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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Robert A. Henderson 180 Howard St. San Francisco, CA 94105 (415) 538-2385 Bar # 173205	Case Number(s): 14-O-00942-LMA 14-O-01904; 14-O-03243	For Court use only PUBLIC MATTER FILED ✓ APR 24 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Steven Lee Wessels P.O. Box 601134 Sacramento, CA 95860 (916) 359-0307 Bar # 96982	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: STEVEN LEE WESSELS Bar # 96982 A Member of the State Bar of California (Respondent)		

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 **January 13, 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 entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **16** 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".

(Effective January 1, 2014)



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

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(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.
- (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.

(Effective January 1, 2014)

Actual Suspension



(Do not write above this line.)

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment to Stipulation at p. 12.**
- (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. **See Attachment to Stipulation at p. 13.**
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

(Effective January 1, 2014)

Actual Suspension

Additional mitigating circumstances:

Pre-trial Stipulation - See Attachment to Stipulation at pp. 12-12.

No Prior Record of Discipline - See Attachment to Stipulation at p. 12.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one year**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and 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 **six months**.

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.

(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:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
 - No MPRE recommended. Reason: .



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- (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: STEVEN LEE WESSELS	Case Number(s): 14-O-00942-LMA 14-O-01904; 14-O-03243
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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:
- a. 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.



8. In 2010 and 2011 Huff made multiple requests of respondent for an accounting of the fees and costs in the *Huff* matter. Respondent received the multiple requests for an accounting shortly after they were made. Respondent did not provide an accounting to Huff until the date set for a hearing on May 3, 2013.

9. Between July 2009 and January 2012, respondent did not keep track of his time or costs incurred on a regular basis. Respondent did provide the court several Fee Affidavits, along with information regarding his accruing fees in his client's Income and Expense Declarations. The court in the *Huff* matter never imposed or sought to impose any consequence on respondent for his failure to comply with the Stipulated orders to provide an accounting for his fees and costs.

10. Respondent's father died in August 2011 during significant litigation on this case.

11. On December 19, 2011, Huff substituted respondent out of the *Huff* matter and substituted in Denise Dirks.

12. On July 5, 2012, Huff through his new counsel requested an accounting from respondent in the *Huff* matter. Respondent knew of the request shortly after it was made. Respondent did not provide an accounting to Huff as requested on July 5, 2012. Respondent did not provide an accounting until the date set for a fees hearing on May 3, 2013.

13. On April 2, 2013, Huff through his new counsel subpoenaed respondent to appear on May 3, 2013 to provide: "Any and all records pertaining to all legal services rendered, including notes, time sheets, accounting and an itemization of all payments received from Mr. Huff or on his behalf." Respondent received the subpoena shortly after it was prepared.

14. Between July 2009 and April 2013, respondent did not regularly account for his time and costs in the *Huff* matter. Respondent had a "rough" idea of the amount of time he had put into the case, but he did not tabulate the time. Likewise respondent knew that he had paid costs on behalf of Huff, but he did not keep track of the costs on a regular basis. During this time frame respondent was "overwhelmed" with litigation in the *Huff* matter and other pending cases.

15. On May 3, 2013, respondent appeared in the *Huff* matter. Respondent provided his fees and cost accounting to the court and all counsel of record at that time, and testified about his fees and costs during a reported hearing. Respondent testified that he had finished preparing the accounting that morning. Respondent testified that he had received the checks described in paragraphs 2 and sent the checks described in paragraphs 3-4. He did not provide the court with the exact figures in his testimony or in the written accounting he provided the court. Respondent also testified that he had not provided Huff with a monthly accounting, nor had he provided successor counsel an accounting prior to that hearing. Respondent acknowledged that both Huff and successor counsel had previously requested an accounting. No questions were asked of respondent about any client trust funds, which were received by respondent and disbursed by respondent.

16. On May 3, 2013, respondent in his testimony admitted to the court, Huff, Denise Dirks and opposing counsel that he had failed to comply with the prior court orders for his fee and cost accountings and that he had failed to honor Huff's requests for a fee and cost accounting before that date.

17. The May 3, 2013, written accounting provided by respondent, among others, omitted: (1) a \$35,000 check received on September 9, 2009, (2) the checks identified in paragraph 2-4 above, (3) \$15,000 in costs incurred on behalf of Huff to a case manager, (4) \$2,793.74 paid to PG&E on behalf of Huff, (5) \$1,500 paid to a mediator on behalf of Huff, and (6) \$4,354 paid to a private investigator on behalf of Huff.

18. Respondent's fees and costs accounting submitted to the court on May 3, 2013, showed respondent was owed \$110,418.80 in the *Huff* matter. Respondent's accounting was inaccurate with respect to the fees received as it omitted a \$10,000 check received from the client trust account. In March 2015, respondent provided the State Bar a final accounting of attorney's fees and costs showing a balance of \$97,000 owed. Respondent has been able to account for a \$35,000 check deposited into his trust account. There were no funds misappropriated from the \$35,000 check.

