


State Bar Court of the State Bar of California
Hearing Department: ☒ Los Angeles ☐ San Francisco
PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

ORIGINAL

Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL BROOKE A. SCHAFER, No. 194824 CHARLES A. MURRAY, No. 146069 1149 South Hill Street, 10th Floor Los Angeles, California 90015-2299 Telephone: (213) 765-1000	Case Number(s) 98-O-01781 RMT 98-O-03660 98-O-03661 99-O-12048 99-O-12071 99-O-12514 00-O-10619 00-O-12362	(for Court use) <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center;">OCT 26 2006 <i>h/c</i></div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
Counsel for Respondent Michael G. Gerner 10100 Santa Monica Bl #800 Los Angeles CA 90067	<div style="text-align: center; font-size: 1.5em; font-weight: bold;">LODGED</div> <div style="text-align: center;">OCT 24 2003 <i>h/c</i></div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>	
In the Matter of Timothy G. Dallinger Bar # 50357 A Member of the State Bar of California (Respondent)	Submitted to Pilot Program Judge <div style="text-align: center; font-weight: bold;">STIPULATION RE FACTS AND CONCLUSIONS OF LAW</div> <div style="display: flex; justify-content: space-between;"> kwiktag® 022 607 049 </div>  <div style="text-align: center;"> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED </div>	

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 5, 1972
(Date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (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." This stipulation consists of 7 pages, plus attachment Exh. 1.
- (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) 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.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

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"
- (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) ☐ Trust violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☒ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) ☒ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

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.
- (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.

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

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

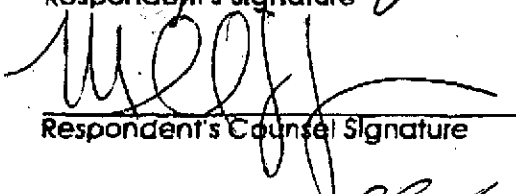
If the Respondent is accepted into the Pilot Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement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

10/23/03
Date


Respondent's Signature

Timothy G. Dallinger
Print Name

10-23-03
Date


Respondent's Counsel Signature

Michael G. Gerner
Print Name

Oct. 23, 2003
Date


Deputy Trial Counsel's Signature

Brooke A. Schafer
Charles A. Murray
Print Name

1 **Attachment to Pilot Program Stipulation re: Facts and Conclusions of Law**
2 ***In re Timothy G. Dallinger***

3 Case nos. **98-O-1781-RMT; 98-O-3660; 98-O-3661; 99-O-12048; 99-O-12071;**
4 **99-O-12514; 00-O-10619 & 00-O-12362**

5 **I. JURISDICTION**

6 Respondent, Timothy G. Dallinger, bar no. 50357, was admitted to the practice of law
7 California on January 5, 1972, and since that time has been a member of the State Bar of
8 California.

9 **II. STATEMENT OF ACTS OR OMISSIONS ACKNOWLEDGED BY**
10 **RESPONDENT AS CAUSE OR CAUSES FOR DISCIPLINE, AND**
11 **CONCLUSIONS OF LAW**

12 The parties previously entered into a stipulation as to Facts and Conclusions of Law
13 which was filed with the court on September 4, 2002. The relevant portion is attached as
14 Exhibit 1, and the parties stipulate that those Facts and Conclusions of Law are incorporated
15 as if fully set forth herein.

16 **III. AGGRAVATING FACTORS, cont'd from page 2 of stipulation:**

17 **Multiple Acts**

18 This misconduct evidences multiple acts of misconduct between 1993 and 2000. The
19 bulk of the misconduct, related to misappropriation, occurred between 1996 and 1998.

20 **IV. MITIGATING FACTORS, cont'd from page 3 of stipulation:**

21 **Lawyer Assistance Program participation**

22 Respondent signed an agreement to be evaluated through the State Bar's Lawyer
23 Assistance Program (LAP) on April 2, 2003. Respondent complied with the LAP's
24 conditions and requests for evaluation. At the conclusion of the LAP evaluation, on June 30,
25 2003, Respondent met with the LAP's Evaluation Committee, and then entered into a long-
26 term participation agreement with LAP.

1 No prior discipline

2 Respondent had been a member of the State Bar for about 21 years when the instant
3 misconduct began. He has no prior misconduct.

4 Financial Stress

5 Respondent reports that in 1994 his family's North Hollywood home incurred about
6 \$80,000.00 in damage in the Northridge earthquake. In early 1995 Respondent's law office
7 burned down, which resulted in some \$50,000.00 loss to him and his partner. Additionally,
8 case and client files had to be reconstructed and they had to relocate to another location for
9 most of the year. Also during 1995 Respondent's 17-year marriage broke up, culminating in
10 divorce the following year. In 1997 Respondent began experiencing severe back pain which
11 made it increasingly difficult to do physical work. He underwent back surgery in 1998, which
12 resulted in a long recovery time and required much time away from his law practice, further
13 contributing to his financial trouble. His law partnership dissolved in 1999, partly as a result of
14 the financial stress on the practice.

