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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
Counsel For The State Bar  <b>Ann J. Kim</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1230</b>  Bar # 259222	Case Number(s): <b>15-O-12694-YDR</b>	For Court use only  <div style="text-align: center;"> <b>FILED</b>   <b>APR 27 2016</b>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>	
In Pro Per Respondent  <b>Francis Joseph O'Kane, Jr.</b> <b>3500 W Olive Ave Ste 300</b> <b>Burbank, CA 91505</b> <b>(818) 769-7300</b>  Bar # 137370	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: <b>FRANCIS JOSEPH O'KANE, JR.</b>  Bar # 137370  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 7, 1988**.
- (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 **15** 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):
- 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: **two billing cycles following the effective date of the Supreme Court 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(h) & 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)  **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.

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- (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.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Candor/Lack of 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. See attachment, at page 11.
- (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)  **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

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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 convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline:** see attachment, at page 11.

**Good Character:** see attachment, at page 11.

**Community Service:** see attachment, at page 11.

**Remorse and Recognition of Wrongdoing:** see attachment, at page 12.

**Pretrial Stipulation:** see attachment, at page 12.

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one (1) year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 **one (1) year**, 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 (6) months**.

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- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 present 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.

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- 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:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> 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: .
- (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: FRANCIS JOSEPH O'KANE, JR.	Case Number(s): 15-O-12694
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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:
- 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";

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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.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      FRANCIS JOSEPH O'KANE, JR.

CASE NUMBER:                              15-O-12694-YDR

**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. 15-O-12694 (Complainant: Pearl Henderson)

FACTS:

1. In November 2008, Pearl Henderson incurred injuries at a Marriott hotel.
2. In March 2009, Ms. Henderson entered into a retainer agreement to hire respondent to represent her in a personal injury matter. Respondent accepted Ms. Henderson's case on a contingency basis whereby respondent would receive 40 percent and Ms. Henderson would receive 60 percent of any settlement.
3. On November 16, 2010, respondent filed a complaint against Marriott on behalf of Ms. Henderson in *Henderson v. Marriott Hotel Services, Inc.*, Los Angeles Superior Court case number YC06317.
4. Ms. Henderson's medical treatment was billed to Medicare. Medicare demanded partial payment and respondent agreed to negotiate and pay the Medicare lien on Ms. Henderson's behalf.
5. On September 9, 2014, respondent accepted a settlement of \$35,000.00 from Marriott, on behalf of Ms. Henderson.
6. On October 20, 2014, Ms. Henderson signed a Release of All Claims settling the personal injury matter for \$35,000.00.
7. On November 13, 2014, Medicare sent Ms. Henderson a final demand letter identifying \$3,371.36 in conditional payments owed by Ms. Henderson.
8. On December 10, 2014, Marriott issued a settlement check for \$35,000.00. Respondent thereafter received this check and deposited into his client trust account ("CTA") at City National Bank, XXXXX1056.
9. Prior to 2004, for 16 years, respondent worked as an attorney in a large personal injury firm with in-house accountants. In 2004, respondent opened his own law practice. He hired an office manager and bookkeeper to manage his business and trust accounts.

10. For 10 years, respondent's office manager and bookkeeper managed the financial aspect of respondent's business. Respondent's law firm consisted of five full-time employees and several independent contractors, including paralegals and investigators. At the end of December 2014, respondent downsized his law firm to work as a solo practitioner out of his house, and no longer employed an office manager, bookkeeper, or other employees.

11. From January 2015 to February 2015, respondent transitioned into a solo practice out of his home. This period was hectic, and respondent did not review his monthly statements and did not reconcile the balance in his CTA, the same CTA he had utilized in his larger practice.

12. In March 2015, respondent began operation as a solo practice. Respondent had a vague understanding of the amount in his CTA, but failed to reconcile his accounts, which is evidenced by, among other things, the fact that he took out his attorney's fees in weekly increments rather than lump sums, to prevent deficits in his CTA. Because he did not know the actual balance in his CTA, respondent thought it was more prudent to withdraw his earned fees in smaller amounts during the month.

13. Between December 10, 2014, and July 27, 2015, respondent was required to maintain a balance of \$18,938.93 in his CTA for the Medicare lien and Ms. Henderson, which was the balance of the settlement after subtracting fees and costs.

14. On February 10, 2015, respondent issued a check to Ms. Henderson for \$15,000.00. Ms. Henderson received the check, but declined to deposit or cash the check because she had expected a check for \$17,500.00.

15. On February 11 and 16, 2015, Ms. Henderson sent letters to respondent informing him that she had not cashed the \$15,000.00 check and demanding \$17,500.00, as well as an accounting after the Medicare lien settled. Respondent received Ms. Henderson's letters.

