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PUBLIC MATTER

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State Bar Court of California

Hearing Department Los Angeles San Francisco
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Counsel for the State Bar OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT DAVID T. SAUBER 1149 South Hill Street, 9 th Floor Los Angeles, CA 90015-2299 Telephone: (213) 765-1252 Bar # 176554	Case Number(s) 98-O-01816-RMT; 98-O-03556; 00-O-15648; 01-O-01537; 01-O-04815; 01-O-02013; 01-O-04673; 04-O-11463; 04-O-13289; 04-O-13933; 04-O-14034; 04-O-14233; 04-O-14461; 04-O-15189; 05-O-00534;	(for Court use) <div style="text-align: center;"> LODGED <i>MVS</i> MAY 16 2006 STATE BAR COURT CLERK'S OFFICE LOS ANGELES FILED SEP - 2 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center; font-size: 2em; font-weight: bold;"> CONFIDENTIAL </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> Pro Per MICHAEL G. GERNER Michael G. Gerner, a Prof Law Corp. 10100 Santa Monica Blvd., Suite 300 Los Angeles, California 90067 Telephone: (310) 772-2207 Bar # 65906	Submitted to Program Judge <div style="text-align: center;"> STIPULATION RE FACTS AND CONCLUSIONS OF LAW </div> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of MIRVYN HILLARD WOLF Bar # 41639 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 5, 1968 (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, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of _____ pages.
- (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."

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- (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 & 6040.7 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 96-0-07673
 - (b) Date prior discipline effective January 4, 1998
 - (c) Rules of Professional Conduct/State Bar Act/on violations B&P Sections 6068(k); RPC Rules 3-700(D)(2)
 - (d) Degree of prior discipline Two (2) years Stayed Suspension; Two (2) years Probation; Forty-Five (45) days Actual Suspension
 - (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) **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:

Prior Record of Discipline:

State Bar Court Case No. 93-O-16826; effective date of 11/12/95; Violations - B&P Sections 6068(m); RPC Rules 3-510, 4-100(A), and 4-100(B)(4); Degree of Prior Discipline - One (1) year Stayed Suspension; Three (3) years Probation with Conditions, including Restitution

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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:

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In the Matter of MERVYN HILLARD WOLF Member #: 41639	Case number(s): 98-O-01816-RMT; 98-O-03556; 00-O-15648; 01-O-01537; 01-O-04815; 01-O-02013; 01-O-04673; 04-O-11463; 04-O-13289; 04-O-13933; 04-O-14034; 04-O-14233; 04-O-14461; 04-O-15189; 05-O-00534; 01-O-04481; 02-O-11247; 02-O-12210; 02-O-13031; 02-O-14094; 03-O-01155; 04-O-10461
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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.

1-12-05 Date	 Respondent's signature	MERVYN HILLARD WOLF Print name
12-2-05 Date	 Respondent's Counsel's signature	MICHAEL G. GERNER Print name
12-5-05 Date	 Deputy Trial Counsel's signature	DAVID T. SAUBER Print name

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: MERVYN HILLARD WOLF

CASE NUMBERS: 98-O-01816-RMT; 98-O-03556-RMT
 00-O-15648-RMT; 01-O-01537-RMT
 01-O-04815-RMT; 01-O-02013-RMT
 01-O-04673-RMT; Investigative Cases: 04-O-10461; 02-O-14094; 02-O-13031; 02-O-11247; 01-O-04481; 02-O-12210; 03-01155;

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.

Facts for Case No. 98-O-01816-RMT

1. On July 22, 1992, Alexander Paolone ("Paolone") employed Respondent to represent him in a personal injury action. A written fee agreement was entered into whereby Respondent would receive one-third of any recovery obtained prior to a Mandatory Settlement Conference, and 40% for recovery thereafter.
2. On October 29, 1997, Paolone paid Respondent \$5,000.00 for costs associated with trial. Respondent deposited the \$5,000.00 into his general account. However, Respondent was required to place all funds not yet owed for costs into his Client Trust Account, i.e. \$1,312.51. The remainder of the \$5,000 was a reimbursement for costs Respondent had incurred on behalf of Paolone.
3. As a result of the accident, Paolone received workers' compensation insurance benefits from his employer in excess of \$90,000, with continuing benefits for future medical treatment. This gave the employer a statutory right to a lien against Paolone's recovery for the \$90,000. Paolone's employer intervened in the lawsuit in order to protect its lien and right to setoff future medical expenses.
4. On November 19, 1997, Paolone's lawsuit was settled at a Mandatory Settlement Conference, whereby Paolone received \$68,000.00 and his employer received \$17,000.00. The court approved those terms, but no one asked the court to approve attorney fees and costs.
5. On December 16, 1997, Respondent deposited the settlement funds of \$85,000.00 into his client trust account. He then took \$34,000.00 as his fee of 40% of the total recovery rather than the \$68,000.00 actually recovered, paid \$17,000.00 to Paolone's employer, and paid Paolone the remainder of \$34,000.00.
6. As of January 15, 1998, Respondent had completed all legal work required for Paolone, and had given him an accounting for the settlement funds. However, Respondent had not made any accounting for the \$5,000.00 received from Paolone on October 29, 1997.

7. On June 18, 1998, after an inquiry from the State Bar, Respondent provided an accounting for the \$5,000.00, showing that a refund of \$1,312.51 was owed. On April 15, 1999, after another inquiry sent by the State Bar, Respondent sent Paolone a refund of the \$1,312.51, plus interest.

8. On or about October 31, 2003, the Client Security Fund granted Paolone's application and paid \$6,800 to Paolone.

Conclusions of Law for Case No. 98-O-01816-RMT

9. By failing to deposit \$1,312.51 of the \$5,000 paid by Paolone for costs, Respondent wilfully failed to deposit client funds into a trust account; and he thereby violated rule 4-100(A) of the California Rules of Professional Conduct.

Facts for Case No. 98-O-03556-RMT

10. On February 27, 1991, Nora Lopez ("Lopez") and Francisco Altamirano ("Altamirano") employed Respondent to represent them in a personal injury action. On October 26, 1992, both claims were settled for \$10,000.00 each. Shortly thereafter, Respondent deposited the \$20,000.00 into his client trust account, no. 03015033, at American Pacific State Bank ("CTA").

11. After deduction of his fees of \$3,333.34 and costs of \$85.03, Respondent's CTA held \$6,581.63 for Lopez and an additional \$6,581.63 for Altamirano. As of August 8, 1994, Respondent owed \$2,856.00 for Lopez's medical expenses and \$4,436.63 for Altamirano and his medical expenses. Respondent made no more payments on behalf of either client until December 24, 1997.

12. From June 19, 1995 to December 24, 1997, the balance in Respondent's CTA fell below the \$7,292.63 owed to Lopez and Altamirano on repeated dates, including, but not limited to, the following:

<u>Date</u>	<u>Balance</u>
6/19/95 - 7/17/95	\$ 36.60 (highest)
8/11/95 - 8/17/95	81.74
8/28/95	minus 17.26
8/29/95 - 1/29/96	584.69 (highest)
2/2/96 - 12/24/97	679.49 (highest)

Conclusions of Law for Case No. 98-O-03556-RMT

13. By failing to maintain at least \$7,292.63 in his client trust account between June 19, 1995 and December 24, 1997, Respondent wilfully failed to maintain client funds in a trust account; and he thereby violated rule 4-100(A) of the California Rules of Professional Conduct.

