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State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT

<p>Counsel For The State Bar</p> <p>Kim Kasrellovich Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1378</p> <p>Bar # 261766</p>	<p>Case Number(s): 14-O-00322 - DFM</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>SEP 03 2014 <i>[Signature]</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Arthur L. Margolis Margolis & Margolis LLP 2000 Riverside Dr Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: WESLEY EUGENE PROFIT</p> <p>Bar # 243769</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.

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A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **July 17, 2006**.
- (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 **(10)** 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):
- 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. **For a further discussion of Dishonesty, see page 7.**
- (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. **For a further discussion of Trust Violation, see page 7.**
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **For a further discussion of Harm, see page 7.**
- (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. **For a further discussion of Restitution, see page 7.**
- (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.

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(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

For Emotional Difficulties, see page 7.

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 **the Estate of Roy Izumi** in the amount of **\$ 75,855.84** plus 10 percent interest per year from **March 2012**. If the Client Security Fund has reimbursed **the Estate of Roy Izumi** 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 **N/A** days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

7. After the March 30, 2011 settlement, Respondent and Zufelt were in regular contact. Respondent repeatedly stated to Zufelt that he would not disburse the funds to the Estate until all matters involving Kelley, in both the conservatorship and the marital dissolution, were concluded. Respondent reiterated these statements until the middle of 2013.

8. Around the middle of 2013, Zufelt lost contact with Respondent. Zufelt tried unsuccessfully to reach Respondent several times by telephone regarding the funds owed to the Estate. In October 2013, Zufelt wrote to Respondent demanding payment of the funds. Respondent received the letter but did not respond. To date, the Estate, through Zufelt or otherwise, has not heard from Respondent.

CONCLUSIONS OF LAW:

9. By allowing the balance in the client trust account to fall below \$75,855.84, the amount Respondent was required to hold in trust for the benefit of the Estate, Respondent failed to maintain entrusted funds deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of the Rules of Professional Conduct, rule 4-100(A).

10. By dishonestly misappropriating \$75,826.37 from the Estate of Roy Izumi, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of the Business and Professions Code section 6106.

AGGRAVATING CIRCUMSTANCES.

Dishonesty (Std. 1.5(d)): Respondent represented to Zufelt that he would not disburse the funds in trust until all matters were resolved. However, at the time Respondent made those representations, he no longer had the full amount owed to the Estate in trust.

Trust Violations (Std. 1.5(e)): Respondent cannot account for the funds which he misappropriated. The funds were diverted to various sources including Respondent, his client and unknown third parties.

Harm (Std. 1.5(f)): The Estate of Roy Izumi has been deprived of more than \$75,000 for at least three years and has been forced to expend additional time and efforts in an attempt to recover the funds.

Failure to Make Restitution (Std. 1.5(i)): To date, Respondent has made no efforts to repay the Estate and has completely failed to make any restitution whatsoever.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Emotional Difficulties: During the time of the misconduct, Respondent was experiencing severe financial stress due to the failure of his mother's real estate business which he was managing and trying to save. Further, he was suffering from family problems associated with his sister's psychological illness. Respondent had to find a place for his sister to live after having to hospitalize her on several occasions due to her mental health condition. Her condition is now stabilized, and she is living with Respondent. (See *Doyle v. State Bar* (1976) 15 Cal.3d 973, 979 [The Court took into consideration the fact that during the period in which his misconduct occurred the attorney was encountering substantial economic, emotional, and business problems].)

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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 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 violation of the Business and Professions Code, section 6106, for moral turpitude.

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 circumstances clearly predominate, in which case actual suspension of one year is appropriate. This applies to Respondent’s misappropriation of \$75,826.37, which belonged to the Estate of Roy Izumi. Respondent knew that all the money in his trust account had been allocated to various parties and that he was entitled to only \$17,000. The records from Respondent’s client trust account clearly show that Respondent took an additional \$57,000 for himself and the rest of the money was spent in various other ways. To date, Respondent has not paid any of the funds owed to the Estate. Even though the Estate was not Respondent’s client, Respondent agreed to hold the funds in trust on behalf of both parties and stipulated to the settlement amounts. Respondent had a fiduciary duty to the Estate and his misappropriation of over \$75,000 is not an insignificant amount. In addition, there is significant aggravation and no mitigation present in this case. Respondent engaged in dishonesty, cannot

account for the funds, caused harm to the Estate by depriving them of the use of the funds, and has failed to make any restitution.

