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State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM

DEC 01 2009

STATE BAR COURT
CLERK'S OFFICE

Counsel For ~~Use State Bar~~
Charles A. Murray
Deputy Trial Counsel
1149 S. Hill Street
Los Angeles, CA 90015-2299
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Case Number (s)
06-O-14552;
07-O-10134;
07-O-10899

(for Court's use)

FILED

FEB 08 2010

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

Bar # 146069

Counsel For Respondent

David C. Carr
Law Office of David Cameron Carr
3333 Camino Del Rio South,
Suite 215
San Diego, CA 92108
(619-696-0526

Submitted to: Program Judge

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

Bar # 124510

In the Matter Of:
TODD E. MACALUSO

PREVIOUS STIPULATION REJECTED

Bar # 133009

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 4, 1988.
- (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, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the 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 consists of 9 pages, excluding the order.



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- (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.

B. Aggravating Circumstances [for definition, see 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 Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
- (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.~~
SEE PAGE 8
- (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 victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **SEE PAGE 8.**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over ¹⁸many 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 ~~with 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 or force of disciplinary, civil or criminal proceedings. **SEE PAGE 8**
- (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 was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and 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 PAGE 8.**

ATTACHMENT TO

ADP STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **TODD E. MACALUSO** MEMBER # **133009**

CASE NUMBERS: 06-O-14552, 07-O-10134 and 07-O-10899

PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A.(6), is November 3, 2009.

STIPULATION AS TO 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, or that he has otherwise committed acts of misconduct warranting discipline, as follows:

Facts for Case Nos. 06-O-14552, 07-O-10134 & 07-O-10899

1. At all times relevant to the events alleged herein, Respondent maintained a client trust account at California Bank & Trust, account number xx-xxxx28-41 ("CTA").¹
2. Between July 25, 2006 and February 9, 2007, Respondent issued the following checks drawn upon his CTA against insufficient funds:

Check Nos.:	Date Issued:	Amount:	Payee:	Date Presented:	Account Balance when Presented:
104	07/25/06	\$130,000.00	L.A. Funding	07/27/06	\$113,437.42
128	01/03/07	\$10,740.20	Richard H. Benes	01/04/07	\$8,967.06
141	02/09/07	\$30,047.87	County Medical Services	02/26/07	\$764.73

3. Respondent issued the checks set forth above when he knew, or was grossly negligent in not knowing, that there were insufficient funds in his CTA to pay them.

¹ The complete account numbers have been omitted due to privacy concerns.

Conclusions of Law for Case Nos. 06-O-14552, 07-O-10134 & 07-O-10899

4. By repeatedly issuing checks drawn upon his CTA over a six month period when he knew, or was grossly negligent in not knowing, that the checks were issued against insufficient funds, Respondent committed acts involving moral turpitude, dishonesty, or corruption, in willful violation of Business and Professions Code, section 6106.

Facts for Case No. 07-O-10134

5. At all times relevant to the events alleged herein, Respondent represented Julie Randall ("Randall") in an attorney fee dispute matter wherein funds were being held by the Los Angeles County Superior Court pursuant to a related interpleader action.

6. In August 2006, the court determined that \$108,750 of the funds being held by the court was to be returned to Randall.

7. On August 25, 2006, the court forwarded a check for \$108,750 to Respondent on behalf of Randall.

8. On August 25, 2006, Respondent received a check for \$108,750 from the court on behalf of Randall. These funds belonged entirely to Randall and Respondent was not entitled to receive any of these funds.

9. On September 21, 2006, Respondent deposited the \$108,750 check that he received from the court on behalf of Randall into his CTA.

10. On September 21, 2006, Respondent issued check no. 117 from his CTA made payable to Randall in the amount of \$108,750, which represented Randall's funds that were returned by the court ("check no. 117").

11. Randall did not present check no. 117 for payment until January 3, 2007. Respondent was required to maintain the sum \$108,750 on behalf of Randall in his CTA, at all times prior to that date.

12. On January 3, 2007, prior to check no. 117 being presented for payment, the balance in Respondent's CTA fell to \$8,997.06.

13. Check no. 117 was not honored for payment when presented on January 3, 2007, due to insufficient funds in the CTA.

14. On January 12, 2007, Respondent wired \$108,750 from his general account to Randall to pay her the money owed.

15. Respondent, acting with gross negligence in the handling of his CTA, misappropriated \$99,752.94 of Randall's funds.

Conclusions of Law for Case No. 07-O-10134

16. By not maintaining \$108,750 on behalf of Randall in a client trust account, Respondent failed to deposit and maintain client funds in trust, in willful violation of Rules of Professional Conduct, rule 4-100(A).

17. By misappropriating through his gross negligence the sum of \$99,752.94 that he was required to maintain in trust on behalf of Randall, Respondent committed an act involving moral turpitude, in willful violation of Business and Professions Code, section 6106.

Facts for Case No. 07-O-10899

18. At all times relevant to the events alleged herein, Respondent represented plaintiff Sandra Wilson ("Wilson") in a civil matter ("Wilson matter").

19. At all times relevant to the events alleged herein, County Medical Services had a lien against the Wilson matter in the amount of \$30,047.87.

20. In November 2006, the Wilson matter settled for \$200,000.

21. On November 14, 2006, the defendants in the Wilson matter transferred \$200,000 to Respondent's CTA via wire pursuant to the settlement agreement.

22. Of the \$200,000 in settlement proceeds from the Wilson matter, County Medical Services was entitled to receive \$30,047.87 pursuant to their lien.