14. Respondent misappropriated \$7,292.63 of funds belonging to Lopez and Altamirano, committing an act involving moral turpitude. He thereby violated section 6106 of the Business and Professions Code.

Facts for Case No. 01-O-01537-RMT

15. In March of 1998, Michael Anthony Wilson ("Wilson") employed Respondent to represent him in a medical malpractice action. On November 17, 2000, the parties settled the

matter for \$125,000.00.

16. On December 6, 2000, Respondent deposited the \$125,000.00 into his client trust account, no. 043-8776932, at Wells Fargo Bank ("CTA"). After deduction of Respondent's fees and costs, \$80,315.65 remained payable directly to Wilson.

17. On December 7, 2000, Respondent paid Wilson \$5,000.00 from the CTA. Wilson requested full payment without delay and requested to know the amount to expect and when, but Respondent told Wilson only that the balance would be paid shortly. On January 16, 2001, Respondent paid Wilson another \$15,000.00 from the CTA. Wilson again requested full payment of his balance, but Respondent only promised payment soon. On April 3, 2001, Respondent paid Wilson \$5,000.00 from his CTA, and again promised full payment soon.

18. On August 8, 2001, after an inquiry from the State Bar, Respondent paid Wilson his balance of \$55,315.65, and provided an accounting for the entire \$125,00.00.

19. From December 19, 2000 to January 15, 2001, the balance in Respondent's CTA stayed below the \$75,315.65 owed to Wilson. Daily balances include, but are not limited to, the following:

<u>Date</u>	<u>Balance</u>
12/19/00	\$ 39,212.42
12/29/00	58,993.42
1/11/01	21,751.76

20. From January 16, 2001 to April 3, 2001, the balance in Respondent's CTA fell below the \$60,315.65 owed to Wilson every day except two, including, but not limited to, the following:

<u>Date</u>	<u>Balance</u>
1/16/01	\$ 2,266.98
2/1/01	2,699.86
2/9/01	11,865.86
2/28/01	19,696.82
3/16/01	304.59
3/30/01	1,272.59

21. From April 3, 2001 to May 31, 2001, the balance in Respondent's CTA stayed below the \$55,315.65 owed to Wilson on every day, including, but not limited to, the following:

<u>Date</u>	<u>Balance</u>
4/3/01	\$ 5,027.90
4/25/01	201.22
5/8/01	3,341.87
5/31/01	7,895.64

22. On or about August 8, 2001, Respondent sent Wilson CTA check no. 5839 in the amount of \$55,315.65, which represented the balance of the amount owing to Wilson.

Conclusions of Law for Case No. 01-O-01537-RMT

23. By paying Wilson eight months after the funds were available in his CTA, and nearly seven months after Wilson requested payment, Respondent wilfully failed to promptly pay client funds as requested by his client. He thereby violated rule 4-100(B)(4) of the California Rules of Professional Conduct.

24. By making three payments to Wilson without an accounting, and by failing to provide an accounting after two requests from Wilson, Respondent wilfully failed to render appropriate accounts to the client regarding the funds. He thereby violated rule 4-100(B)(3) of the California Rules of Professional Conduct.

25. By failing to maintain at least \$75,315.65 in his client trust account between December 19, 2000 and January 15, 2001, by failing to maintain at least \$60,315.65 in his client trust account between January 16, 2001 and April 3, 2001, and by failing to maintain at least \$55,315.65 in his client trust account between April 3, 2001 and May 31, 2001, Respondent wilfully failed to maintain client funds in a trust account. He thereby violated rule 4-100(A) of the California Rules of Professional Conduct.

26. Respondent misappropriated \$60,011.06 of funds belonging to Wilson, committing an act involving moral turpitude. He thereby violated section 6106 of the Business and Professions Code.

Facts for Case No. 01-O-02013-RMT

27. On October 5, 1993, David Benson ("Benson") employed Respondent to represent him in a personal injury action. A written fee agreement was entered into whereby Respondent would receive one-third of any recovery obtained prior to a Mandatory Settlement Conference, and 40% for recovery thereafter. The injury occurred during the course and scope of Benson's employment, and Benson also employed Respondent to obtain workers compensation benefits from Benson's employer.

28. On January 11, 1994, Respondent filed a third party civil action against those responsible for Benson's injuries. Benson's employer intervened later to recover its payments made to Benson and to his medical care providers.

29. Just prior to February 1, 1995, Respondent and Benson settled with one of the civil case defendants for \$25,000.00. On February 1, 1995, Respondent deposited the \$25,000.00 into his client trust account, no. 03015033, at American Pacific State Bank ("CTA1").

30. Respondent paid the entire \$25,000.00 to himself or his personal creditors, by checks paid on CTA 1 between February 1st and February 23, 1995. Respondent was entitled to no more than \$10,000.00 plus reimbursement for costs, if any were paid.

31. On March 27, 1995, Respondent paid Benson \$2,500.00 from Respondent's personal funds. On September 14, 1995, Respondent paid Benson another \$2,500.00 from Respondent's personal funds.

32. On March 14, 1996, Respondent and Benson settled with another of the civil case defendants for \$40,000.00. On March 15, 1996, Respondent deposited the \$40,000.00 into another client trust account, no. 0617093984, at Wells Fargo Bank ("CTA2").

33. On June 7, 1996, Respondent sent Benson a check for \$14,667.44 from CTA2. As of that date, Respondent had collected a total of \$65,000.00 (which represents the total proceeds from the \$25,000 and \$40,000 settlement checks) for Benson, charged \$26,000.00 for his fee, reimbursed himself \$4,374.56 for costs, paid \$19,667.44 to Benson, and retained \$14,958.00 for unpaid liens. On January 17, 1997, Respondent paid Benson another \$5,000.00 from CTA2, retaining \$9,958.00 for unpaid liens.

34. To date, Respondent has not paid nor accounted to Benson for the \$9,958.00.

Conclusions of Law for Case No. 01-O-02013-RMT

35. By removing the entire \$25,000.00 from his client trust account by February 23, 1995, Respondent wilfully failed to maintain client funds in a trust account; and he thereby violated rule 4-100(A) of the California Rules of Professional Conduct.

36. Respondent misappropriated at least \$15,000.00 of Benson's funds, committing an act involving moral turpitude. He thereby violated section 6106 of the Business and Professions Code.

Facts for Case No. 01-O-04673-RMT

37. In September of 1999, Michael Medsker ("Medsker") employed Respondent to represent him in a claim against Medsker's son's insurance for uninsured motorists. In November of 2000, the parties settled the matter for \$15,000.00.

38. On December 21, 2000, Respondent deposited the \$15,000.00 into his client trust account, no. 043-8776932, at Wells Fargo Bank ("CTA"). After deduction of Respondent's fees and costs, \$9,723.00 remained payable to Medsker or to his medical care providers.

39. On May 2, 2001, Respondent sent Medsker a check for \$2,270.93 from the CTA, leaving a balance of \$7,452.07 for Medsker's medical care providers. This check was paid from the CTA on May 29, 2001.

40. On December 10, 2001, after an inquiry from the State Bar, Respondent completed the disbursement of all of Medsker's funds by paying the remaining \$7,452.07 to Medsker and three medical care providers.