19. At the May 3, 2013, hearing, respondent asked whether the court or Denise Dirks wanted an explanation for the delay in providing the accounting. Neither the court nor Denise Dirks asked for an explanation.

20. Respondent admits that although he did not intend to deceive the court with his testimony on May 3, 2013, regarding his accounting, his gross negligence in preparing that inaccurate accounting constitutes a *de facto* violation of Business and Professions Code section 6068(d), that of making a misleading statement to the court, which justifies a finding that respondent is culpable of a moral turpitude violation.

21. As of the end of March 2015, respondent has provided an accounting of the fees, costs and funds received in the *Huff* matter, including the \$35,000 in trust funds. The accounting provided demonstrates that respondent has not misappropriated any of the Huff funds received and that they were disbursed per court order.

22. Respondent has written off the outstanding balance of over \$97,000 in fees and costs in the *Huff* matter.

CONCLUSIONS OF LAW:

23. By depositing four cashier's checks totaling \$17,676, which were child and spousal support belonging to Huff, in a business bank account rather than a bank account labeled trust account or words of similar import, respondent wilfully failed to deposit client funds into a trust account in violation of Rules of Professional Conduct, rule 4-100(A).

24. By failing to provide an accounting to Huff as requested on multiple occasions in 2010, 2011 and also on July 5, 2012, respondent failed to promptly provide an accounting to a client following the client's request, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

25. By failing to provide an accounting of his fees and costs, as ordered by the court on November 20, 2009 and May 13, 2010, respondent knowingly violated an order of the court requiring him to do or forebear an act connected with or in the course of his profession, in violation of Business and Professions Code section 6103.

26. By providing the court an inaccurate accounting of the fees, costs and funds received from or on behalf of Huff on May 3, 2013, when respondent was grossly negligent in preparing the accounting, respondent committed an act of moral turpitude in violation of Business and Professions Code section 6106.

Case No. 14-O-03243 (Complainant: Mary Altieri)

FACTS:

27. Between September 26, 2013 and May 7, 2014, respondent represented Mary Altieri ("Altieri") in a contentious child custody and child support matter, *Altieri v. Mahoney*, Sacramento County Superior Court case no. 13FL05482. The matter also had issues related to ownership and disposition of \$10,500 in funds, as well as attorney fee and costs issues.

28. On September 26, 2013, respondent received \$2,500 in advanced fees, from Altieri's mother. Respondent did not obtain the written consent of Altieri to the payment.

29. On October 3, 2013, respondent received \$2,500 in advanced fees, from Altieri's mother. Respondent did not obtain the written consent of Altieri to the payment.

30. On October 3, 2013, Altieri signed an Income and Expense Declaration in which she declared that she had borrowed \$5,000 from her parents for attorney's fees and costs.

31. On December 13, 2013, respondent received \$2,500 in advanced fees, from Altieri's mother. Respondent did not obtain the written consent of Altieri to the payment.

32. Respondent has written off the outstanding balance of about \$70,000 in fees and costs in the *Altieri* matter.

CONCLUSIONS OF LAW:

33. By failing to obtain the client's written consent to the payments from the client's mother, respondent received compensation from one other than the client in wilful violation of Rules of Professional Conduct, rule 3-310(F).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent has committed five acts of misconduct, which constitute multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent in this contested matter has entered into a stipulation as to facts, conclusions of law and level of discipline, which has saved State Bar and State Bar Court resources, as well as the time of the witnesses that would have been called. (*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].)

No Prior Record of Discipline: Although the misconduct in this matter is serious, respondent has been in practice since 1981, nearly 34 years, with no prior record of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, an attorney was credited with significant mitigation for serious misconduct where the attorney had practiced discipline-free for more than seventeen years.

Severe Financial Stress: Respondent's practice is such that he regularly has large unpaid receivables, which during the timeframe in these matters was particularly acute. When undertaking the representation of Dennis Huff and Mary Altieri, respondent did not anticipate the number of hours he would need to devote to the matters, nor did he realize that he would for long periods of time go uncompensated or undercompensated. These financial strains in part led respondent to fail to promptly provide the accounting in the Huff matter as ordered by the court and requested by the client. (See *Grim v. State Bar* (1991) 53 Cal.3d 21, 31 [financial difficulties both extreme and result of circumstances not reasonably foreseeable or beyond attorney's control]; *In the Matter of Chestnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 176 [nexus must be shown between financial difficulties and misconduct].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re 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 five 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 2.7, which applies to respondent's violation of Business and Professions Code section 6106. Standard 2.7 provides that:

"Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law."

