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State Bar Court of California
Hearing Department
Los Angeles

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Counsel For The State Bar Jean Cha 1149 S. Hill St Los Angeles, CA 90015 (213) 765-1000 Bar # 228137	Case Number (s) 08-O-13061 08-O-14778 & 09-O-13237	(for Court's use) <div align="center"> FILED JUL 19 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER </div>
In Pro Per Respondent Keith Hammond Bray 940 S. Coast Dr, Ste 215 Costa Mesa, CA 92626 Bar # 219586		
In the Matter Of: Keith Hammond Bray Bar # 219586 A Member of the State Bar of California (Respondent)	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 June 1, 2002.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 20 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years: 2012, 2013, & 2014
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs entirely waived

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 06-O-11728 & 06-O-13919
 - (b) ☐ Date prior discipline effective Not yet effective, stipulation filed February 18, 2010.
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations:
Rules of Professional Conduct, rule 3-110(A) and 3-700(A)(2), and
Business and Professions Code sections 6068(d) and 6068(m).
 - (d) ☒ Degree of prior discipline One year stayed suspension, two years probation and 30 days actual suspension
 - (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. Respondent harmed Della Reed by depriving her of her right to give or withhold consent regarding \$9,550.68 in attorney fees and a \$723.74 refund for almost two years (Std. 1.2(b)(iv).) Respondent should have reimbursed the funds after Della's attorney made a demand. (In the Matter of Klein (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9.)
- (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.
- (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 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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent cooperated during the pendency of the instant proceeding by stipulating. He also recognized his wrongdoing and admitted culpability. His candor and cooperation are mitigating factors. (Std. 1.2(e)(v).)
- (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. Respondent has expressed remorse for his misconduct and acknowledged his misconduct to the State Bar. Respondent has purchased and reviewed the rules regulating attorney ethics and the State Bar of California, Handbook on Client Trust Accounting for California Attorneys (2003 ed.)
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted 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. In 2008, there were several deaths in Respondent's family that caused emotional strain and stress. In May 2008, Respondent was hospitalized and suffered from severe symptoms of Crohn's disease throughout May and June 2008. Respondent's illness has not recurred since 2008. Respondent is currently under the care of a medical professional familiar with his medical history and would be available to testify to Respondent's improved health. Also Respondent has a law office management plan so that in the event of any future illness, he has a support system of qualified attorneys in good standing who will be able to assist with covering appearances and handling client matters.

- (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. Respondent has presented character letters from eight individuals in the community attesting to their respective faith in Respondent and his overall honesty. These character references expressed their belief in Respondent's integrity even with the knowledge of the misconduct and believe that the conduct will not recur. (Std. 1.2(e)(vi).)
- (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

Respondent has performed pro bono work on about 30 cases from 2001 through 2009. Community service is a mitigating circumstance. (Calvert v. State Bar (1991) 54 Cal.3d 765, 785.)

In the Haywood matter, Respondent had represented Haywood in a separate matter also relating to the Jordan v. Haywood case where Newton was the opposing counsel. In case no. TC029427, Respondent was successfully substituted out of the case and Haywood did successfully substitute in pro per as of December 12, 2008. Haywood did not understand that Respondent had to be substituted out of case no. VD059403 separately. At a December 19, 2008 hearing where Haywood appeared in pro per in case no. TC029427, Haywood indicated that he had hired new counsel. Haywood's new counsel substituted into case no. TC029427 on January 12, 2009. Haywood was under the mistaken belief that his new counsel would handle the appearances related to case no. VD059403 and so was Respondent, based on Haywood's understanding. However, Respondent, as the attorney of record, should have made efforts to ensure that he was no longer attorney of record in case no. VD059403 and should not have left his client to shoulder the burden of filing a substitution of attorney form on his own.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of Two Years.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of Two Years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of 150 days.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☒ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

Attachment language begins here (if any):