Misappropriation of client funds has long been viewed as a particularly serious ethical violation. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1035.) Misappropriation generally warrants disbarment absent clearly mitigating circumstances. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) Intentional misappropriation of entrusted funds, even without a prior record of discipline, warrants disbarment in the absence of compelling mitigation. (*Kaplan v. State Bar* (1991) 52 Cal. 3d 1067, 1071-1073.)

Although this is Respondent's first discipline, the misconduct is extremely serious. In *Chang v. State Bar* (1989) 49 Cal. 3d 114, an attorney who took almost \$8,000 of his client's funds as fees without the client's knowledge or permission after representing to the client that his services would be free of charge, was disbarred. The fact that Chang had no prior record of discipline and the matter was an "isolated instance of misappropriation" was of no significance to the court. (*Id.* at 128-9.) That was because he had never acknowledged his impropriety, made no effort at reimbursing his client, and displayed a lack of candor. (*Id.*) Those factors made the likelihood he would engage in other misconduct sufficiently high to warrant disbarment. (*Id.*) This is similar to the conduct at hand. Respondent has neither acknowledged his misconduct nor made any efforts to repay the Estate.

As the Review Department noted in *In the Matter of Kueker* (1991) 1 Cal. State Bar Ct. Rptr. 583, 596 in which an attorney misappropriated \$66,000 along with other misconduct, any showing of rehabilitation less than a full reinstatement hearing, would be insufficient "to protect the public and maintain the integrity of the profession, give the extreme seriousness of the Respondent's offenses..." The concerns of the court apply in the present case as well. Disbarment is the only appropriate remedy to protect the public and the integrity of the profession.

Case law has supported this level of discipline many times over, even where the Respondent had no prior misconduct. (See *Chang v. State Bar* (1989) 49 Cal.3d 114 [disbarment for \$7,000 misappropriated, no prior discipline]; *Baca v. State Bar* (1990) 52 Cal.3d 294, 304 [disbarment for \$2,300 misappropriated, no prior discipline]; *Read v. State Bar* (1991) 53 Cal.3d 394, 426 [disbarment for \$4,100 misappropriated, no prior discipline]; *Kennedy v. State Bar* (1989) 48 Cal.3d 610, 617 [disbarment for \$10,000 misappropriated, no prior discipline]; *In re Naney* (1990) 51 Cal.3d 186, 190 [disbarment for \$18,000 misappropriated, no prior discipline].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 28, 2014, the prosecution costs in this matter are \$3,497. 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.

DISMISSALS.

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



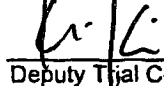
<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
14-O-00322	TWO	6103

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In the Matter of: WESLEY EUGENE PROFIT	Case number(s): 14-O-00322 - DFM
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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>8/10/2014</u> Date	<u></u> Respondent's Signature	<u>Wesley Eugene Profit</u> Print Name
<u>8/12/14</u> Date	<u></u> Respondent's Counsel Signature	<u>Arthur L. Margolis</u> Print Name
<u>8/14/14</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Kim Kasreliovich</u> Print Name

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In the Matter of: WESLEY EUGENE PROFIT	Case Number(s): 14-O-00322
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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.

1. On page 5 of the Stipulation, paragraph E.(2), "from March 2012" is deleted, and in its place is inserted "from March 31, 2011".
2. On page 5 of the Stipulation, paragraph E.(2), by stipulation of the parties the following is added to the end of the paragraph: "Although Respondent misappropriated \$75,826.37 from the Estate and maintained \$29.47 in his client trust account, he has to date failed to pay any of the \$75,855.84 to the Estate as ordered in the May 11, 2011 court order, and is therefore required to make restitution of the full amount of \$75,855.84."

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 **WESLEY EUGENE PROFIT** 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.

SEPTEMBER 3, 2014
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 September 3, 2014, 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:

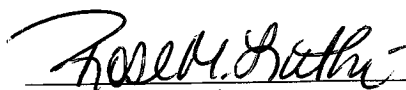
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

KIMBERLY KASRELIOVICH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 3, 2014.



Rose M. Luthi
Case Administrator
State Bar Court