41. From January 16, 2001 to May 8, 2001, the balance in Respondent's CTA fell below the \$ 9,723.00 owed to Medsker on many days, including, but not limited to, the following:

<u>Date</u>	<u>Balance</u>
1/16/01	\$ 2,266.98
2/1/01	2,699.86
3/16/01	304.59
3/30/01	1,272.59
4/3/01	5,027.90
4/25/01	201.22
5/8/01	3,341.87

Conclusions of Law for Case No. 01-O-04673-RMT

42. By failing to maintain at least \$9,723.00 in his client trust account between December 21, 2000 and May 8, 2001, Respondent wilfully failed to maintain client funds in a trust account. He thereby violated rule 4-100(A) of the California Rules of Professional Conduct.

43. Respondent misappropriated \$9,521.78 of funds belonging to Medsker, committing an act involving moral turpitude. He thereby violated section 6106 of the Business and Professions Code.

Facts for Case No. 04-O-11463:

44. On or about April 22, 2002, Hans D. Roybal ("Roybal") employed Respondent to handle a wrongful termination matter against Able Building Maintenance, ("Able"). *Roybal v. Able Building Maintenance*, case no. BC284965.

45. In or about June 2003, Respondent, through mediation, reached an agreement to settle the Able matter for \$35,000.

46. On or about July 10, 2003, Respondent deposited Roybal's settlement check from Able into his client trust account at Wells Fargo Bank ("CTA") no. 043-8776932. (Respondent reported to Wells Fargo Bank that two CTA checks for account no. 043-8776932 were stolen from his office. A check was subsequently cashed by Wells Fargo Bank on or about March 5, 2004 in the amount of \$28,939. Wells Fargo Bank changed Respondent's CTA bank account no. from 043-8776932 to 141-4419125 on April 23, 2004, and reimbursed Respondent \$28,939 on May 26, 2004. All account transactions for account no. 043-8776932 continued in account no. 141-4419125. Although Respondent also made a report that a \$45,000 check was also stolen, the bank did not find that such a check had been cashed and did not reimburse Respondent's account for this check.)

47. Roybal attempted to contact Respondent on at least a monthly basis by telephone, leaving messages for Respondent to telephone him from in or about July 2003 through January 2004. Respondent has indicated that he did not receive any of these messages.

48. It was not until on or about January 6, 2004, that Respondent's secretary telephoned Roybal and informed him that his settlement check from Able had arrived at Respondent's office.

49. Roybal again attempted unsuccessfully to contact Respondent by telephone and letter through from on or about January 6, 2004 to on or about March 22, 2004.

50. On or about March 25, 2004, Roybal filed a complaint against Respondent with the State Bar and sent Respondent a copy of the complaint via fax.

51. On or about March 29, 2004 and over eight (8) months after deposit of Roybal's settlement check, Respondent sent Roybal an accounting and a check for \$18,842 drawn on Respondent's Wells Fargo Bank CTA number 141-4419125. Roybal's check was paid by Wells Fargo Bank on May 5, 2004.

52. Between on or about July 10, 2003 and May 5, 2004, the balance in Respondent's Wells Fargo CTA fell below \$18,842 on repeated dates, including, but not limited to the following:

<u>Date</u>	<u>Balance</u>
08-15-03	\$ 6,453.18
08-22-03	603.18
09-16-03	1,175.09
10-15-03	88.44
11-06-03	757.96
12-17-03	451.32

53. Not until in or about January 2004 did Respondent notify Roybal of the receipt on behalf of Roybal of settlement funds from Able.

54. Respondent dishonestly or with gross negligence misappropriated the settlement funds he received on behalf of Roybal.

Conclusions of Law for Case No. 04-O-11463:

55. By failing to promptly respond to his client's reasonable status inquiries, Respondent failed to communicate with his client in wilful violation of Business and Professions Code, section 6068(m).

56. By not maintaining at least \$18,842 received on behalf of Roybal in his Wells Fargo Bank CTA, Respondent failed to maintain client funds in a trust account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

57. By misappropriating at least \$18,753.56 of the settlement funds received on behalf of his client, Respondent committed an act or acts involving moral turpitude in wilful violation of Business and Professions Code, section 6106.

Facts for Case No. 04-O-13289:

58. In or about January 17, 2003 Jeanelle Faircloth ("Faircloth") employed Respondent to represent her and to substitute in place of Dale S. Gribow ("Gribow"), to handle a personal injury matter against Rudolfo Cabusol, entitled *Faircloth v. Cabusol* case no. KC039020.

59. In or about June 2003, Respondent, through mediation, reached an agreement to settle Faircloth's case for \$18,000.

60. On or about June 5, 2003, Respondent deposited Faircloth's settlement check from 20th Century Insurance for \$18,000 into his client trust account at Wells Fargo Bank ("CTA") no. 043-8776932. Although the check was made out to Respondent, Faircloth, and Gribow, only Respondent endorsed the check prior to deposit.

61. On or about July 30, 2003, Respondent sent Faircloth an accounting which showed that Respondent was holding \$10,800 for Faircloth in unpaid costs and medical bills and the balance of Faircloth's settlement funds of \$4,341.25.

62. On or about September 2, 2003, Respondent paid Faircloth \$4,341.25 as her share of her settlement funds according to Respondent's accounting.

63. According to Respondent's July 30, 2003 accounting he held \$5,941.45 of Faircloth's funds in his CTA. After Respondent paid a \$900 medical bill payment on behalf of Faircloth or about September 19, 2003, Respondent should have held in his Wells Fargo CTA \$5,041.45 on behalf of Faircloth. (Respondent reported to Wells Fargo Bank that a CTA check for account no. 043-8776932 was stolen from his office. The check was subsequently cashed by Wells Fargo Bank on or about March 5, 2004 in the amount of \$28,939. Wells Fargo Bank changed Respondent's CTA bank account no. from 043-8776932 to 141-4419125 on April 23, 2004, and reimbursed Respondent \$28,939 on May 26, 2004. All account transactions for account no. 043-8776932 continued in account no. 141-4419125.)

64. Between on or about June 5, 2003 and June 23, 2004, the balance in Respondent's Wells Fargo CTA fell below \$10,800 on repeated dates, including, but not limited to the following:

<u>Date</u>	<u>Balance</u>
06-11-03	\$ 6,958.11
08-15-03	5,703.18
08-22-03	603.18
10-15-03	88.44
06-23-04	-3,890.51

65. On or about June 23, 2004 Respondent's Wells Fargo CTA reached a balance of \$-3,890.51. Respondent did not inform Faircloth that he had not paid Faircloth's medical providers pursuant to his accounting.

66. On or about July 30, 2003, Faircloth approved a disbursement of the \$18,000 settlement which authorized Respondent to take \$7,200 as his fees and \$517.30 as his costs, and to pay \$5,941.45 to various medical providers, and to pay the remaining \$4,341.25 to Faircloth. On or about September 2, 2003 Respondent paid \$4,341.25 to Faircloth by check drawn upon his Wells Fargo CTA.

67. On or about September 19, 2003 Respondent paid \$900 of the outstanding medical bills, but failed to pay the balance of \$5,041.45 of Faircloth's funds held in the Wells Fargo CTA for costs and to medical providers as requested by Faircloth.

68. Respondent dishonestly or with gross negligence misappropriated the settlement funds he received on behalf of Faircloth.

Conclusions of Law for Case No. 04-O-13289:

69. Respondent failed to pay all of Faircloth's medical providers, Respondent failed to notify Faircloth that he had failed to pay her medical providers and misappropriated her funds, and by misappropriating Faircloth's settlement funds, Respondent intentionally or recklessly failed to perform services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

70. By not maintaining at least \$10,800 received on behalf of Faircloth in his Wells Fargo Bank CTA, Respondent failed to maintain client funds in a trust account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

71. By not paying Faircloth's funds held in the Wells Fargo Bank CTA for costs and to the remaining medical providers at Faircloth's request, Respondent failed to pay promptly client funds as requested by his client in wilful violation of Rules of Professional Conduct, rule

4-100(B)(4).