16. On March 27, 2015, respondent transferred funds into his general account leaving \$13,880.50 in his CTA, which was \$5,058.43 below the amount that respondent was required to maintain on Ms. Henderson's behalf.

17. On April 1, 2015, the balance in respondent's CTA was \$73,880.50, which exceeded the amount that respondent was to maintain in his CTA on Ms. Henderson's behalf, following the deposit of an unrelated settlement check containing attorney's fees.

18. Respondent did not begin to reconcile his CTA until April 2015.

19. From April 2015 to June 2015, Medicare sent notices informing Ms. Henderson of the past-due debt owed to Medicare and of its intent to refer the debt to the Department of Treasury. On June 29, 2015, the Department of Treasury wrote to Ms. Henderson demanding payment of approximately \$3,587.73, stating that a collection action would continue unless Ms. Henderson made payment within ten days of the date of the letter. Ms. Henderson forwarded the letter to respondent. Nevertheless, respondent delayed payment of the Medicare lien, even though he was aware of Ms. Henderson's desire that it be paid as early as April.

20. On July 17, 2015, respondent issued a check payable to Ms. Henderson in the amount of \$17,500.00 and paid the Department of Treasury the amount due for the Medicare lien. Part of the money paid to the Department of Treasury was in the form of disgorged attorney's fees.

21. At no time did respondent submit an accounting to Ms. Henderson.

#### CONCLUSIONS OF LAW:

22. By failing to maintain a balance of \$18,938.93, on behalf of Ms. Henderson and the medical provider in his client trust account at City National Bank, XXXXX1056, respondent failed to maintain client funds in trust, in willful violation of Rules of Professional Conduct, rule 4-100(A).

23. By failing to render an appropriate accounting to Ms. Henderson regarding the settlement funds following Ms. Henderson's request for such accounting, respondent failed to render an accounting, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

24. By failing to pay promptly, as requested by respondent's client, any portion of the \$35,000.00 in respondent's possession to the Department of Treasury for the Medicare lien, respondent failed to pay out promptly, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

25. By misappropriating \$5,058.43 of Ms. Henderson's settlement funds through gross negligence, respondent committed an act of moral turpitude in violation of Business and Professions Code section 6106.

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)).** Respondent failed to maintain client funds, failed to account, failed to pay promptly, and misappropriated client funds.

#### MITIGATING CIRCUMSTANCES.

**No Prior Record of Discipline:** Respondent has been an attorney since 1988 and has no record of discipline, which is entitled to significant mitigation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; see *Friedman v. State Bar* (1990) 50 Cal.3d 235, 242 [20 years in the practice of law without discipline is afforded significant weight in mitigation].)

**Good Character:** Respondent provided six letters attesting to his extraordinary good character from references in the legal and general community. With the exception of one, all of the references were aware of the full extent of the misconduct. References include respondent's church member, four work colleagues, and one client. Respondent has been sober since 1987 and is a sponsor for five men. Respondent has been a circuit speaker for AA meetings all over California. Respondent's character letters are entitled to limited mitigation. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [three attorneys and three clients not found to constitute a broad range of references from legal and general communities].)

**Pro Bono/Community Service:** Respondent has been involved with the Consumer Attorneys of California and Consumer Attorneys Association of Los Angeles (CAALA). Respondent was on the board of governors of CAALA for several years, serving on the education committee, where he worked to educate new layers and assist lawyers in meeting their MCLE requirements. Respondent was also the chair/co-chair of the CAALA's Las Vegas Seminar for three years. In the mid-1990s, respondent was involved with the "new attorney" programs hosted by the Los Angeles Superior Court where he worked with judges and court staff to educate new attorneys on court appearances and trying cases. (*In the*

*Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [where civic service was recognized as a mitigating circumstance].)

**Remorse and Recognition of Wrongdoing:** Beginning in mid-2015, in order to timely pay any Medicare and Medi-Cal liens in the future, respondent began using the services of an attorney in Pasadena whose sole specialty is negotiating Medicare and Medi-Cal liens. (*In the Matter of Spaith* (Review. Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519 [objective step, though not spontaneous, is considered a mitigating circumstance].)

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

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

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

Although not binding, the Standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) 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).)