15 **V. RESTITUTION**

16 Respondent agrees that, as part of his participation in the Pilot Program, he will make
17 restitution to the following people (or to the Client Security Fund to the extent it has paid), and
18 a restitution condition shall be part of any discipline recommendation submitted in association
19 herewith:

- 20 - Layla Bennet. \$3416.67 plus interest at 10% per annum from July 1, 1998.
21 - Roland Kern. \$47,916.67 plus interest at 10% per annum from July 1, 1997.
22 - Guy Lundberg. \$4416.67 plus interest at 10% per annum from October 1, 1998.
23 - Sy Maxwell. \$2316.00 plus interest at 10% per annum from April 1, 1999.
24 - Fred Fleming. \$11,636.82 plus interest at 10% per annum from February 1, 1996.
25 - Roger Williams. \$42,188.00 plus interest at 10% per annum from June 1, 1998.

1 **VI. RULE 133(12) NOTIFICATION OF PENDING MATTERS**

2 Respondent was notified by writing dated and mailed October 21, 2003, of any
3 matters not included in this stipulation.
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1 **III. STATEMENT OF ACTS OR OMISSIONS ACKNOWLEDGED BY**
2 **RESPONDENT AS CAUSE OR CAUSES FOR DISCIPLINE**

3 The parties stipulate that the following acts and/or omissions constitute
4 cause for discipline:

5 **A. Case No. 98-O-01781**

6 1. In or about the years 1997 through 1998, Respondent maintained a
7 client trust account, no. 127-412697-6, at California Federal Bank ("the California
8 Federal Trust Account").

9 2. In or about February 1998 through June 1998, Respondent issued
10 checks drawn upon the California Federal Trust Account against insufficient
11 funds, including:

CHECK NO.	DATE PRESENTED	CHECK AMOUNT	ACCT. BALANCE (on date presented)
2018	2/3/98	\$ 58.54	\$-06.38
2053	5/7/98	\$6,841	\$486.71
2061	5/7/98	\$3,000	\$486.71
2064	5/22/98	\$2,000	\$ 30.71
2064	5/29/98	\$2,000	\$-1928.29
2062	6/9/98	\$3,798.86	\$- 26.29
2063	6/9/98	\$132	\$- 26.29
2069	6/22/98	\$500	\$- 00.71
2066	6/23/98	\$9,000	\$- 17.29
2067	6/23/98	\$2,000	\$- 17.29
2068	6/24/98	\$3,000	\$- 53.29

19 3. Respondent issued the checks set forth above when he knew or
20 should have known that there were insufficient funds in the California Federal
21 Trust Account to pay them and that there would not be sufficient funds to pay the
22 checks at the time they were presented.

23 **Legal Conclusion Case No. 98-O-01781**

24 4. By issuing checks drawn upon the California Federal Trust Account
25 when he knew or should have known that there were insufficient funds,
26 Respondent committed acts involving moral turpitude and wilfully violated
27 Business and Professions Code, section 6106.
28

1 **B. Case No. 98-O-03660**

2 5. In or about January 1998, Layla Bennet ("Bennet") enlisted the
3 advice of Respondent regarding a medical malpractice matter in which Bennet
4 was representing herself in *Layla Bennet v. Horace C. Jenkins, MD., et al.*, case no.
5 EC 021501 in the Los Angeles Superior Court.

6 6. Although there was no written fee agreement, Respondent agreed to
7 negotiate a settlement of the action.

8 7. On or about May 21, 1998, Bennet, through Respondent's
9 negotiations, settled her claim for \$4,500.

10 8. On or about June 4, 1998, Respondent received a check from the
11 defendant in *Layla Bennet v. Horace C. Jenkins, MD., et al.* in the amount of \$4,500.
12 The check was made payable solely to "Layla Bennet."

13 9. On or about June 5, 1998, Respondent deposited the \$4,500 check
14 received on behalf of Bennet into Respondent's non-client trust account at
15 California Federal Bank account no. 127-410985-7.

16 10. Respondent wilfully misappropriated Bennet's settlement funds.

17 11. On or about June 12, 1998, Respondent issued check # 2065 to
18 Bennet in the amount \$1,500 from his trust account at California Federal Bank,
19 account no. 127-412697-6. In the memo portion of the check "partial settlement
20 dist." is written.