72. By failing to notify his client that he had not paid his client's medical liens, Respondent failed to inform his client of a significant development in wilful violation of Business and Professions Code, section 6068(m).

73. By misappropriating \$5,041.45 of the settlement funds received on behalf of his client. Respondent committed an act or acts involving moral turpitude in wilful violation of Business and Professions Code, section 6106.

Facts for Case No. 04-O-13933:

74. In or about March 3, 2003, Nichole Hanson ("Hanson") employed Respondent to represent her and to substitute in place of Ellis Paul Robin ("Robin") to handle a personal injury matter against Joshua Price, entitled Hanson v. Price case no. LCO65057. (Aka Robert J. Pierce and Susan A. Pierce, et al.)

75. In or about April 13, 2004, Respondent, through mediation, reached an agreement to settle Hanson's case for \$17,500.

76. On or about April 16, 2004, Respondent deposited Hanson's settlement check(s) for the Pierces from the Automobile Club for \$17,500 into his client trust account at Wells Fargo Bank ("CTA") no. 043-8776932 without Robin's endorsement. (Respondent reported to Wells Fargo Bank that two CTA checks for account no. 043-8776932 were stolen from his office. A check was subsequently cashed by Wells Fargo Bank on or about March 5, 2004 in the amount of \$28,939. Wells Fargo Bank changed Respondent's CTA bank account no. from 043-8776932 to 141-4419125 on April 23, 2004, and reimbursed Respondent \$28,939 on May 26, 2004. All account transactions for account no. 043-8776932 continued in account no. 141-4419125. Although Respondent also made a report that a \$45,000 check was also stolen, the bank did not find that such a check had been cashed and did not reimburse Respondent's account for this check.)

77. On or about June 11, 2004, Respondent sent Hanson an accounting which showed that Respondent was holding \$8,381.50 for Hanson in unpaid costs and medical bills and the balance of Hanson's settlement funds of \$3,511.75.

78. On or about June 22, 2004, Respondent paid Hanson \$3,511.75 as her share of her settlement funds according to Respondent's accounting.

79. According to Respondent's June 11, 2004 accounting he held \$8,381.50 of Hanson's funds in his CTA. After Respondent paid \$280.00 for medical liens payments on behalf of Hanson on or about June 30, 2004 and July 1, 2004, Respondent should have held in his Wells Fargo CTA \$8,101.50 on behalf of Hanson.

80. Between on or about June 22, 2004 and August 1, 2004 the balance in Respondent's Wells Fargo CTA fell below \$8,101.50 on repeated dates, including, but not limited to the following:

<u>Date</u>	<u>Balance</u>
06-23-04	\$ -3,890.51
07-02-04	1,361.51
08-01-04	-323.51

81. On or about June 23, 2004 Respondent's Wells Fargo CTA reached a balance of \$-3,890.51. Respondent did not inform Hanson that he had not paid all of her medical liens pursuant to his accounting.

82. On or about June 11, 2004, Hanson approved a disbursement of her \$17,750 settlement which authorized Respondent to take \$5,856.75 fees and to pay \$8,381.50 to pay costs and various medical bills, and to pay the remaining \$3,511.75 to Hanson. On or about June 22, 2004, Respondent paid \$3511.75 to Hanson by check drawn upon his Wells Fargo CTA.

83. On or about June 30, 2004 and July 1, 2004, Respondent paid \$280 of the outstanding medical bills, but failed to pay the balance of \$8,101.50 of Hanson's funds held in the Wells Fargo CTA for costs and to medical providers as requested by Hanson.

84. From in or about June 2004, after Hanson had received her share of her settlement funds through the present date, Hanson telephoned Respondent's office numerous times and asked Respondent and Respondent's staff to send her a copy of her client file. Hanson has not received her original client file or a copy of her client file.

85. On or about October 4, 2004, Respondent paid check number 6318 in the amount of \$1,800 to Ellis Paul Robin in connection with the Hanson matter.

86. Respondent dishonestly or with gross negligence misappropriated settlement funds of at least \$6,301.50 that he received on behalf of Hanson. Respondent thereby committed an act or acts involving moral turpitude, dishonesty or corruption.

Conclusions of Law for Case No. 04-O-13933:

87. Respondent failed to pay all of Hanson's medical providers, Respondent misappropriated Hanson's settlement funds, and Respondent failed to inform Hanson of his misappropriation's of Hanson's funds and his failure to pay her medical providers, thereby, Respondent intentionally or recklessly failed to perform services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

88. By not maintaining at least \$8,101.50 received on behalf of Hanson in his Wells Fargo Bank CTA, Respondent failed to maintain client funds in a trust account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

89. By not paying Hanson's funds held in the Wells Fargo Bank CTA for costs and to the remaining medical providers at Hanson's request, Respondent failed to pay client funds as requested by his client in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

90. By failing to promptly release to Hanson her client file at her request upon termination of her case, Respondent failed to release his client's file in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

91. By failing to notify his client that he had not paid his client's medical liens, Respondent failed to inform his client of a significant development in his client's case in wilful violation of Business and Professions Code, section 6068(m).

92. By misappropriating at least \$6,301.50 of the settlement funds received on behalf of his client, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

Facts for Case No. 04-O-14034:

93. In or about September 2003, Penelope Summers employed Respondent to handle a workers compensation case against Bob Gail Enterprises, ("GAIL"). Gail was insured by State Farm Insurance Companies ("State Farm").

94. On or about September 24, 2003, Respondent reached an agreement with State Farm Insurance to give Summers a permanent disability advance of \$25,000.00.

95. On or about September 26, 2003, Respondent deposited Summers advance check from State Farm made out only to Summers as payee, into his client trust account at Wells Fargo Bank ("CTA") no. 043-8776932.

96. Between on or about September 26, 2003 and October 15, 2003, the balance in Respondent's Wells Fargo CTA fell below \$25,000 on repeated dates, including, but not limited to the following:

<u>Date</u>	<u>Balance</u>
10-02-03	\$18,675.09
10-10-03	5,620.44
10-15-03	88.44

97. As a result of Respondent's misappropriations of her permanent disability advance funds and Respondent's failure to pay those funds to Summers, Summers failed to pay her apartment rent. On or about July 21, 2004 Summers landlord filed a Complaint for Unlawful Detainer against Summers for failure to pay her apartment rent for June and July 2004. On or about September 10, 2004, Summers total delinquent rent was \$3,602. Summers stipulated to surrender possession of her apartment to her landlord on October 1, 2004, and pay a judgment of \$6,490.53 to her landlord.

98. Summers sent several faxes to Respondent requesting her file. On or about August 18, 2004, Summers appeared at Respondent's office to pick up her file. Respondent was supposedly not available and his staff would not release Summers' file. Summers has not received her original client file or a copy of her client file.

99. As of November 29, 2005, Summers has stated that Respondent owes her the sum of \$6,473.00.

100. Respondent dishonestly or with gross negligence misappropriated the permanent disability advance funds he received on behalf of Summers.

Conclusions of Law for Case No. 04-O-14034:

101. By failing to communicate with Summers, by failing to promptly pay Summers her advance permanent disability funds, and by misappropriating Summers advance funds, Respondent intentionally or recklessly failed to perform services with competence in wilful violation of Rules of Professional Conduct, rule 3-11.0.