23. On February 9, 2007, Respondent issued check no. 141 from his CTA in the amount of \$30,047.87 made payable to County Medical Services for payment of the lien ("check no. 141"). County Medical Services did not present check no. 141 for payment until February 26, 2007.

24. On February 26, 2007, Respondent was required to maintain in his CTA the sum \$30,047.87 on behalf of Wilson.

25. On February 26, 2007, prior to check no. 141 being presented for payment, the balance in Respondent's CTA fell to \$764.73. The bank honored the check despite the insufficiency of funds.

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26. Respondent, acting with gross negligence, misappropriated \$29,283.14 of Wilson's funds.

Conclusions of Law for Case No. 07-O-10899

27. By not maintaining \$30,047.87 on behalf of Wilson in a client trust account, Respondent failed to deposit and maintain client funds in trust, in willful violation of Rules of Professional Conduct, rule 4-100(A).

28. By misappropriating through his gross negligence the \$29,283.14 that he was required to maintain in trust on behalf of Wilson, Respondent committed an act involving moral turpitude, in willful violation of Business and Professions Code, section 6106.

Facts for Case Nos. 07-O-10134 & 07-O-10899

29. Between December 18, 2006 and January 3, 2007, Respondent issued checks drawn upon his CTA to pay for his personal and business expenses including, but not limited to, the following:

Check No.	Date Issued:	Amount:	Payee:
126	12/18/06	\$50,000.00	Courtesy Aircraft
128	01/03/07	\$10,740.20	Richard H. Benes

30. At least one check was issued by Respondent's own signature. These checks should have been paid from Respondent's general account, but - due to Respondent's inadequate supervision and of his staff and his inattention to the accounting and maintenance of his CTA - were instead, mistakenly issued and paid from his CTA.

31. Respondent restored the wrongfully taken funds to the CTA.

Conclusions of Law for Case Nos. 07-O-10134 & 07-O-10899

32. By issuing checks representing client funds from his CTA to pay for his personal and business expenses, Respondent misused his CTA, in willful violation of Rules of Professional Conduct, rule 4-100(A).

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RESPONDENT:

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Page

(PROGRAM)

(Printed: 11/24/09)

Attachment Page 4

AGGRAVATING CIRCUMSTANCES:

B(4) HARM:

Respondent misappropriated approximately \$100,000 of a client's funds from his CTA causing a \$108,750 check he had written from his CTA to the client to not be honored when presented for payment three and one-half months later. Nine days later Respondent wired \$108,750 from of his general account to the client to restore her funds to her.

B(7) MULTIPLE/PATTERN OF MISCONDUCT:

On six different occasions between July 25, 2006 and February 26, 2007 Respondent issued checks from his CTA when there was insufficient funds in the CTA to cover the amount of the checks due to similar improper handling of his CTA and/or client funds. He also issued two checks from his CTA for personal and business expenses due to similar improper handling of his CTA and/or client funds. He committed a total of eight ethical violations involving his handling of client funds in his CTA.

MITIGATING CIRCUMSTANCES:

C(5) RESTITUTION:

Randall: The funds represented by check number 117 described above from Respondent's CTA in the sum of \$108,750 which the bank would not honor on January 3, 2007, were restored on January 12, 2007 by wire transfer from Respondent's general account.

Wilson: The funds represented by check number 141 described above were paid by the bank upon presentation despite the lack of sufficient funds to cover the payment so the client was paid in full in a timely manner and no restitution was required to the client.

ADDITIONAL MITIGATING CIRCUMSTANCES:

In the Summer of 2007, Respondent received an award from the University of Detroit Mercy School of Law in recognition of what they described as an exemplary commitment to service and dedication to the community.

Respondent provides *pro bono* teaching services on a part time basis at the University of San Diego Law School.

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In the Matter of TODD E. MACALUSO	Case number(s): 06-O-14552, et al
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SIGNATURE OF THE PARTIES

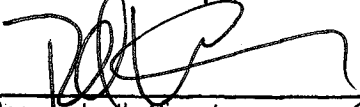
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

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, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

11-30-09
Date


Respondent's Signature

TODD E. MACALUSO
Print Name

11/30/09
Date


Respondent's Counsel Signature

DAVID C. CARR
Print Name

12/1/09
Date


Deputy Trial Counsel's Signature

CHARLES A. MURRAY
Print Name

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In the Matter Of TODD E. MACALUSO	Case Number(s): 06-O-14552, et al.
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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(a), Rules of Procedure.)

02-05-08
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 February 8, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

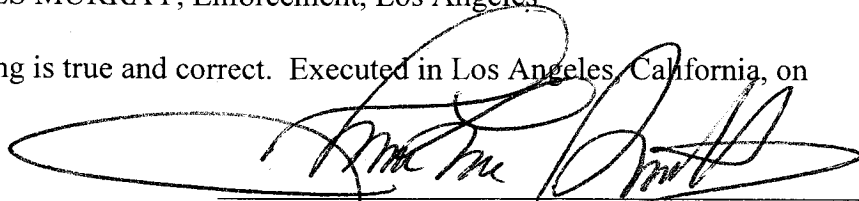
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID C. CARR
LAW OFFICE OF DAVID CAMERON CARR
3333 CAMINO DEL RIO S STE 215
SAN DIEGO, CA 92108

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

CHARLES MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 8, 2010.



Johnnie Lee Smith
Case Administrator
State Bar Court