21 12. On or about July 21, 1998, the check was returned to Bennet due to
22 non-sufficient funds. On or about August 24, 1998, Bennet attempted to cash the
23 check again but it was returned to her due to non-sufficient funds. Bennet then
24 contacted Respondent and requested her settlement proceeds.

25 13. On or about August 27, 1998, Respondent closed his client trust
26 account at California Federal Bank, account no. 127-412697-6.

27 14. At no time prior to closure of this client trust account did Respondent
28 pay Bennet any portion of the settlement funds.

1 15. On or about September 7, 1999, the State Bar opened an
2 investigation, case no. 98-O-3660, pursuant to a complaint filed by Layla Bennet
3 ("the Bennet matter").

4 16. On or about September 13, 1999, State Bar Investigator Michael
5 Wolverton wrote to Respondent regarding the Bennet matter. The investigator's
6 letter was placed in a sealed envelope correctly addressed to Respondent at his
7 membership records address. The letter was properly mailed by first class mail,
8 postage pre-paid, by depositing for collection by the United States Postal Service in
9 the ordinary course of business. The United States Postal Service did not return
10 the letter as undeliverable or for any other reason.

11 17. On or about February 2, 2000, State Bar Investigator Lisa
12 Foster wrote to Respondent regarding the Bennet matter. The investigator's
13 letter was placed in a sealed envelope correctly addressed to Respondent at his
14 membership records address. The letter was properly mailed by first class mail,
15 postage pre-paid, by depositing for collection by the United States Postal Service in
16 the ordinary course of business. The United States Postal Service did not return
17 the letter as undeliverable or for any other reason.

18 18. Both of the investigators' letters requested that Respondent respond
19 in writing to specific allegations of misconduct being investigated by the State Bar
20 in the Bennet matter. Respondent did not respond to either of the investigators'
21 letters or otherwise communicate with either investigator.

22 **Legal Conclusions Case No. 98-O-03660**

23 19. By failing to deposit funds received for the benefit of a client in a
24 bank account labeled "Trust Account," "Client's Funds Account" or words of similar
25 import, Respondent wilfully violated Rules of Professional Conduct, rule 4-
26 100(A).

27 20. By depositing funds received for the benefit of a client in an account
28 not designated as a client trust account, Respondent commingled his own

1 personal funds with funds received on behalf of a client in wilful violation of Rules
2 of Professional Conduct, rule 4-100(A).

3 21. By misappropriating Bennet's settlement funds, Respondent
4 committed an act involving moral turpitude in wilful violation of Business and
5 Professions Code, section 6106.

6 22. By not paying Bennet any portion of the settlement funds,
7 Respondent failed to pay promptly funds in his possession which his client was
8 entitled to receive in wilful violation of Rules of Professional Conduct, rule 4-
9 100(B)(4).

10 23. By not paying Bennet the money Respondent received on her
11 behalf, by issuing a check to Bennet from an account where none of her
12 settlement funds were held, by issuing a check against non-sufficient funds and
13 by closing the bank account before the check was paid, Respondent committed
14 acts involving moral turpitude in wilful violation of Business and Professions
15 Code, section 6106.

16 24. By not providing a written response to the allegations in the Bennet
17 matter or otherwise cooperating in the investigation of the Bennet matter,
18 Respondent failed to cooperate in a disciplinary investigation in wilful violation of
19 Business and Professions Code, section 6068(i).

20 **C. Case No. 98-O-03661**

21 25. On or about May 30, 1990, Roland Kern ("Kern") employed
22 Respondent to represent him with a pending insurance claim for a property loss
23 suffered as a result of the sinking of the vessel *Spicewind I*. Respondent and Kern
24 agreed that Respondent would be compensated at a rate of \$200 per hour.

25 26. On or about April 25, 1997, after settling the insurance claim,
26 Respondent received a settlement check in the amount of \$125,000 made payable
27 to both Respondent and Kern.

28 27. On or about April 29, 1997, Respondent deposited the \$125,000 check

1 received on behalf of Kern into Respondent's client trust account no.127-
2 412697-6 at California Federal Bank.

3 28. Kern had already paid Respondent approximately \$140,000 in legal
4 fees so Respondent agreed to disburse the entire \$125,000 to Kern. Therefore,
5 Respondent was required to maintain the entire \$125,000 amount in the
6 California Federal Bank trust.

7 29. On June 23, 1997, the balance in the California Federal Bank client
8 trust account dropped to -\$46.21. Respondent did not disburse any of Kern's
9 settlement funds from the California Federal Bank client trust account at that
10 time.

11 30. Respondent wilfully misappropriated Kern's settlement funds.

