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State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT

PUBLIC MATTER

Counsel For The State Bar	Case Number(s):	For Court use only
Ross E. Viselman **Senior Trial Counsel** **845 South Figueroa Street** **Los Angeles, California 90017** **(213) 765-1295** Bar # **204979**	**14-O-05356**	**FILED** OCT 20 2015 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent **Paul Virgo** **9909 Topanga Blvd # 282** **Chatsworth, CA 91311** **(310) 666-9701** Bar # **67900**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT **DISBARMENT** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **RICHARD EUGENE ASHBRAN** Bar # **60467** 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 **December 20, 1974**.

(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 (**9**) 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."

(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(h) & 1.5]. Facts supporting aggravating circumstances are required.

(1) ☒ **Prior record of discipline**

(a) ☒ State Bar Court case # of prior case **92-O-11549 and 92-O-11553**

(b) ☒ Date prior discipline effective **November 13, 1992**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rule 3-700(D) of the Rules of Professional Conduct**

(d) ☒ Degree of prior discipline **Private reproval**

(e) ☐ If respondent has two or more incidents of prior discipline, use space provided below:

For a further discussion of respondent's prior record of discipline, see Additional Facts re: Aggravating Circumstances on page 7.

(2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

(3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.

(4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.

(5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.

(6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.

(7) ☐ **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.

(8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **For a further discussion of the harm caused by respondent, see Additional Facts re: Aggravating Circumstances on page 7.**

(9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(10) ☐ **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.

(11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. For a further discussion of respondent's multiple acts, see Additional Facts re: Aggravating Circumstances on page 7.

(12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.

(13) ☐ **Restitution:** Respondent failed to make restitution.

(14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.

(15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.

(2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(3) ☐ **Lack of Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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.

Additional mitigating circumstances:

Pre-trial stipulation: See Additional Facts re: Mitigating Circumstances on 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 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:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: RICHARD EUGENE ASHBRAN

CASE NUMBER: 14-O-05356

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-05356 (Complainant: Kemper Auto and Home Insurance Company)

FACTS:

1. In 2004, Kemper Auto and Home Insurance Company ("Kemper") reimbursed one of its insureds for a fire that damaged the insured's house. The fire was caused by a third party.

2. In July 2008, Kemper hired respondent to pursue Kemper's subrogation claim against the third party.

3. In August 2008, respondent negotiated, on behalf of Kemper, a settlement for $20,000 to be paid to Kemper in installments as follows: $5,000 on August 31, 2008 and $2,000 each month thereafter until the full $20,000 was paid.

4. Respondent received each installment payment and immediately thereafter, deposited the payment into his client trust account, designated as respondent's "Subrogation Trust Account" (the "STA"). Respondent was entitled to a fee of $2,000, which required him to maintain $18,000 in trust for Kemper.

5. Instead of issuing the payments to Kemper as he agreed to do, respondent withdrew the funds from his STA for his own business operating expenses. Virtually every month during the applicable period, respondent's STA fell below the required balance. For example, after depositing the initial $5,000 on August 31, 2008, the STA balance fell to $2,058.93 in September 2008, and after depositing the second check (in the amount of $2,000) on September 28, 2008, the balance fell to $925.16 in October 2008.

6. The misappropriation continued until April 27, 2009, when the final settlement payment of $1,500 was paid. At this time, the balance in respondent's STA was $950.

7. In this way, respondent dishonestly misappropriated $17,050 of the $18,000 he held in trust for Kemper.

8. On November 5, 2013, Kemper inquired of respondent as to the whereabouts of the settlement funds. Because respondent did not pay any portion of the funds that he owed to Kemper in response to these inquiries, Kemper submitted a complaint to the State Bar of California on May 27, 2014.

9. On August 21, 2014, after negotiations with respondent and Kemper's counsel, respondent paid $10,000 to Kemper.

10. On May 1, 2015, respondent paid the remaining $8,000 owed to Kemper.

CONCLUSIONS OF LAW:

11. By failing to maintain a balance of $17,050 on behalf of Kemper in his client trust account, respondent wilfully violated Rules of Professional Conduct, rule 4-100(A).

12. By intentionally misappropriating for his own purposes $17,050 held in his client trust account for Kemper between September 2008 and April 2009, respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): In case no. 92-O-11549 et al., respondent stipulated to a private reproval (effective November 13,1993) in two client matters. In both matters, respondent failed to return subrogation files to his insurance company client despite repeated requests to do so.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's repeated misappropriation of Kemper's funds between September 2008 and April 2009 constitutes multiple acts of misconduct.

Harm (Std. 1.5(j)): Respondent's misappropriation of $17,050 and failure to pay the funds promptly caused significant harm to Kemper, which had to use its investigative and legal resources to track down respondent and obtain the amount it was owed.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Although the facts in this matter are easily provable, respondent cooperated with the State Bar by candidly acknowledging his misconduct upon his first contact with a State Bar investigator and by entering into this stipulation fully resolving the matter without the necessity of a trial, thereby saving State Bar 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).)

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.1(a), which applies to Respondent's violation(s) of Business and Professions Code, section 6106. Standard 2.1(a) provides that intentional or dishonest misappropriation of entrusted funds shall result in disbarment, unless the amount misappropriated is insignificantly small or sufficiently compelling circumstances clearly predominate. Here, there are no compelling mitigating circumstances and the amount misappropriated was significant.

Misappropriation of client funds breaches the high duty of loyalty owed to a client, violates basic notions of honesty and endangers public confidence in the legal profession. (*Kelly v. State Bar* (1988) 45 Cal.3d 649; *Chang v. State Bar* (1989) 49 Cal.3d 114 *and McKnight v. State Bar* (1991) 53 Cal.3d 1025.) 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, 1071-73.)

In this light, disbarment is the appropriate discipline under the Standards and to protect the public and the integrity of the profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of September 23, 2015, the prosecution costs in this matter are $5,182.00. 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:	Case number(s):
RICHARD EUGENE ASHBRAN	14-O-05356

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.

10/7/15		Richard E. Ashbran
Date	Respondent's Signature	Print Name
10/7/2015	Paul Virgo	Paul Virgo
Date	Respondent's Counsel Signature	Print Name
10/7/2015		Ross E. Viselman
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of: RICHARD EUGENE ASHBRAN	Case Number(s): 14-O-05356

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:

- [x] 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.

10/20/2015
Date

DONALD F. MILES
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 October 20, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

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

PAUL JEAN VIRGO
9909 TOPANGA BLVD # 282
CHATSWORTH, CA 91311

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

Ross E. Viselman, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 20, 2015.

Julieta E. Gonzales
Case Administrator
State Bar Court