102. 0(A).

103. By not maintaining at least \$24,911.56 received on behalf of Summers in his Wells Fargo Bank CTA, Respondent failed to maintain client funds in a trust account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

104. By failing to promptly release to Summers her client file at her request upon

termination of her case, Respondent failed to release his client's file in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

105. By misappropriating at least \$6,473 of the permanent disability advance funds received on behalf of this client, Respondent committed an act or acts involving moral turpitude in wilful violation of Business and Professions Code, section 6106.

Facts for Case No. 04-O-14233:

106. Between in or about June 2004 and July 2004, Respondent repeatedly issued checks drawn upon Respondent's client trust account 043-8776932 at Wells Fargo Bank ("the Wells Fargo Bank trust account") against insufficient funds, including:

<u>CHECK NUMBER</u>	<u>DATE ISSUED</u>	<u>CHECK AMOUNT</u>	<u>ACCOUNT BALANCE</u>
6299	6/23/04	\$1,975.00	-3,890.00
6308	6/23/04	1,700.00	"
6306	6/23/04	680.00	"
6314	6/23/04	320.00	"
6313	6/23/04	280.00	"
6303	7/01/04	100.00	-2,619.51
6315	7/09/04	1,801.00	-125.90
6312	7/09/04	1,400.00	-2,240.51
6311	6/29/04	950.00	"
6301	6/30/04	180.00	-2,486.51
6316	7/13/04	500.00	-290.51

107. Respondent reported to Wells Fargo Bank that two CTA checks for account no. 043-8776932 were stolen from his office. A check was subsequently cashed by Wells Fargo Bank on or about March 5, 2004 in the amount of \$28,939. Wells Fargo Bank changed Respondent's CTA bank account no. from 043-8776932 to 141-4419125 on April 23, 2004, and reimbursed Respondent \$28,939 on May 26, 2004. All account transactions for account no. 043-8776932 continued in account no. 141-4419125. Although Respondent also made a report that a \$45,000 check was also stolen, the bank did not find that such a check had been cashed and did not reimburse Respondent's account for this check.

108. Respondent issued the checks set forth above when he knew or should have known that there were insufficient funds in the Wells Fargo Bank trust account to pay them. (NOTE: On or about April 16, 2004, Respondent deposited \$17,500 into his CTA on behalf of Nichole Hanson. Pursuant to Respondent's accounting of June 11, 2004, through July 13, 2004, he was supposed to be holding \$8,101.50 on behalf of Hanson in his CTA.)

Conclusions of Law for Case No. 04-O-14233:

109. By repeatedly issuing checks drawn upon the Wells Fargo trust account when he knew or should have known that there were insufficient funds, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

Facts for Case No. 04-O-14461:

110. In or about January 2001 McAndrew Friswell ("Friswell") employed Respondent to represent him to handle a personal injury matter against 20th Century Fox, entitled *Friswell et al. V. 20th Century Fox et al.* case no. 261123.

111. In or about June 2003, Respondent, through alternative dispute resolution, reached an agreement to settle Friswell's case for \$310,000.

112. On or about April 29, 2004, Respondent deposited Friswell's settlement checks for \$310,000 into his client trust account at Wells Fargo Bank ("CTA") no. 141-4419125.

113. Respondent reported to Wells Fargo Bank that two CTA checks for account no. 043-8776932 were stolen from his office. A check was subsequently cashed by Wells Fargo Bank on or about March 5, 2004 in the amount of \$28,939. Wells Fargo Bank changed Respondent's CTA bank account no. from 043-8776932 to 141-4419125 on April 23, 2004, and reimbursed Respondent \$28,939 on May 26, 2004. All account transactions for account no. 043-8776932 continued in account no. 141-4419125. Although Respondent also made a report that a \$45,000 check was also stolen, the bank did not find that such a check had been cashed and did not reimburse Respondent's account for this check.

114. On or about September 23, 2004, Respondent sent Friswell a disbursement and accounting and wired Friswell \$156,220.99 as his share of his settlement funds according to Respondent's accounting.

115. According to Respondent's September 27, 2004 accounting he held \$156,220.99 of Friswell's funds in his CTA from April 29, 2004 to September 27, 2004. Respondent reported to Wells Fargo Bank that a CTA check for account no. 043-8776932 was stolen from his office. The check was subsequently cashed by Wells Fargo Bank on or about March 5, 2004 in the amount of \$28,939. Wells Fargo Bank changed Respondent's CTA bank account no. from 043-8776932 to 141-4419125 on April 23, 2004, and reimbursed Respondent \$28,939 on May 26, 2004. All account transactions for account no. 043-8776932 continued in account no. 141-4419125.

116. Between on or about April 29, 2004 and September 27, 2004, the balance in Respondent's Wells Fargo CTA fell below \$156,220.99 on repeated dates, including, but not limited to the following: (It should be noted that Respondent notified Wells Fargo Bank that one of his checks from the CTA account was stolen. Wells Fargo investigated the claim and determined that the check was illegally negotiated for \$28,939.00 and credited Respondent's CTA with that amount on May 26, 2004. Therefore, the balance for May 10, 2004 should have added up to \$106,775.41, and the balance for May 24, 2004 should have added up to \$97,919.24.*)

<u>Date</u>	<u>Balance</u>
05-10-04	\$77,836.41*
05-24-04	68,980.24*
06-15-04	36,076.24
06-23-04	-3,890.51

117. On or about June 23, 2004 Respondent's Wells Fargo CTA reached a balance of -\$3,890.51. Respondent did not inform Friswell of the CTA discrepancy. Respondent has indicated that he was unaware of the account balance.

118. On or about April 29, 2004, Friswell approved a settlement of his lawsuit for \$310,000. It was not until September 27, 2004 that Respondent disbursed to Friswell his share of the settlement proceeds.

119. Respondent dishonestly or with gross negligence misappropriated the settlement funds he received on behalf of Friswell.

Conclusions of Law for Case No. 04-O-14461:

120. By failing to inform Friswell of the CTA discrepancy, Respondent intentionally or recklessly failed to perform services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

121. By not maintaining at least \$156,220.99 received on behalf of Friswell in his Wells Fargo Bank CTA, Respondent failed to maintain client funds in a trust account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

122. By not paying Friswell his funds held in the Wells Fargo Bank CTA promptly, Respondent failed to pay promptly client funds as requested by his client in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

123. By misappropriating at least \$156,220.99 of the settlement funds received on behalf of his client. Respondent committed an act or acts involving moral turpitude in wilful violation of Business and Professions Code, section 6106.

Facts for Case No. 04-O-15189:

124. On or about September 24, 2001 Roy A. Decauwer ("Decauwer") employed Respondent to handle a personal injury and workers' compensation matter against Entertainment Partners and others, ("Partners"). *Decauwer v. Entertainment, et al.*, case no. BC281601, WCAB no. VNO 0443746.

125. On or about February 19, 2004, Respondent, through mediation, reached an agreement to settle the Partners matter for \$197,500, (\$47,500 of the settlement was to be paid to Continental Casualty).

126. On or about February 26, 2004, Respondent deposited Decauwer's settlement check for \$80,000 into his client trust account at Wells Fargo Bank ("CTA") no. 043-8776932.

127. On or about March 11, 2004, Respondent deposited Decauwer's settlement check for \$17,500 into his CTA no. 043-8776932.

128. On or about March 22, 2004, Respondent deposited Decauwer's settlement check for \$100,000 into his CTA no. 043-8776932.