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

IN THE MATTER OF: KEITH HAMMOND BRAY, 219586
CASE NUMBERS: 08-O-13061, 08-O-14778 & 09-O-13237

Respondent admits the facts set forth in the stipulation are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

MILES MATTER (08-O-13061)

FACTS

1. On October 24, 2007, Dion Miles ("Miles") employed Respondent to represent him in a child support matter filed on September 21, 2007 in the Los Angeles County Superior Court entitled, *County of Los Angeles v. Dion Lorenzo Miles*, case number BY0867147 (the "action"). As part of the representation, Respondent agreed to seek a modification of a December 2004 child support order on behalf of Miles. Miles paid Respondent a total of \$2,500 as advance fees for the representation.
2. On June 17, 2008, Miles terminated Respondent's employment.
3. On June 19, 2008, Miles picked up his file. An accounting was provided to Miles showing a balance credit owed to Miles for \$443.84.
4. Respondent issued a check dated June 19, 2008 for \$443.84 to Miles as a refund of unearned fees. The check was not honored when presented by Miles for payment due to insufficient funds in Respondent's account.
5. On June 25, 2008, June 30, 2008, and July 2, 2008, Miles sent e-mails to Respondent in which he advised that the check was not honored and demanded a refund of the unearned fees.
6. Respondent must pay Miles the \$443.84 refund.

Attachment language begins here (if any):

CONCLUSION OF LAW

7. By not refunding at least \$443.84 of the \$2,500 advance fee until June 2010, Respondent wilfully failed to refund promptly any part of a fee paid in advance that had not been earned in wilful violation of Rules of Professional Conduct rule 3-700(D)(2).

REED MATTER (08-O-14778)

FACTS

8. Respondent represented Derk Reed ("Reed") in a dissolution of marriage matter filed in the Los Angeles County Superior Court on September 19, 2005 and entitled, *In re the Marriage of Derk Reed and Della Reed*, case number VD059403. Attorney Randolph Brandelli ("Brandelli") represented Della Reed ("Della") in the action.

9. In September 2005, Respondent filed an ex parte request for an order to compel Della to enter into a loan agreement so that the loan proceeds could be used to pay for \$23,000 in prior construction repairs and necessary renovations to the parties' community residence. No other use for the loan funds was mentioned in Respondent's request. The loan funds were borrowed against the community residence and Reed was to pay the loan down until issues of offsets and distributions could be later negotiated or litigated.

10. On October 27, 2005, the court held a hearing at Respondent's request. Respondent and Brandelli appeared for the hearing. In chambers, the parties entered into a verbal agreement that Della would execute the loan documents on the condition that the loan proceeds would not be used for any purpose without Della's consent. The court did not issue a written order memorializing the parties' agreement; however, none was required. The summons filed on September 19, 2005, included an order restraining the parties from "transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an

order of the court, except in the usual course of business or for the necessities of life" (the "order"). The order was in full force and effect at all times mentioned herein.

11. Pursuant to the parties' agreement, in October 2005, Reed and Della obtained a secured loan from Wells Fargo Bank ("Wells Fargo") for \$87,825 against their community residence.

12. On November 1, 2005, Wells Fargo purchased a \$37,143.73 cashier's check payable to Reed and Della with the \$87,825 loan funds. Reed deposited the check into the parties' joint checking account without Della's endorsement, and then withdrew the funds from the account without her knowledge or consent.

13. On December 16, 2005, Reed purchased a \$37,143 cashier's check payable to Respondent with the loan funds. Della had not consented to the withdrawal of the \$37,143 from the joint account or to the payment to Respondent. When Respondent received the \$37,143 from Reed, he knew that the funds were earmarked for payment of construction costs on the community residence and for no other purpose.

14. Respondent did not deposit or maintain the \$37,143 from the loan proceeds received from Reed in a client trust account for the benefit of Reed and Della.