12 31. On or about August 5, 1997, the Internal Revenue Service ("IRS")
13 issued a Notice of Levy to the Respondent stating that Kern owed the IRS
14 \$148,036.84 and requested that Respondent turn over to the IRS any money that
15 the Respondent was holding for Kern.

16 32. On or about September 5, 1997, Respondent sent Kern's attorney for
17 the IRS matter, Donald Price("Price"), an "Instructions, Release & Indemnity
18 Agreement" which stated Respondent would transfer the funds Respondent held
19 on behalf of Kern to the IRS in response to its Notice of Levy.

20 33. On or about September 9, 1997, Price sent the IRS a letter enclosing
21 an Assignment signed by Kern, assigning to the IRS the funds being held by
22 Respondent on Kern's behalf. The letter also informed the IRS that the funds
23 would be forthcoming.

24 34. On or about October 29, 1997, Respondent issued check no. 1539
25 from his California Federal general business account, no. 738-4023565 for
26 \$125,662 to the IRS on behalf of Kern. The \$125,662 represented the settlement
27 amount plus accrued interest. On or about November 18, 1997, check no. 1539
28 was returned to the IRS due to non-sufficient funds.

1 35. On or about November 20, 1997, Respondent closed the California
2 Federal general business account, no. 738-4023565.

3 36. Respondent failed to pay the outstanding IRS levy with Kern's
4 settlement funds as Kern requested Respondent to do.

5 37. On or about September 7, 1999, the State Bar opened an
6 investigation, case no. 98-O-3661, pursuant to a complaint filed by Roland Kern
7 ("the Kern matter").

8 38. On or about September 13, 1999, State Bar Investigator Michael
9 Wolverton wrote to Respondent regarding the Kern matter. The investigator's
10 letter was placed in a sealed envelope correctly addressed to Respondent at his
11 membership records address. The letter was properly mailed by first class mail,
12 postage pre-paid, by depositing for collection by the United States Postal Service in
13 the ordinary course of business. The United States Postal Service did not return
14 the letter as undeliverable or for any other reason.

15 39. The investigator's letters requested that Respondent respond
16 in writing to specific allegations of misconduct being investigated by the State Bar
17 in the Kern matter. Respondent did not respond to the investigator's letter or
18 otherwise communicate with the investigator.

19 **Legal Conclusions Case No. 98-O-03661**

20 40. By not maintaining at least \$125,000 in the California Federal Bank
21 client trust account no. 127-412697-6, Respondent wilfully failed to maintain
22 funds received for the benefit of a client in a trust account in wilful violation of
23 Rules of Professional Conduct, rule 4-100(A).

24 41. By misappropriating at least \$125,000 of Kern's settlement funds,
25 Respondent committed an act involving moral turpitude in wilful violation of
26 Business and Professions Code, section 6106.

27 42. By issuing a \$125,662 check against non-sufficient funds and by
28 closing the bank account before the check was paid, Respondent committed acts

1 involving moral turpitude in wilful violation of Business and Professions Code,
2 section 6106.

3 43. By not paying the IRS levy, Respondent failed to pay promptly, as
4 requested by a client, funds that were in Respondent's possession which the
5 client was entitled to receive in wilful violation of Rules of Professional Conduct,
6 rule 4-100(B)(4).

7 44. By not providing a written response to the allegations in the Kern
8 matter or otherwise cooperating in the investigation of the Kern matter,
9 Respondent failed to cooperate in a disciplinary investigation in wilful violation of
10 Business and Professions Code, section 6068(i).

11 **D. Case No. 99-O-12048**

12 45. On or about September 10, 1998, Guy Lundberg ("Lundberg")
13 employed Respondent to review a resignation agreement prepared by Lundberg's
14 employer. At that time Lundberg agreed to pay and did pay Respondent \$5,000.

15 46. Later in the same day that Lundberg employed Respondent, Lundberg
16 told Respondent by telephone to cease work on his matter as he had reached an
17 agreement with his employer. Lundberg requested that Respondent send him a
18 billing statement and a refund of the unearned fees. Respondent told Lundberg
19 that he agreed to refund the fees.

20 47. On or about September 29, 1998, Lundberg wrote a letter to
21 Respondent requesting to know when he could expect to receive the billing
22 statement and his refund of the unearned fees. Lundberg both faxed this letter to
23 Respondent and sent the letter to Respondent's then-membership records
24 address.

25 48. On or about September 29, 1998, Respondent faxed Lundberg a
26 message that was in response to Lundberg's request for a billing statement and
27 refund of the unearned fees. Respondent's message stated that he would provide
28 a billing statement and the refund of the fee as soon as possible.