129. On or about April 9, 2004, Respondent issued a check for \$5,000 payable to Decauwer (as "partial settlement").

130. On or about April 30, 2004, Respondent issued a check for \$65,000 payable to Decauwer as "partial settlement" from his Wells Fargo Trust account no. 141-4419125. (On or about April 23, 2004, Respondent's CTA no. 043-8776932 was changed by closing and reopening the account as account no. 141-4419125.)

131. On or about May 10, 2004, Respondent issued a check for \$47,500 to Continental Casualty from his CTA no. 141-4419125 as part of Decauwer's agreed settlement.

132. Respondent reported to Wells Fargo Bank that two CTA checks for account no.

043-8776932 were stolen from his office. A check was subsequently cashed by Wells Fargo Bank on or about March 5, 2004 in the amount of \$28,939. Wells Fargo Bank changed Respondent's CTA bank account no. from 043-8776932 to 141-4419125 on April 23, 2004, and reimbursed Respondent \$28,939 on May 26, 2004. All account transactions for account no. 043-8776932 continued in account no. 141-4419125. Although Respondent also made a report that a \$45,000 check was also stolen, the bank did not find that such a check had been cashed and did not reimburse Respondent's account for this check.

133. By on or about March 22, 2004, Respondent received \$197,500 from various defendant's on behalf of Decauwer and Continental Casualty. Respondent paid \$5,000 to Decauwer on or about April 9, 2004 and had \$28,939 stolen from his CTA on or about March 5, 2004. On or about April 13, 2004, Respondent should have held \$163,561.00 in his CTA on behalf of Decauwer.

TOTAL DEPOSITS	\$197,500.00	03-22-04
TO DECAUWER	- 5,000.00	04-09-04
THEFT	- 28,939.00	03-05-04 (Prior to deposit)
	<u>\$163,561.00</u>	
BALANCE	35.16	04-13-04
MISAPPROPRIATION	(\$163,525.84)	

134. Decauwer again attempted unsuccessfully to contact Respondent by letter on or about April 25, 2005.

135. Between on or about February 26, 2004 and May 10, 2004, the balance in Respondent's Wells Fargo CTA fell below the amount held for Decauwer (\$163,561.00) on repeated dates, including but not limited to the following:

<u>Date</u>	<u>Balance</u>
04-13-04	35.16
04-23-04	808.41 (Date of account number changes)

Conclusions of Law for Case No. 04-O-15189:

136. By failing to account for Deauwer's settlement funds and by failing to promptly pay Decauwer's his settlement funds, Respondent intentionally or recklessly failed to perform services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

137. By not maintaining at least \$163,525.84 received on behalf of Decauwer in his Wells Fargo Bank CTA, Respondent failed to maintain client funds in a trust account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

138. Respondent dishonestly or with gross negligence misappropriated settlement funds of at least \$163,525.84 he received on behalf of Decauwer. Respondent thereby committed an act or acts involving moral turpitude in wilful violation of Business and Professions Code, section 6106.

Facts for Case No. 05-O-00534:

139. On or about September 11, 2002, Lydia Velez ("Velez") employed Respondent to handle a wrongful termination matter against Rockwell Collins, Inc. ("Rockwell"). *Velez v. Rockwell Collins*, case no. KC042732.

140. On or about September 15, 2003, Respondent filed Velez's case in the Los Angeles County Superior Court.

141. From in or about January 2004 until the present, Velez has been unable to obtain her client file despite requests from herself and her attorney.

142. On or about December 8, 2004, Velez faxed Respondent a letter requesting a complete copy of her client file. Velez did not get a response to her fax from Respondent, nor did Respondent provide Velez with a copy of her client file.

143. On or about January 28, 2005, Velez's attorney, Christopher Day ("Day") telephoned Respondent requesting a copy of Velez's entire client file. Respondent told Day that he would provide a copy of the Velez file to Day by January 31, 2005. No copy was received by Day from Respondent.

Conclusions of Law for Case No. 05-O-00534:

144. By failing to promptly release, upon termination of employment, to the client, at the request of the client, all papers and property, Respondent willfully failed to release his client's file in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

Facts for Case No. 02-O-14094:

145. On or about September 22, 1995, Arnolando and Betty Itzol ("Itzols") employed Respondent to represent them in a personal injury matter arising out of an automobile accident which occurred on August 29, 1995. Pursuant to their agreement, Respondent was to collect 33% of any settlement he was able to obtain.

146. On or about September 24, 1996, State Farm Insurance sent Respondent settlement drafts regarding the Iztol personal injury matter. The drafts were for the following amounts: \$15,000 for Arnolando Iztol; \$10,000 for Betty Iztol. On the same date, State Farm Insurance sent the Iztols a letter informing them that the settlement drafts had been sent to Respondent.

147. In or about September 25, 1996, Respondent's office contacted the Iztols and told them they needed to come to Respondent's office and sign the settlement drafts. The Iztols went to Respondent's office and signed the settlement drafts. Prior to leaving Respondent's office, Respondent's secretary stated that the Iztols would be contacted to set another appointment in order to receive an accounting and their portion of the settlement.

148. From on or about September 26, 1996, through May 20, 2002, neither Respondent nor anyone from his office contacted the Iztols.

149. On or about May 20, 2002, the Iztols received a letter from Dr. Mark Greenspan which stated that the Iztols still owed Dr. Greenspan \$6,873.00 for treatment performed on Arnolando Iztol and \$6,437.00 for treatment performed on Betty Iztol. Subsequently, these debts have been referred to a collection company called Allied International Credit Corp.

150. In or about June 2002, after not being able to get Respondent of the telephone despite repeated calls to his office, the Iztols went to Respondent's office. Respondent met with the Iztols and indicated that he would take care of the outstanding debt with Dr. Greenspan. However, Respondent did not take care of that debt and the debt to Dr. Greenspan remains

outstanding.

151. On or about July 17, 2002, the Iztols filed a complaint with the State Bar indicating that, although Respondent had collected \$25,000 as settlement of their personal injury case, they had not received any of the money and that they were not able to purchase a home due to the outstanding debt to Dr. Greenspan being reported to a credit agency.

152. On or about August 13, 2002, the Iztols received a bill from the collection company Gess and Associates on behalf of Northridge Diagnostic Center in the amount of \$1,625.00 for Betty Iztol and \$1,625.00 for Arnoldo Iztol.

153. To the present date, the Iztols have received no money from Respondent in connection with their personal injury settlement. Further, Respondent has not provided the Iztols with an accounting, as promised, and has failed to pay any of the medical providers who treated the Iztols in connection with the personal injury matter. Pursuant to the fee agreement, Respondent was to retain 33% as his fee, which in this case would have been \$8,250. The remainder owed to the Iztols is \$16,750.

Conclusions of Law for Case No. 02-O-14094:

154. Respondent misappropriated \$16,750 of funds belonging to the Iztols, committing an act involving moral turpitude in wilful violation of section 6106 of the Business and Professions Code.

155. By failing to provide an accounting of the \$25,000 in settlement funds received on behalf of the Iztols, Respondent wilfully violated rule 4-100(B)(3) of the Rules of Professional Conduct.

156. By failing to pay any portion of the \$25,000 in settlement funds received to the Iztols or to any of the medical providers as promised by Respondent and requested by the Iztols, Respondent wilfully violated rule 4-100(B)(4) of the Rules of Professional Conduct.

Facts for Case No. 02-O-13031:

157. In or about June 2000, Deborah A. Mullis ("Mullis") employed Respondent to represent her in a personal injury matter.