15. After discovering that Reed had withdrawn the \$37,143 from the joint account, Brandelli requested an accounting of all of Reed's financial records from Respondent by letter dated December 19, 2005.

16. On December 20, 2005, Respondent sent Brandelli a letter stating that the funds were deposited into an interest bearing account on December 17, 2005.

17. Respondent provided invoices related to the construction costs and made disbursements to Great Lakes Construction in January 2006 and February 2006 without objections from Della.

18. In May 2006, Reed requested that Respondent pay his attorney's fees out of the loan funds. However, Reed did not have authority as the funds were jointly owned and Respondent did not obtain consent from Della.

19. On October 12, 2006, Reed employed new counsel for the dissolution action. Reed and Respondent parted ways amicably.

20. On October 18, 2006, Respondent was substituted out as Reed's attorney in the dissolution action.

21. On October 20, 2006, Respondent sent a letter to Reed's new attorney, Damian Nolan ("Nolan"), with an accounting for the \$37,143. In Respondent's accounting, he represented that \$36,850.68 was paid from the \$37,143, leaving a balance of \$292.32, as follows:

<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Purpose</u>
01-06-06	\$22,500.00 ¹	Great Lakes Construction	Remodeling
02-08-06 ²	\$ 2,400.00	Great Lakes Construction	Remodeling
05-01-06 ³	\$ 2,400.00	Great Lakes Construction	Remodeling
05-30-06	\$ 3,548.13	Law Office of K.H. Bray	Attorney Fees
05-30-06	\$ 3,500.00	Law Office of K.H. Bray	Attorney Fee (Retainer)
10-20-06	<u>\$ 2,502.55</u>	Law Office of K.H. Bray	Remaining Balance
Total:	\$36,850.68		

22. Due to the miscalculation in Respondent's October 20, 2006 accounting, the total remaining balance Respondent was required to maintain was \$723.74 (\$292.32 + \$431.42).

¹ According to Great Lakes Construction, \$22,068.58, not \$22,500, was paid on January 18, 2006, via check number 1403. Respondent did not account for the difference of \$431.42.

² According to Great Lakes Construction, \$2,400 was paid on March 1, 2006, via check number 1413.

³ According to Great Lakes Construction, \$2,400 was paid on May 5, 2006, via check number 1422.

23. At the time Respondent disbursed funds from the \$37,143 for his attorney fees, he knew that Della was not informed of, and did not consent to, the disbursement of any of the \$37,143 for Respondent's attorney fees.

24. On November 20, 2006, Brandelli sent a letter to Respondent. Brandelli demanded that the \$37,143 be delivered to his office within five days.

25. On November 21, 2006, Respondent sent a letter to Brandelli in response to his November 20, 2006 letter. In the letter, Respondent refused to refund any of the \$37,143.

26. In October 2008, almost two years later, the parties entered into a settlement agreement in the dissolution action wherein Reed assigned his rights to whatever was left of the \$37,143 retained by Respondent to Della. On October 17, 2008, the parties' settlement agreement was made an order of the court. A specific amount was not included in the order. Reed understood the remaining amount to be about \$292.32. Reed negotiated offsets and replenishments to the community for attorney fees that were paid out of the community and payments he had made from his separate property for the benefit of the community in consideration of the settlement agreement.

27. Respondent disbursed \$9,550.68 for his attorney fees from the \$37,143 earmarked for construction costs without Della's consent and without a court order. Respondent misappropriated at least \$9,843 from Della in 2006.

28. Respondent must refund \$723.74 to Della through Brandelli.

CONCLUSIONS OF LAW

29. By disbursing at least \$9,843 from the construction loan funds to pay his own attorney fees, Respondent committed an act involving moral turpitude in wilful violation of Business and Professions Code section 6106.