1 49. On or about November 30, 1998, Lundberg wrote another letter to
2 Respondent requesting an accounting of the fees and a refund. Lundberg both
3 faxed this letter to Respondent and sent the letter to Respondent's then-
4 membership records address. The letter was not returned as undeliverable or for
5 any other reason.

6 50. Between December 1998 and May 1999, Lundberg left several
7 messages on Respondent's telephone answering machine in an effort to obtain the
8 accounting of the fees and the refund.

9 51. At no time has Respondent provided Lundberg with an accounting of
10 the \$5,000.

11 52. Respondent has not refunded the entire \$5000.

12 53. At no time since September 29, 1998, has Respondent responded to
13 any of Lundberg's requests for information regarding an accounting or refund.

14 54. On or about September 27, 1999, the State Bar opened an
15 investigation, case no. 99-O-12048, pursuant to a complaint filed by Guy
16 Lundberg ("the Lundberg matter").

17 55. On or about October 8, 1999, State Bar Investigator Michael
18 Wolverton wrote to Respondent regarding the Lundberg matter. The investigator's
19 letter was placed in a sealed envelope correctly addressed to Respondent at his
20 membership records address. The letter was properly mailed by first class mail,
21 postage pre-paid, by depositing for collection by the United States Postal Service in
22 the ordinary course of business. The United States Postal Service did not return
23 the letter as undeliverable or for any other reason.

24 56. On or about February 2, 2000, State Bar Investigator Lisa
25 Foster wrote to Respondent regarding the Lundberg matter. The investigator's
26 letter was placed in a sealed envelope correctly addressed to Respondent at his
27 membership records address. The letter was properly mailed by first class mail,
28 postage pre-paid, by depositing for collection by the United States Postal Service in

1 the ordinary course of business. The United States Postal Service did not return
2 the letter as undeliverable or for any other reason.

3 57. Both of the investigators' letters requested that Respondent respond
4 in writing to specific allegations of misconduct being investigated by the State Bar
5 in the Lundberg matter. Respondent did not respond to either of the investigators'
6 letters or otherwise communicate with either investigator.

7 **Legal Conclusions Case No. 99-O-12048**

8 58. By not refunding the \$5,000 as requested by Lundberg, Respondent
9 failed to refund unearned fees in wilful violation of Rules of Professional
10 Conduct, rule 3-700(D)(2).

11 59. By not providing a billing statement or an accounting of the fees that
12 Respondent received from Lundberg as requested, Respondent failed to render an
13 account of client funds in wilful violation of Rules of Professional Conduct, rule 4-
14 100(B)(3).

15 60. By failing to respond to Lundberg's letter and telephone calls since
16 November 1998, Respondent has failed to respond to a client's reasonable status
17 inquiries in wilful violation of Business and Professions Code, section 6068(m).

18 61. By not providing a written response to the allegations in the
19 Lundberg matter or otherwise cooperating in the investigation of the Lundberg
20 matter, Respondent failed to cooperate in a disciplinary investigation in wilful
21 violation of Business and Professions Code, section
22 6068(i).

23 **E. Case No. 99-O-12071**

24 62. In or about January 1998, Sy Maxwell ("Maxwell") employed
25 Respondent regarding interests in a real estate partnership, Balboa Enterprises.
26 No written fee agreement was entered into at that time.
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1 63. In or about April 1998 Respondent completed his services for which
2 he had been retained. At that time Respondent submitted a final billing statement
3 to Maxwell showing a balance of \$3,500 owed to Respondent by Maxwell.

4 64. On or about May 20, 1998, Maxwell issued to Respondent a personal
5 check for \$3,500. Respondent had wanted the money immediately, and he did not
6 want to wait on a check from Balboa Enterprises as the account was not yet
7 funded. Respondent had agreed to reimburse Maxwell the \$3,500 upon receipt of
8 payment from Balboa Enterprises.

9 65. On or about May 22, 1998, Maxwell issued a check to Respondent
10 from Balboa Enterprises in the amount \$3,500 representing payment in full of the
11 Respondent's fees.

12 66. Respondent issued a check from his personal bank account to
13 Maxwell in the amount of \$3,500. In the memo portion of the check "loan pymt"
14 was written. On or about June 2, 1998, this check was presented for payment but
15 was returned to Maxwell unpaid due to non-sufficient funds. On or about June 5,
16 1998, this check was presented again for payment but was returned to Maxwell
17 unpaid due to non-sufficient funds.

18 67. On or about August 7, 1998, Maxwell filed a small claims action
19 against Respondent in the Van Nuys Municipal Court, *Sy Maxwell v. Timothy*
20 *Dallinger*, Small Claims Case No. 98V20959. On or about September 15, 1998, a
21 Notice of Entry of Judgement in *Sy Maxwell v. Timothy Dallinger*, Small Claims Case
22 No. 98V20959 was entered indicating that Respondent owed Maxwell \$3,520 and
23 \$46 in costs.

