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State Bar Court of California Hearing Department San Francisco DISBARMENT		
Counsel For The State Bar Sherrle B. McLetchie Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2297 Bar # 85447	Case Number(s): 14-O-03698	For Court use only
In Pro Per Respondent James Arthur Fonda 334 S. Yosemite Ave., Suite C-1 P.O. Box 412 Oakdale, CA 95361 (209) 847-5720 Bar # 45160	PUBLIC MATTER	FILED <i>210</i> JUL 24 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In the Matter of: JAMES ARTHUR FONDA Bar # 45160 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 15, 1970.**
- (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."

(Effective January 1, 2014)



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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 **07-O-12016**.
 - (b) Date prior discipline effective **10/22/09**.
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 3-110(A); Bus. & Prof. Code section 6068(m)**.
 - (d) Degree of prior discipline **Public reproof conditioned on Ethics School within one year**.
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
State Bar Case nos. 00-O-13804; 01-O-00054 & 02-O-13964, effective 11/11/03, Rules of Professional Conduct/State Bar Act violations: Rules 3-700(A)(2); 3-100; 4-100(A); Bus. & Prof. Code section 6068(m). Degree of discipline: Private reproof conditioned on Ethics School, CTA School, law mgmt. plan, and mental health treatment for a one-year period.
- (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 7.**
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See Attachment at page 7.**

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

Additional aggravating circumstances:

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

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

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

Additional mitigating circumstances:

Pretrial Stipulation. See Attachment at page 7.

(Do not write above this line.)

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 **David Lane** in the amount of \$ **184,099.80** plus 10 percent interest per year from **9/29/09**. If the Client Security Fund has reimbursed **David Lane** 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 **30** days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAMES ARTHUR FONDA

CASE NUMBER: 14-O-03698-PEM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 14-O-03698 (Complainant: David Lane)

FACTS:

1. On September 3, 2009, respondent received on behalf of respondent's client, David Lane ("Lane"), two checks totaling \$486,705.77, which represented Lane's equity in properties he had owned which had been foreclosed upon.
2. At all relevant times herein, respondent maintained a client trust account at Wells Fargo Bank, account number 026836XXXX ("CTA").
3. On September 3, 2009, respondent deposited \$486,705.77 into respondent's CTA on behalf of Lane.
4. Between September 9, 2009, and January 24, 2012, respondent intentionally misappropriated for his own use and purposes at least \$194,440.36 from respondent's CTA, which Lane was entitled to receive, by writing 163 CTA checks made payable to respondent and cashed by respondent at respondent's bank.
5. Between May 2012 and April 2014, respondent made payments to Lane or on his behalf -- not from respondent's CTA -- totaling \$10,340.56.
6. To date, respondent has not accounted for or repaid \$184,099.80 to Lane.

CONCLUSIONS OF LAW

7. By intentionally misappropriating at least \$194,440.36, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline: Standard 1.5(a) provides that "a prior record of discipline" is an aggravating circumstance.

Effective November 11, 2003, respondent was privately reprovved after stipulating to in effect abandoning two family law clients [rules 3-700(A)(2) & 3-110 & Bus. & Prof. Code section 6068(m)] and depositing proceeds from his father's estate into his CTA and failing to withdraw earned fees at the earliest reasonable time possible [rule 4-100(A)]. Conditions attached to the private reprovval included Ethics School, CTA School, development of a law office management plan, and monthly treatment from a mental health professional for a one-year period.

Effective October 22, 2009, respondent was publicly reprovved after stipulating to in effect abandoning a family law client [rules 3-110(A) & Bus. & Prof. Code section 6068(m)]. Respondent was again required to attend Ethics School.

Multiple acts of wrongdoing: Standard 1.5(b) provides that "multiple acts of wrongdoing" is an aggravating circumstance. We have multiple acts: misappropriation through the writing and cashing of 163 separate CTA checks over a period of two and one-quarter years, failure to account to the client, and failure to return the client file upon request.

Refusal to Account for Entrusted Funds: Standard 1.5(e) provides that "refusal or inability to account for entrusted funds or property" is an aggravating circumstance. Respondent has never provided an accounting to Lane.

Significant Harm to Client: Standard 1.5(f) provides that "significant harm to the client" is an aggravating circumstance. Loss of \$194,440.36 represented significant harm to the client who was disabled due to a bad back and consequently unable to work consistently. Respondent was also aware that the client suffered from cancer.