158. In or about December 2000, Respondent settled Mullis's personal injury matter for \$15,000.

159. On or about December 13, 2000, Respondent sent Mullis a letter which included an accounting of the settlement money received and amounts owed for various costs and medical bills. Included in this accounting from Respondent was a statement that Holistic Care Center was to receive \$1,000.00 for treatment provided to Mullis. Respondent deducted \$4,900.00 as his fee and Mullis was provided with the net settlement proceeds of \$4,500.00.

160. Between in December 13, 2000, and April 4, 2002, Holistic Care Center contacted Respondent's office on numerous occasions by letter and telephone to inquire as to when they would be receiving payment for the treatment rendered to Mullis. Respondent did not respond to these inquiries and did not send payment to Holistic Care Center.

161. On or about May 14, 2002, Holistic Care Center sent Mullis a letter indicating that Respondent had not paid any amount for the treatment she had received. Further, the letter indicated that, if payment was not forthcoming, collection proceedings would commence.

162. On or about July 13, 2002, Mullis sent a letter to Respondent inquiring about the \$1,000.00 payment that was to be made to Holistic Care Center. Mullis requested that Respondent send her a copy of the cancelled check once payment was made to Holistic Care Center. Respondent did not respond to Mullis's letter.

163. On or about June 20, 2003, Respondent sent a check of \$1,000 to Holistic Care Center in payment of the medical lien in the Mullis matter.

Conclusions of Law for Case No. 02-O-13031:

164. By failing to promptly pay Holistic Care Center as requested by Mullis, Respondent wilfully violated rule 4-100(B)(4) of the Rules of Professional Conduct.

Facts for Case No. 02-O-11247:

165. On or about July 11, 1997, Shorry Pope ("Pope") employed Respondent to represent her in a personal injury matter. Subsequently, Respondent filed a complaint against Ralphs Grocery Store on behalf of Pope.

166. On or about April 24, 2000, the matter was settled for the amount of \$32,500. Both Respondent and Pope signed the Settlement Agreement.

167. On or about May 3, 2000, a check from Claims Administration was sent to Respondent naming Pope and Respondent as payees.

168. On or about May 8, 2000, Respondent deposited the settlement check of \$32,500 into his Client Trust Account at Wells Fargo Bank, account no. 0438-776932 ("CTA"). Following this deposit, the CTA balance was \$32,659.32.

169. On or about May 10, 2000, sent an accounting showing the breakdown of the settlement proceeds. According to the accounting, Respondent received \$13,000 in attorney fees and Pope received a net recovery of \$13,087.69. Further, Respondent listed as one of the medical bills to be paid by Respondent as Dr. Rouzbeh M. Masroure, D.C. ("Dr. Masroure") in the amount of \$1,500.00, reduced from \$4,601.00.

170. On or about June 26, 2000, the balance in Respondent's CTA was \$1,358.54.

171. On or about November 5, 2001, Pope received a summons indicating that she and Respondent were being sued by Dr. Masroure ("Masroure case").

172. On or about January 9, 2002, a Request for Entry of Default was entered against Pope and Respondent in the Masroure case.

173. On or about March 19, 2002, default judgment was entered against Pope and Respondent in the amount of \$4,783.

174. On or about May 10, 2002, an Acknowledgment of Satisfaction of Judgment was filed in the Masroure case indicating that Respondent had paid the full amount of the judgment against Pope and Respondent.

Conclusions of Law for Case No. 02-O-11247:

175. Respondent misappropriated \$4,601.00 of funds belonging to Pope which was to

be paid to Dr. Masrour on her behalf, committing an act involving moral turpitude in wilful violation of section 6106 of the Business and Professions Code.

176. By failing to promptly pay Dr. Masrour as requested by Pope, Respondent wilfully violated rule 4-100(B)(4) of the Rules of Professional Conduct.

Facts for Case No. 01-O-04481:

177. In or about May 1997, Diana Risicato ("Risicato") employed Respondent to represent her and Tara Benson, Risicato's daughter, in a personal injury matter.

178. In or about March 1998, Respondent received a settlement check in the amount of \$6,500.00 in Tara Benson's matter and deposited it into his Client Trust Account at Wells Fargo Bank, account no. 0438-776932 ("CTA").

179. On or about March 26, 1998, Respondent paid himself \$1,600.00 from the Tara Benson settlement.

180. On or about April 7, 1998, Respondent sent a check to Risicato for Tara Benson as full settlement.

181. On or about May 26, 1998, Respondent paid medical provider Kiran Dua \$1,500.00 for treatment provided to Tara Benson.

182. On or about February 25, 1999, National Alliance Insurance prepared and sent a check for \$12,000 to Respondent as full settlement of the Risicato personal injury matter.

183. On or about March 2, 1999, Respondent deposited the \$12,000 check into his CTA. After making this deposit, the balance in Respondent's CTA was \$88,892.76. On or about the same date, Respondent paid himself \$4,000.00 for his work on the Risicato personal injury matter. Further, at the time of the settlement, Risicato communicated to Respondent that she wanted Respondent to pay all of the medical providers.

184. From in or about March 2, 1999, through at least September 2000, Risicato was receiving telephone calls and letters from various medical providers in her personal injury matter. Pursuant to these contacts, Risicato learned that the medical providers had not been paid by Respondent as he had been directed to. During this same period of time, Risicato attempted to contact Respondent by telephone on numerous occasions in an attempt to determine why the medical providers had not been paid. Respondent did not return any of these telephone calls to Risicato.

185. On or about February 16, 2000, the balance of Respondent's CTA dropped to \$183.37.

186. On or about March 27, 2000, Respondent sent Risicato a letter entitled "Distribution of Proceeds." This letter indicated the following distribution:

- Respondent had taken \$4,000.00 as his share of the \$12,000 settlement;
- Costs were waived;
- Medical providers were to be paid a total of \$5,249.56 (as follows):
 - Mark Greenspan M.D. to be paid \$1,200.00;
 - Key Health Management to be paid \$800.00;
 - Dura Medical to be paid \$530.00;
 - Warner Radiology to be paid \$319.56;

Northridge Family Medical to be paid \$1,200.00;
Edmond Dooman D.C. to be paid \$400.00; and
Kenneth Geiger to be paid \$1,605.00.

Further, the letter indicated that the remaining amount of settlement proceeds, \$2,750.44, were to be paid to Russ Auto Body as agreed by Risicato. As of the date of this letter, none of the medical providers listed had been paid.

187. On May 30, 2000, check no. 5585 in the amount of \$800.00, made out to Medical Diagnostic Associates/ Key Health Mgmt, was cashed on Respondent's CTA.

188. On or about June 12, 2000, check no. 5587 in the amount of \$319.56, made out to Warner Radiology, was cashed on Respondent's CTA.

189. On or about June 16, 2000, check no. 5588 in the amount of \$1,200.00, made out to Northridge Family Medical, was cashed on Respondent's CTA.

190. On or about July 21, 2000, Respondent's CTA balance dropped to -\$2,341.89.

191. As of August 6, 2004, Respondent has failed to pay any amount to the following medical providers: Mark Greenspan, M.D.; Edmond Dooman, D.C.; and Kenneth Geiger.

Conclusions of Law for Case No. 01-O-04481:

192. Respondent misappropriated \$3,205.00 of funds belonging to Risicato which was to be paid to Mark Greenspan, M.D., Edmund Dooman, D.C., and Kenneth Geiger on her behalf, committing an act involving moral turpitude in wilful violation of section 6106 of the Business and Professions Code.