24 68. On or about September 25, 1998 Respondent sent Maxwell a letter
25 stating that he planned to pay Maxwell all monies owed to him the following week.

26 69. On or about January 25, 1999, Maxwell and Respondent signed an
27 Agreement to Satisfy Judgment, whereby Respondent agreed to pay Maxwell a
28

1 total amount of \$3,566 in 3 increments: \$1,250 on 2/10/99, \$1,250 on 3/10/99
2 and \$1,066 on 4/10/99.

3 70. On or about February 12, 1999, Respondent made one payment to
4 Maxwell in the amount of \$1,250. At no time has Respondent paid Maxwell any
5 more money.

6 71. On or about September 27, 1999, the State Bar opened an
7 investigation, case no. 99-O-12071, pursuant to a complaint filed by Sy Maxwell
8 ("the Maxwell matter").

9 72. On or about October 7, 1999, State Bar Investigator Michael
10 Wolverton wrote to Respondent regarding the Maxwell matter. The investigator's
11 letter was placed in a sealed envelope correctly addressed to Respondent at his
12 membership records address. The letter was properly mailed by first class mail,
13 postage pre-paid, by depositing for collection by the United States Postal Service in
14 the ordinary course of business. The United States Postal Service did not return
15 the letter as undeliverable or for any other reason.

16 73. The investigator's letters requested that Respondent respond
17 in writing to specific allegations of misconduct being investigated by the State Bar
18 in the Maxwell matter. Respondent did not respond to the investigator's letter or
19 otherwise communicate with the investigator.

20 **Legal Conclusions Case No. 99-O-12071**

21 74. By not refunding the \$3,500 to Maxwell, Respondent failed to refund
22 unearned fees in wilful violation of Rules of Professional Conduct, Rule 3-
23 700(D)(2).

24 75. By failing to refund unearned fees to his client, by writing a check
25 against non-sufficient funds to re-pay his client and by failing to obey a court
26 order to pay the small claims judgment, Respondent committed acts involving
27 moral turpitude in wilful violation of Business and Professions Code, section 6106.

28 76. By not providing a written response to the allegations in the Maxwell

1 matter or otherwise cooperating in the investigation of the Maxwell matter,
2 Respondent failed to cooperate in a disciplinary investigation in wilful violation of
3 Business and Professions Code, section 6068(i).

4 **F. Case No. 00-O-10619**

5 77. On or about December 22, 1994, Fred Fleming ("Fleming") hired
6 Respondent to represent him in a matter entitled *AT&T Corp. v. Fleming & Berkley*,
7 U.S. District Court, case no. 94-6024. Respondent and Fleming agreed that
8 Respondent would be compensated by an hourly fee.

9 78. On or about January 3, 1996, the U.S. District Court entered
10 judgment for the plaintiff in *AT&T Corp. v. Fleming & Berkley* in the amount of
11 \$35,636.82.

12 79. On or about February 2, 1996, Respondent filed a Notice of Appeal
13 and Representation Statement in the matter *AT&T Corp. v. Fleming & Berkley* with
14 the U.S. District Court.

15 80. On or about February 2, 1996, Fleming gave Respondent a check in
16 the amount of \$35,636.82. In the memo portion of the check Fleming wrote "For
17 Appeal Bond, ATT v Fleming". Respondent agreed to deposit the check in his
18 Client Trust Account and then obtain a cashier's check in the amount of
19 \$35,636.82 for the purpose of posting a cash bond with the U.S. District Court
20 while Fleming appealed the judgment in *AT&T Corp. v. Fleming & Berkley*.

21 81. On or about February 2, 1996, Respondent deposited the \$35,636.82
22 check into his client trust account no. 058-0507626-9 at California Federal Bank
23 ("the California Federal Bank trust account").

24 82. Until Respondent obtained a cashier's check and posted a bond in the
25 amount of \$35,636.82 with the U.S. District Court, Respondent was required to
26 maintain in the California Federal Bank trust account the sum of \$35,636.82.

27

28

1 83. At no time did Respondent obtain a \$35,626.82 cashier's check from
2 the California Federal Bank trust account or disburse any of Fleming's funds to
3 the U.S. District Court on his behalf.

4 84. On or about February 27, 1996, the balance in Respondent's
5 California Federal Bank trust account fell to \$5,375. 35. On or about March 26,
6 1996, the balance in the California Federal Bank trust account was approximately
7 \$236.26.