Providing an inaccurate accounting to Denise Dirks and the court in the *Huff* matter relate directly to respondent's practice of law, is serious misconduct, but not the most serious which would lead to disbarment and although harmful, did not cause significant lasting damage to the administration of justice. Therefore, Standard 2.7 would suggest an actual suspension rather than disbarment. Case law supports the actual suspension. (See *Drociak v. State Bar* (1991) 52 Cal.3d 1085 [30 days' actual suspension for using pre-signed verifications]; *In the Matter of Connor* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 [disbarred for among other things not properly accounting to the client for fees and costs incurred].) Respondent's misconduct is more pervasive and serious than in *Drociak* and less egregious than in *Connor*. *Drociak* involved an attorney that utilized pre-signed verifications in a personal injury action. Unbeknownst to *Drociak*, his client had died. *Drociak* attempted to communicate with his client, going so far as to send 4 letters and also letting the opposing side know of his inability to communicate with the client. Thereafter, still not knowing that his client had died, *Drociak* utilized 2 pre-signed verifications in answering interrogatories and a document demand. The court found the conduct of *Drociak* mitigated by his years in practice, the lack of financial harm and cooperation. In *Drociak* the Supreme Court imposed a 30-day actual suspension notwithstanding the significant mitigation, because of the need to protect the public and the profession. In *Connor* the Review Department recommended disbarment, which was subsequently ordered by the Supreme Court, for an attorney who among other things failed to provide an adequate accounting. The conduct in *Connor* involved much more serious conduct, including a misappropriation of in excess of \$26,000.

The gravamen of respondent's misconduct is his failure to properly and timely account for the funds received from and on behalf of his client, as well as his mishandling of client funds deposited into a business account rather than a trust account. Applying the criteria of Standard 2.7, it is clear that the inaccurate accounting to the court was a significant act directly related to the respondent's practice of law, as were the preceding acts that led to the inaccurate testimony. The court, Denise Dirks and opposing counsel were all misled, but the inaccurate accounting has belatedly been corrected demonstrating that there was no misappropriation of funds from the client. In addition to the act of moral turpitude, the additional culpable acts are: (1) failing to deposit client funds in a trust account, (2) failing to render an accounting, (3) failure to obey court orders, and (4) accepting fees from a non-client without the required waiver.

In mitigation respondent was under significant financial stress, has many years in practice and has entered into this pre-trial stipulation. The financial stress respondent was under during the time of the misconduct was in part from the *Huff* and *Altieri* matters and the fact that respondent had accrued a sizable unpaid bill for legal services. Respondent did not anticipate at the outset of the matters that his fees would go unpaid. Additionally, during the pendency of the *Huff* matter, respondent's father died. Respondent has written off the unpaid balance of fees and costs in both of the matters. Further, respondent has more than three decades of family law practice and has entered into this pre-trial stipulation.



On balance, the factor in aggravation of multiple acts, especially considering the serious nature of the acts, requires a significant actual suspension rather than disbarment. The significant mitigation would suggest that disbarment is unnecessary. On balance a six (6) month actual suspension from the practice of law will adequately protect the public and the profession.

DISMISSALS.

The parties respectfully request the court to dismiss the following counts in in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
14-O-00942	Four	6068(d) [Seeking to Mislead a Judge]
14-O-00942	Six	6106 [Misrepresentation]
14-O-00942	Seven	6068(d) [Seeking to Mislead a Judge]
14-O-00942	Eight	6106 [Misappropriation]
14-O-03243	Twelve	6068(m) [Failure to Communicate]
14-O-03243	Thirteen	6106 [Misrepresentation]

The parties respectfully request the court to dismiss the following counts without prejudice to the State Bar filing at a future date:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
14-O-01904	Nine	6106 [Advising Client to Violate Court Order]
14-O-01904	Ten	3-210 [Advising Violation of Law]
14-O-01904	Eleven	6068(b) [Failure to Maintain Respect Due Court]

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 9, 2015, the prosecution costs in this matter are \$5,000. 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

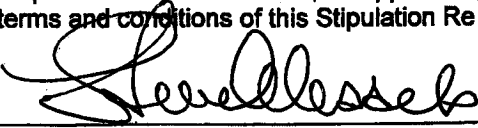
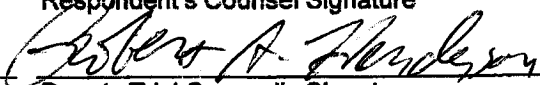
Pursuant to rule 3201, respondent may not receive MCLE credit for completion of State Bar Ethics School and State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: STEVEN LEE WESSELS	Case number(s): 14-O-00942-LMA 14-O-01904; 14-O-03243
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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>4-9-15</u> Date	<u></u> Respondent's Signature	<u>Steven Lee Wessels</u> Print Name
<u>4/10/15</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Robert A. Henderson</u> Print Name

(Do not write above this line.)

In the Matter of: STEVEN LEE WESSELS	Case Number(s): 14-O-00942-LMA 14-O-01904; 14-O-03243
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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.)**

Date

April 24, 2015


PAT E. McELROY
Judge of the State Bar Court

(Effective January 1, 2014)

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Actual Suspension Order



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 San Francisco, on April 24, 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:

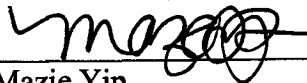
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

STEVEN LEE WESSELS
PO BOX 601134
SACRAMENTO, CA 95860

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

ROBERT A. HENDERSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 24, 2015.



Mazie Yip
Case Administrator
State Bar Court