193. By failing to promptly pay Mark Greenspan, M.D., Edmund Dooman, D.C., and Kenneth Geiger as requested by Risicato, Respondent wilfully violated rule 4-100(B)(4) of the Rules of Professional Conduct.

194. By failing to return any of the telephone calls made by Risicato between March 2, 1999, through at least September 2000, Respondent wilfully violated section 6068(m) of the Business and Professions Code.

Facts for Case No. 02-O-12210:

195. On or about September 19, 1999, Carleen Olmstead ("Olmstead") employed Respondent to represent her in a personal injury matter. Subsequently, Respondent filed suit against Campbell, Caltrans, and Gallagher.

196. On or about December 23, 1999, the case against Campbell was settled for \$300,000. Respondent took \$60,000 as his fee and \$1,271.46 as costs. \$60,000 was held in trust for a medical lien by Health Net. Respondent then disbursed \$178,728.54 to Olmstead. Respondent also obtained an additional \$15,000 in relation to the Campbell case on December 28, 1999. Respondent took his fees and forwarded the remaining \$11,194.48 to Olmstead.

197. In or about December 2001, the case against Caltrans was settled for \$400,000. Respondent took his attorney's fees and costs and sent Olmstead the net proceeds of \$257,133.43. Respondent also sent an accounting for the Caltrans matter.

198. In or about June 2001, trial in the case against Gallagher was commenced. The

jury returned a defense verdict.

199. On or about February 19, 2002, Respondent's office wrote to Olmstead informing her that the Health Net lien was settled for \$7,173.03.

200. On February 20, 2002, Respondent wrote to Olmstead with an accounting of the \$60,000 held in trust pursuant to the Health Net lien. This accounting stated that after all costs and the lien were paid, \$45,128.44 remained.

201. On or about March 21 and 25, 2002, and April 2 and 4, 2002, Olmstead wrote and faxed Respondent demanding the release and payment of the \$45,128.44 to her immediately. Respondent did not respond to any of these letters.

202. On or about June 24, 2003, the State Bar Client Security Fund paid Olmstead \$45,128.44 in connection with this matter.

203. Respondent has been litigating the Client Security Fund payment to Olmstead. According to Respondent, Olmstead engaged Respondent to represent her in further work on the Gallagher matter that resulted in a defense verdict, including representing her on appeal. According to Respondent, any money remaining in his trust account from the settlements in these cases was used in his representation of Olmstead in the Gallagher appeal.

Conclusions of Law for Case No. 02-O-12210:

204. Respondent misappropriated \$45,128.44 of funds belonging to Olmstead, committing an act involving moral turpitude, dishonesty, or corruption in wilful violation of section 6106 of the Business and Professions Code.

205. By failing to promptly pay Olmstead the \$45,128.44 held in trust by Respondent as requested by Olmstead, Respondent wilfully violated rule 4-100(B)(4) of the Rules of Professional Conduct.

206. By failing to respond to any of the letters sent by Olmstead between March 21, 2002, and April 4, 2002, Respondent wilfully violated section 6068(m) of the Business and Professions Code.

DISMISSALS:

207. The State Bar requests that the State Bar Court dismiss the following counts in furtherance of justice:

- a. Case No. 98-O-01816-RMT; Counts Two, Three and Four
- b. Case No. 00-O-15648-RMT; entire case, consisting of Counts Seven and Eight.
- c. Case No. 01-O-01537-RMT; Counts Thirteen through Twenty-one
- d. Case No. 01-O-04815-RMT; entire case, consisting of Counts Twenty-Two and Twenty-three
- e. Case No. 01-O-02013-RMT; Count One and Two
- f. Case No. 03-O-01155: entire case
- g. Case No. 04-O-10461: entire case
- h. Case No. 04-O-11463; Counts One and Three
- i. Case No. 04-O-14034; Count Eighteen
- j. Case No. 04-O-15189; Count Twenty-eight
- k. Case No. 05-O-00534; Counts 31, 32, and 34

PENDING CASES:

The written advice of pending cases, referenced in paragraph A.(6), was sent on August 15, 2003.

RESTITUTION:

<u>Case No.</u>	<u>Principal Amount</u>	<u>Date incurred</u>	<u>Party owed*</u>
98-O-01816	\$ 6,800.00	January 1, 1998	CSF
01-O-02013	\$ 9,958.00	March 15, 1996	David Benson*
02-O-14094	\$16,750.00	September 24, 1996	Arnoldo & Betty Iztol
01-O-04481	\$1,200.00	March 2, 1999	Mark Greenspan, M.D.
	\$400.00	March 2, 1999	Edmund Dooman, D.C.
	\$1,605.00	March 2, 1999	Kenneth Geiger
02-O-12210	\$45,128.44	June 24, 2003	Client Security Fund
04-O-13289	\$5,041.45	Sept. 12, 2003	Jeanelle Faircloth
04-O-13933	\$6,301.50	June 11, 2004	Nichole Hanson
04-O-14034	\$6,473.00	September 24, 2003	Penelope Summers

04-O-15189

\$10,000.00

N/A**

Roy A. Decauwer

In addition to the principal amount(s) listed above, Respondent owes as additional restitution to the designated party, interest on that amount at the rate of ten percent (10%) per annum from the date incurred listed above.

*Restitution is due the "Party owed" or the *State Bar Client Security Fund* if it has paid.

**Respondent and Mr. Decauwer have entered into an agreement by which Respondent shall pay the flat amount of \$10,000. The terms of the agreement do not require any interest to be paid and, therefore, no date is listed in the "Date incurred" section. As such, any interest shall only accrue if the Client Security Fund makes payment to Mr. Decauwer from the date such payment is made.

OTHER CONDITIONS:

Respondent shall return by certified mail, return receipt requested, the entire client case file of Penelope Summers to Ms. Summers. Return of the client file shall be accomplished within 10 days of signing the Alternative Discipline Contract in this matter.

Respondent shall return by certified mail, return receipt requested, the entire client case file of Nichole Hanson to Ms. Hanson. Return of the client file shall be accomplished within 10 days of signing the Alternative Discipline Contract in this matter.

(Do not write above this line.)

In the Matter of MERVYN HILLARD WOLF Member #: 41639	Case number(s): 98-O-01816-RMT; 98-O-03556; 00-O-15648; 01-O-01537; 01-O-04815; 01-O-02013; 01-O-04673; 04-O-11463; 04-O-13289; 04-O-13933; 04-O-14034; 04-O-14233; 04-O-14461; 04-O-15189; 05-O-00534; 01-O-04481; 02-O-11247; 02-O-12210; 02-O-13031; 02-O-14094; 03-O-01155; 04-O-10461
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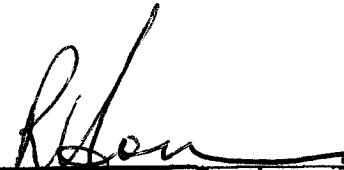
ORDER

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.)

5/16/06
Date


Judge of the State Bar Court

RICHARD A. HONN

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 September 2, 2010, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN 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 Los Angeles, California, addressed as follows:

MICHAEL GALEN GERNER
MICHAEL G GERNER, A PROF LAW CORP
425 S BEVERLY DR STE 210
BEVERLY HILLS, CA 90212

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- by overnight mail at , California, addressed as follows:

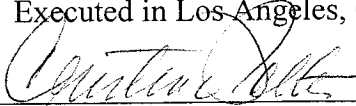
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 2, 2010.



Cristina Potter
Case Administrator
State Bar Court