of Bus. & Prof. Code Section 6106), and 2.14 (Respondent’s other equivalent violations of the Code and Rules). Standard 2.1(a) provides that culpability of a member for the intentional or dishonest misappropriation of entrusted funds or property shall result in disbarment. Standard 2.7 states that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption, or concealment of a material fact. Standard 2.14 also provides that disbarment or actual suspension is appropriate for any violation not specified in the Standards, such as improper solicitation, sharing legal fees with non-lawyers, acting outside the scope of representation, or inducing or causing others to violate the rules of conduct. After reviewing the facts of this case and the aggravating circumstances, as discussed below, the most appropriate discipline to impose is disbarment.

In aggravation, the Respondent committed multiple acts of misconduct, showed a pattern of misconduct, caused significant harm to his clients, and engaged in misconduct for his own personal gain. The Review Court has considered multiple acts of misconduct as serious aggravation. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.) Second, Respondent’s misappropriated funds and improper solicitation all for personal gain over a 5-year period constituted a pattern of misconduct. (*In the Matter of Reiss* (2012) 5 Cal. State. Bar Ct. Rptr. 206, 217.) Third, Respondent’s misappropriation and improper solicitation caused significant harm to his clients, amounting to as much as \$30,816. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 (Van Sickle harmed clients when depriving clients of funds that were needed); *In the Matter of Copren* (2005) 4 Cal. State Bar Ct. Rptr. 861, 864-66 (member harmed client by depriving her of \$750 in funds).) Finally, Respondent intentionally violated the rules of professional conduct in order to make a personal gain. (*In the Matter of Oheb* (2006) 4 Cal. State. Bar Ct. Rptr. 920, 938.)

In summary, Respondent misappropriated many of his clients’ funds and property over several years, fraudulently signed his client’s name to a settlement agreement, made several deceitful statements of material fact, caused others in his office to falsify documents, shared his legal fees inappropriately and in violation of the rules of conduct, and established a system wherein employees would make improper solicitations for personal injury cases. As Respondent freely admitted in his resignation in the underlying Pennsylvania case, disbarment is the most appropriate discipline. Respondent’s disbarment would fulfill the primary purposes of discipline, which are the protection of the public, the maintenance of the highest professional standards and preservation of public confidence in the legal profession.

Case law, too, supports this level of discipline. The Review Department found where an attorney improperly obtained interests adverse to a client, committed trust account violations, intentionally

misappropriated, failed to competently perform, failed to account, failed to return client files, collected an unconscionable fee, and committed multiple acts involving moral turpitude, the appropriate discipline recommendation was disbarment. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 107-09.) While Conner had several aggravating factors against him, his misconduct occurred in a single-client matter. Here, Respondent committed many acts of misconduct, including misappropriation and acts of moral turpitude, spanning several years and involving several clients. The facts of this case, and the number and nature of the violations warrant disbarment.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 9, 2014, the prosecution costs in this matter are approximately \$2,992.00. Respondent further acknowledges that should this stipulation be rejected or should relief from this 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: RANDOLPH CRAIG SMITH	Case number(s): 14-J-03437
---	-------------------------------

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.

12/9/2014 *Randolph C. Smith* Randolph C. Smith
Date Respondent's Signature Print Name

12/16/2014 *Lorri Brobeck* LORI BROBECK
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: RANDOLPH CRAIG SMITH	Case Number(s): 14-J-03437
---	-------------------------------

DISBARMENT ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

December 30, 2014

Judge of the State Bar Court

Yvette D. Roland
Yvette D. Roland

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 2, 2015, 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:

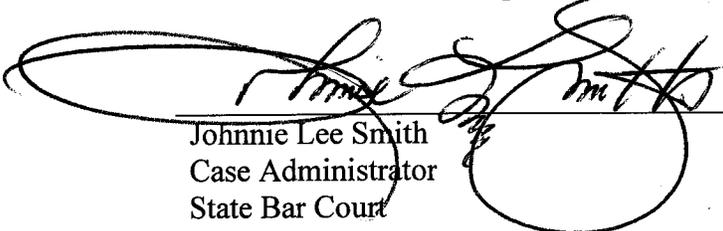
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**RANDOLPH CRAIG SMITH
1819 JOHN F KENNEDY BL #400
PHILADELPHIA, PA 19103**

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

LORI D. BRODBECK, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 2, 2015.


Johnnie Lee Smith
Case Administrator
State Bar Court