

(Do not write above this line.)

- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior Record of Discipline [see standard 1.2(f)]**
- (a) State Bar Court Case # of prior case _____
- (b) Date prior discipline effective _____
- (c) Rules of Professional Conduct/State Bar Action violations _____
- (d) Degree of prior discipline _____
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ~~xxxx~~ **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
- (4) ~~xxxx~~ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attachment
- (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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) ~~xxxx~~ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct. See attachment
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

None

(Do not write above this line.)

C. Mitigating Circumstances [standard 1.2(e)]. 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 or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to 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 of 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. See attachment
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (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 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:

See attachment

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In the Matter of ERNEST R. KRAUSE	Case number(s): 97-0-15614 07-0-15614 04-0-15133
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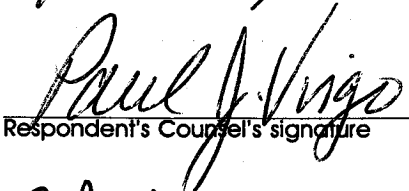

SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

<u>1/10/05</u> Date	<u></u> Respondent's signature	<u>ERNEST R. KRAUSE</u> Print name
<u>1/6/2005</u> Date	<u></u> Respondent's Counsel's signature	<u>PAUL J. VIRGO</u> Print name
<u>1/12/05</u> Date	<u></u> Deputy Trial Counsel's signature	<u>CYDNEY BATCHELOR</u> Print name

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In the Matter of ERNEST R. KRAUSE	Case number(s): 97-0-15614 XXXXXXXXXX 04-0-15133
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

May 2, 2005
Date

Pat McEleny
Judge of the State Bar Court

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: ERNEST R. KRAUSE

CASE NUMBER(S): 97-O-15614, et al.

DISMISSAL.

Case No. 04-O-12659 (Olga Escobar): Upon the execution of the pilot program contract by the Respondent and the State Bar Court, the State Bar will dismiss this case, without prejudice, in the interests of justice, pursuant to rule 262 of the Rules of Procedure of the State Bar.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the State Bar Act and/or Rules of Professional Conduct:

Case No. 97-O-15614 (State Bar Investigation):

Facts: In 1996, Respondent accepted a job with the American Legal Network ("ALN"). Respondent knew that ALN was owned and operated by a non-licensed individual named Ted Alvarez ("Alvarez"), and that the sole business of ALN was the practice of law. The employment arrangement was that Respondent would receive ten percent (10%) of the settlement of cases he worked on and ALN would provide and supervise office employees, cover all costs and overhead, and provide clients. Respondent was to take recorded statements, close cases over the telephone, make court appearances as necessary, and appear at the office ALN had rented once a week. During his employment with ALN, Respondent did not supervise other employees, did not obtain new clients, did not receive or review settlement checks, did not prepare or review disbursement information, and did not review or oversee operation of either the client trust account or the general account. Respondent did, however, sign checks as directed by Alvarez, including signing blank checks for which he had no further information. Respondent also opened a client trust account in his name, for which he was a signatory; Alvarez was also a signatory on the account. Between February and August 1997, over \$175,000.00 in insurance company

payments was deposited Respondent's client trust account; in the same period of time, over \$104,000.00 in client trust account checks was written to ALN.

Conclusions of Law: By willfully entering into an agreement with ALN, Respondent formed a partnership with a person whom he knew was not a lawyer where at least one of the activities of the partnership consisted of the practice of law, in violation of Rule of Professional Conduct 1-310. By willfully allowing Alvarez to be a signatory on the client trust account, and allowing checks totaling over \$104,000.00 to be written from the client trust account to ALN, Respondent shared attorney fees with a non-lawyer, in violation of Rule of Professional Conduct 1-320(A).

Case No. 04-O-15133 (Dale Moore)

Facts: In February 2002, Dale Moore employed Respondent to represent him in a matter involving cost recovery in a worker's compensation case. Although Respondent performed some legal services in the case, he did not complete the matter, nor did he respond to numerous messages from his client.

Conclusions of Law: By willfully failing to complete the worker's compensation matter, Respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to respond to numerous messages from Mr. Moore, Respondent failed to respond to his client's numerous status inquiries, in violation of Business and Professions Code section 6068(m).

PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A.(6), was December 23, 2004.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing: Respondent has stipulated to misconduct in two matters.

Significant Harm: By engaging in the misconduct described above in case number 97-O-15614, Respondent caused significant harm to the public by exposing them to an unlicensed, unscrupulous individual who was using his license to further their own illegal schemes.

Trust Account Involvement: By engaging in the misconduct set forth above in case number

97-O-15614, Respondent allowed an unlicensed, unscrupulous individual to use his client trust account illegally. Furthermore, although over \$175,000.00 was deposited into the client trust account between February and August 1997, only approximately \$13,000.00 was actually paid to clients, and over \$104,000.00 was paid to ALN.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Remorse: Although he did not do so until after significant harm and substantial abuse of his client trust account had occurred, Respondent voluntarily contacted Allstate Insurance Company about the fraud being committed in the ALN office, and cooperated with the Federal Bureau of Investigation in its investigation and prosecutor of Alvarez and others involved in ALN.

Candor and Cooperation: Respondent has been completely candid and cooperative with the State Bar in the investigation and resolution of these cases.

Financial Problems: At the time that Respondent accepted the position with ALN, he was in desperate financial straits. He had been fired from a previous position over a year earlier, and was unable to obtain another job until he was hired by ALN. At the time Respondent accepted the position, he had exhausted his savings.

FACTS SUPPORTING ADDITIONAL MITIGATING CIRCUMSTANCES.

No Prior Record: Although the conduct described in 97-O-15614 is very serious, it should be noted nevertheless that Respondent had practiced for 20 years with no prior record of discipline before the misconduct in that case occurred.

Participation in State Bar Lawyer Assistance Program: On November 24, 2003, Respondent voluntarily contacted the State Bar Lawyer Assistance Program ("LAP"), and immediately thereafter signed an application agreement to be assessed by the Lawyer's Assistance Program and fully cooperated in that assessment process. Respondent also cooperated in an evaluation by a LAP-selected mental health professional, and then met with the LAP Evaluation Committee to discuss full participation the LAP program. On April 5, 2004, Respondent signed the participation agreement with LAP that memorialized

his long-term commitment to the program. He has been in continuous compliance with LAP since his initial contact.

Delay in Finalizing Stipulation: Through no fault of Respondent, the State Bar delayed in finalizing the stipulation that would have resulted in Respondent being enrolled in a timely manner in the State Bar Court Treatment and Discipline Program. As a result, Respondent has already been participating in LAP for over one year by the time this stipulation was presented to him for signature.

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; 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 March 11, 2009, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

**ERNEST ROY KRAUSE
6805 FLAMINGO WAY
SACRAMENTO, CA 95828**

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

MARK HARTMAN , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 11, 2009.


Laurretta Cramer
Case Administrator
State Bar Court