Respondent’s misappropriation was a result of gross negligence, rather than an intentional act. The most severe sanction applicable to respondent’s misconduct is found in Standard 2.1(b), which provides that “Actual suspension is the presumed sanction for misappropriation involving gross negligence.” Admittedly this is a broad range. In order to fix discipline, it is necessary to consider the nature of the misconduct and the aggravating and mitigating factors (Std. 1.7). After downsizing his practice, respondent failed to monitor and reconcile his CTA. For years, he had not balanced his own bank accounts, but relied on a bookkeeper to do it for him. Respondent allowed his CTA balance to fall

below the amount needed to pay his client and the Medicare lien as a result of paying no attention to the account. Respondent was grossly negligent in monitoring his financial affairs, but he acted without any intent to misappropriate client funds. The misconduct was limited in scope and time, to just one client. Moreover, within days there were enough earned fees back in the CTA to cover both the client's and Medicare's checks.

Ultimately, respondent's client received the settlement she desired (\$17,500) and respondent paid the Medicare lien. Respondent disgorged part of his fees to do so. Respondent's lack of prior record and effort to right the wrong done to his client demonstrate that the current misconduct is an aberration in respondent's many years of practice. Respondent has no record of discipline since 1988, over 27 years of discipline-free practice prior to the misconduct, which is significant mitigation. Respondent does not appear to pose a harm to the public, the courts or the legal profession. Further, respondent has shown proof of good character, pro bono work/community service, and recognition of wrongdoing. In aggravation, respondent committed multiple acts of misconduct. On balance, the mitigation outweighs the aggravation, meaning that discipline in the lower range of Standard 2.1(b) is appropriate. A discipline consisting of a six-month actual suspension will fulfill the goals of attorney discipline.

This level of discipline is supported by case law. In *Edwards v. State Bar* (1990) 52 Cal.3d 28, the Supreme Court found that Edwards commingled funds in the trust account and wilfully misappropriated client funds. Edwards used client funds for his own benefit without his client's authorization and was unable to pay funds to the client. But Edwards made full repayment within three months of the misappropriation before he was aware of the State Bar complaint. In mitigation, Edwards had no prior record of discipline in 12 years of practice, no significant harm to the client and candor and cooperation. In aggravation, the Supreme Court found that Edwards lacked appreciation of the seriousness of his misconduct. The Supreme Court ordered a three-year stayed suspension and three-year probation with conditions including a one-year actual suspension.

In the current matter, respondent's misconduct is somewhat distinguishable from *Edwards*. Respondent's misappropriation was not intentional, but rather occurred through gross negligence. The misappropriation of client funds was due to respondent's failure to monitor and reconcile his CTA. But respondent never intended to misappropriate client funds, and had enough earned fees in the CTA to cover the client's and Medicare's checks in a matter of days. In addition, respondent has more years of discipline-free practice than Edwards, provided evidence of good character and community service, and acknowledges his misconduct. Therefore, a lower level of discipline is appropriate.

#### **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>
15-O-12694	Four	6068(m)

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 15, 2016, the prosecution costs in this matter are \$3,670.06. 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**

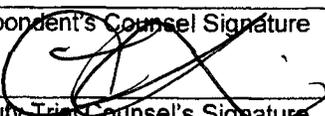
Pursuant to rule 3201, respondent may not receive MCLE credit for completion of Ethics School ordered as a condition of discipline. (Rules of Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>O'KANE, FRANCIS J.</b>	Case number(s): <b>15-O-12694</b>
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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>3/22/16</u> Date	 Respondent's Signature	<u>FRANCIS J. O'KANE, JR.</u> Print Name
<u>3/28/16</u> Date	 Deputy Trial Counsel's Signature	<u>ANN J. KIM</u> Print Name

(Do not write above this line.)

In the Matter of: O'KANE, FRANCIS J.	Case Number(s): 15-O-12694
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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.)**

April 26, 2016  
Date

W. Kearse McGill  
W. KEARSE MCGILL  
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 April 27, 2016, 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:

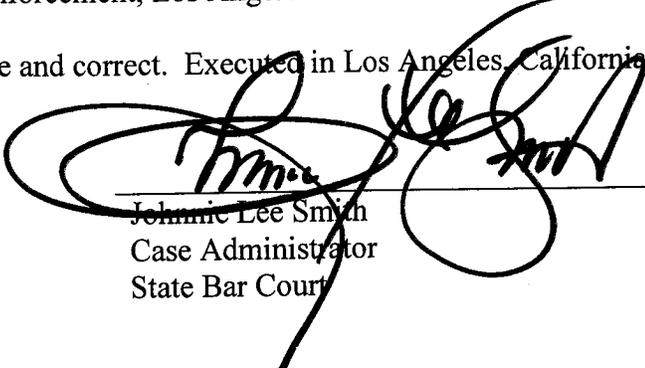
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**FRANCIS J. O'KANE JR  
THE O'KANE LAW FIRM  
3500 W OLIVE AVE STE 300  
BURBANK, CA 91505**

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

**ANN J. KIM**, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 27, 2016.



Johnnie Lee Smith  
Case Administrator  
State Bar Court