Failure to Make Full Restitution: Standard 1.5(i) provides that "failure to make restitution" is an aggravating circumstance. Respondent did repay \$10,340.56 out of the \$194,440.36 he misappropriated from Lane, but still owes Lane \$184,099.80.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of the Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving the State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

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 committed at least three acts of professional misconduct: misappropriation of \$194,440.36, failure to account for entrusted funds, and failure to return a client file.

Standard 1.7(a) requires that where an attorney “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 potentially applicable to respondent’s misconduct – disbarment – is found in standard 2.1(a) as this is an intentional and dishonest misappropriation. Standard 2.1(a) provides that “Disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.”¹

Disbarment is appropriate in this matter since \$194,440.36 is not insignificantly small and the most compelling circumstances do not clearly predominate. Mitigation is limited to entering into a pretrial stipulation. In addition, respondent has two prior records of discipline, one of which was for trust account violations. Standard 1.8(b) provides

If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

1. Actual suspension was ordered in any one of the prior disciplinary matters;
2. The prior disciplinary matter coupled with the current record demonstrate a pattern of misconduct; or
3. The prior disciplinary matters coupled with the current record demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.

¹ Effective July 1, 2015, standard 2.1(a) will read as follows: “Disbarment is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.”

Based on respondent's repeated trust account violations, it is clear that he is unwilling or unable to conform to ethical responsibilities. Therefore, disbarment is warranted.

Under the Standards, disbarment is the presumptive level of discipline for intentional or dishonest misappropriation. Without evidence of the most compelling mitigating circumstances, there is no reason to deviate from the Standards. Nonetheless, we consider case law.

An attorney who misappropriates client funds will generally be disbarred. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 100.) The following Supreme Court cases are in accord: *Kelly v. State Bar* (1988) 45 Cal. 3d 649, 656 [disbarred on a \$19,597.05 misappropriation]; *Chang v. State Bar* (1989) 49 Cal. 3d 114, 128 [disbarred on a \$7,000 misappropriation]; *Walker v. State Bar* (1989) 49 Cal.3d at p. 1120 [disbarred on a \$2,700 misappropriation]; and *Baca v. State Bar* (1990) 52 Cal.3d 294, 304 [disbarred on a \$2,300 misappropriation]. In none of these cases had the attorney been previously disciplined.

In *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, the Review Department recommended the disbarment of an attorney who intentionally misappropriated \$112,293 over a period of three years by making 65 unauthorized withdrawals from his CTA. Song had no prior record of discipline over the 12 years of practice before the misconduct began, but the Review Department reduced the weight of this factor in mitigation finding the misconduct to be serious and prolonged. Here, respondent misappropriated more than Song, who fully repaid his victim prior to State Bar involvement.

As stated above, the primary purposes of discipline are "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." Under standard 2.1(a), because of the seriousness of this case, disbarment is the only appropriate level of discipline even without consideration of respondent's prior record of discipline, multiple acts of misconduct, refusal to account, harm to the client, and limited restitution. Here, despite some restitution and respondent's cooperation in entering into this stipulation, only disbarment will adequately serve the purposes of discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 16, 2015, the prosecution costs in this matter are approximately \$4,995.85. 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.

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In the Matter of:
JAMES ARTHUR FONDA

Case number(s):
14-O-03698

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.

06/24/15
Date

James A. Fonda
Respondent's Signature

James A. Fonda
Print Name

Date

Respondent's Counsel Signature

Print Name

7/1/15
Date

Sherrie B. McLetchie
~~Deputy Trial Counsel's Signature~~
SR

Sherrie B. McLetchie
Print Name

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In the Matter of: JAMES ARTHUR FONDA	Case Number(s): 14-O-03698
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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.

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 James Arthur Fonda 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

July 24, 2015

Pat McElroy

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 San Francisco, On July 24, 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 San Francisco, California, addressed as follows:

JAMES ARTHUR FONDA
JAMES A. FONDA, ATTORNEY AT
LAW
334 S YOSEMITE AVE STE C-1
PO BOX 412
OAKDALE, CA 95361

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

Sherrie B. McLetchie, Enforcement, San Francisco

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



Laurretta Cramer
Case Administrator
State Bar Court