8 85. Respondent wilfully misappropriated Fleming's funds.

9 86. On or about March 9, 2000, the State Bar opened an
10 investigation, case no. 00-O-10619, pursuant to a complaint filed by Fred Fleming
11 ("the Fleming matter").

12 87. On or about June 8, 2000, State Bar Investigator Lisa Foster
13 wrote to Respondent regarding the Fleming matter. The investigator's letter was
14 placed in a sealed envelope correctly addressed to Respondent at his membership
15 records address as well as to an additional address: 12925 Riverside Drive, 4th
16 Floor, Sherman Oaks, CA 91423. Both letters were properly mailed by first class
17 mail, postage pre-paid, by depositing for collection by the United States Postal
18 Service in the ordinary course of business. The United States Postal Service did
19 not return either letter as undeliverable or for any other reason.

20 88. The investigator's letters requested that Respondent respond
21 in writing to specific allegations of misconduct being investigated by the State Bar
22 in the Maxwell matter. Respondent did not respond to the investigator's letter or
23 otherwise communicate with the investigator.

24 89. On or about March 6, 2001, State Bar Investigator Lisa Foster
25 wrote to Respondent regarding the Fleming matter. The investigator's letter was
26 placed in a sealed envelope correctly addressed to Respondent at his membership
27 records address as well as to an additional address: 12925 Riverside Drive, 4th
28 Floor, Sherman Oaks, CA 91423. Both letters were properly mailed by first class

1 mail, postage pre-paid, by depositing for collection by the United States Postal
2 Service in the ordinary course of business. The United States Postal Service did
3 not return either letter as undeliverable or for any other reason.

4 **Legal Conclusions Case No. 00-O-10619**

5 90. By not maintaining at least \$35,636.82 received on behalf of Fleming
6 in the California Federal Bank trust account, Respondent wilfully failed to
7 maintain client funds in a trust account in wilful violation of Rules of Professional
8 Conduct, rule 4-100(A).

9 91. By not paying Fleming's funds held in the California Federal Bank
10 trust account to the U.S. District Court at Fleming's request, Respondent failed to
11 pay client funds as requested by his client in wilful violation of Rules of
12 Professional Conduct, rule 4-100(B)(4).

13 92. By misappropriating at least \$35,636 of Fleming's funds and by failing
14 to pay out the funds as requested by Fleming, Respondent committed acts of
15 moral turpitude in wilful violation of Business and Professions Code, section 6106.

16 93. By not providing a written response to the allegations in the Fleming
17 matter or otherwise cooperating in the investigation of the Fleming matter,
18 Respondent failed to cooperate in a disciplinary investigation in wilful violation of
19 Business and Professions Code, section 6068(i).

20 **G. Case No. 00-O-12362**

21 94. From approximately 1978 through 1998 Respondent was Roger
22 Williams's ("Williams") personal attorney and the attorney for Williams's business,
23 Roger D. Williams & Company.

24 95. In or about September 1990, Respondent counseled Williams to loan
25 \$21,000 to individuals recommended by Respondent.

26 96. On or about November 5, 1990, Respondent signed a promissory note
27 as guarantor for the \$21,000 loan Williams made to individuals recommended by
28 Respondent.

1 97. Respondent did not advise Williams in writing of his right to seek
2 independent legal counsel regarding whether the \$21,000 loan was fair and
3 reasonable.

4 98. On or about April 5, 1993, Respondent and Williams entered into a
5 written agreement that Williams would loan Respondent \$80,000.

6 99. Respondent did not advise Williams in writing of his right to seek
7 independent legal counsel regarding whether the \$80,000 loan was fair and
8 reasonable.

9 100. The terms of the promissary note for the \$80,000 loan signed by
10 Respondent and Williams included: 1.) Respondent was to repay the loan at a rate
11 of 10% interest; 2.) Respondent was to make 4 installments of \$20,000 ; 3.) all
12 principal and accrued interest was to be due by June 30, 1995; 4.) Respondent
13 assigned to Williams an unrecorded deed of trust in Respondent's residential real
14 property as security for the loan. The promissary note required that Williams
15 agreed not to record the deed until Respondent had been in default of the loan for
16 at least 90 days; 5.) Respondent also assigned to Williams fees that Respondent
17 expected to recover in contingency cases in which Respondent was the attorney of
18 record. One of the cases was *Dallinger v. Cortez*.

19 101. On or about January 18, 1998, Respondent entered into a
20 "Stipulation for First Lien Against Recovery". This stipulation assigned legal fees
21 Respondent expected to recover in *Dallinger v. Cortez* to a creditor other than
22 Williams. This assignment gave the other creditor a "first lien" in the sum of
23 \$125,000 against any judgment recovered by the plaintiff in the *Dallinger v. Cortez*
24 action.

25 102. On or about June 12, 1998, Respondent stopped making payments on
26 the loan, leaving a balance of \$42,188.

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1 **Legal Conclusions Case No. 00-O-12362**

2 103. By not advising Williams in writing of his right to seek the advice of
3 independent counsel before entering into a business transaction with Williams
4 regarding the \$21,000 loan, Respondent wilfully violated Rules of Professional
5 Conduct, rule 3-300.

6 104. By failing to advise the client in writing that he may seek the advice
7 of an independent lawyer before entering into a business transaction with
8 Williams regarding the \$80,000 loan, Respondent wilfully violated Rules of
9 Professional Conduct, rule 3-300.

10 105. By subsequently assigning the fees that Respondent expected to
11 recover in the *Dallinger v Cortez* case as a "first lien" to another creditor,
12 Respondent committed an act of moral turpitude in wilful violation of Business
13 and Professions Code, section 6106.

14 **H. Case No. 99-O-12514**

15 106. On or about February 25, 1998, Rolfe Auerbach ("Auerbach")
16 employed Respondent to hold Auerbach's money in Respondent's client trust
17 account and to use the money to pay certain debts, bills and obligations of
18 Auerbach's business.

19 107. Between February 25, 1998, and March 20, 1998, Auerbach delivered
20 to Respondent three payments totaling \$275,780.

21 108. Between February 25, 1998 and March 20, 1998, Respondent
22 deposited a total of \$275,780 received from Auerbach into Respondent's client
23 trust account no. 127-4126976, at California Federal Bank ("the California
24 Federal Bank trust account"). Respondent agreed to pay Auerbach's bills
25 periodically as instructed by Auerbach.

26 109. Auerbach authorized Respondent to properly pay out only \$229,932
27 from the California Federal Bank trust account. The balance Respondent was
28

1 required to maintain in the California Federal Bank trust account on behalf of
2 Auerbach was \$45,848.

3 110. Without returning the remaining \$45,848 to Auerbach, Respondent
4 closed the client trust account he maintained at California Federal Bank, account
5 number 127-4126976 on or about August 27, 1998. On the date of closure, the
6 remaining balance in the California Federal Trust Account was \$7.10.

7 111. Respondent wilfully misappropriated Auerbach's funds.

8 112. In or about June 1998, Auerbach requested that Respondent return
9 the remaining approximate \$45,848 from the funds that Respondent had received
10 from Auerbach.

11 113. On or about July 21, 1999, Auerbach filed a lawsuit against
12 Respondent because he had not yet refunded any money to Auerbach.

13 114. On or about November 30, 2000, Auerbach and Respondent entered
14 into a settlement in which the Respondent agreed to pay Auerbach \$37,500 via
15 monthly installments.

16 **Legal Conclusions Case No. 99-O-12514**

17 115. By not maintaining at least \$45,848 received on behalf of Auerbach in
18 the California Federal Bank trust account, Respondent wilfully failed to maintain
19 client funds in a trust account in wilful violation of Rules of Professional Conduct,
20 rule 4-100(A).

21 116. By not refunding Auerbach's funds held in the California Federal
22 Bank trust account at Auerbach's request, Respondent failed to pay client funds
23 as requested by his client in wilful violation of Rules of Professional Conduct, rule
24 4-100(B)(4).

25 117. By misappropriating approximately \$45,848 received on behalf of
26 Auerbach in the California Federal Bank trust account and by not refunding
27 Auerbach's funds held in the California Federal Bank trust account at Auerbach's
28

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

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot 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 Pilot 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.

10/23/03
Date


Respondent's Signature

Timothy G. Dallinger
Print Name

10-23-03
Date


Respondent's Counsel Signature

Michael G. Gerner
Print Name

10/27/03
Date


Deputy Trial Counsel's Signature

Brooke A. Schafer
Charles A. Murray
Print Name

ORDER

Finding this stipulation to be fair to the parties, 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.

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; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

Date

Judge of the State Bar Court

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 Los Angeles, on December 11, 2006, I deposited a true copy of the following document(s):

DECISION AND ORDER FILING AND SEALING CERTAIN DOCUMENTS

STIPULATION RE FACTS, 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 Los Angeles, California, addressed as follows:

TIMOTHY G. DALLINGER	MICHAEL GALEN GERNER
12925 RIVERSIDE DR 3FL	10100 SANTA MONICA BLVD #300
SHERMAN OAKS, CA 91423	LOS ANGELES, CA 90067

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

BROOKE SCHAFER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 11, 2006.**



Tammy R. Cleaver
Case Administrator
State Bar Court