30. By not depositing or maintaining the \$37,143 in a trust account when Respondent owed a fiduciary duty to Della, Respondent wilfully failed to deposit and maintain funds

received for the benefit of a client and a third party with whom he owed a fiduciary duty in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in wilful violation of Rules of Professional Conduct, rule 4-100(A).

HAYWOOD MATTER (09-O-13237)

FACTS

31. Beginning in September 2008, Respondent represented Aaron Haywood ("Haywood") in an action filed on August 22, 2008 in the Los Angeles County Superior Court and entitled, *Eula Jordan v. Aaron Haywood*, case number TC022192.

32. On August 22, 2008, the court set a case management conference ("CMC") in the action for January 7, 2009. On August 22, 2008, Arthur Newton ("Newton"), the attorney for Eula Jordan ("Jordan"), served notice of the CMC on Haywood.

33. On September 22, 2008, Respondent filed an answer in the action on behalf of Haywood.

34. On September 24, 2008, Newton served Jordan's discovery propounded to Haywood, including form and special interrogatories, a request for admissions, and a demand for production of documents, on Respondent at his address of record of 5500 E. Atherton St., Ste. 325, Long Beach, CA 90815 ("address of record"). Respondent received the discovery.

35. On November 26, 2008, Newton sent a letter to Respondent at his address of record as he had not received Haywood's responses to the discovery and the responses were overdue. Respondent received the letter. In the letter, Newton granted Haywood an extension to December 10, 2008 to respond to the discovery, without objections. In the letter, Newton also informed Respondent that he would file a motion to compel responses to the discovery and a motion for an order imposing sanctions against Respondent if Newton was required to seek the court's intervention regarding the overdue responses. Respondent did not serve responses to the discovery on Newton.

36. On December 11, 2008, Respondent provided Haywood the file, exemplars of discovery responses, a signed substitution of attorney form with instructions from Respondent on how to file the substitution of attorney form with the court and serve the form on Newton on December 12, 2008. Haywood did not file the substitution of attorney and Respondent did not take appropriate action to ensure the substitution of attorney was filed. Therefore, Respondent remained attorney of record in the Haywood matter.

37. On December 11, 2008, Newton filed and served Jordan's motions to compel Haywood's responses to the discovery, and for an order of sanctions against Haywood and Respondent on Respondent at his address of record. The motions reflected that a hearing on the motions was set for January 13, 2009.

38. On December 18, 2008, Respondent learned that Haywood did not substitute Respondent out of the case and provided Haywood with another substitution of attorney form. Respondent's employment by Haywood for the action was effectively terminated when Haywood signed a substitution of attorney. Although, Respondent did notify Newton of the substitution of attorney, neither Respondent nor Haywood filed the substitution of attorney with the court. Respondent did not confirm whether Haywood had filed the substitution of attorney with the court. As such, Respondent remained as Haywood's attorney of record in the action.

39. On December 22, 2008, Newton served Jordan's CMC statement and notice of the January 7, 2009 CMC on Respondent at his address of record.

40. In mid-December 2008, Respondent was in the process of moving office locations. After December 10, 2008, when Respondent received documents in the Haywood matter, he forwarded them directly to Haywood.

41. On January 7, 2009, the court held the CMC in the action. Respondent did not appear at the CMC on behalf of Haywood. The court continued the CMC to January 13, 2009. The court also scheduled a hearing for January 13, 2009 on its order to show cause re: sanctions

against Respondent for his failure to appear for the January 7, 2009 CMC and failure to file a CMC statement on behalf of Haywood. The court ordered Respondent to appear in person.

42. On January 8, 2009, Newton served notice of the January 13, 2009 CMC and OSC on Respondent at his address of record and at his fax number of record.

43. On January 13, 2009, the court held a hearing on the motions to compel discovery, the CMC and the OSC. Respondent did not appear for the hearing or file any written opposition to the motions. The court ordered that Haywood's responses were due without objection in 14 days. The court also ordered a \$1,800 sanction in connection with the motions to compel discovery against Haywood and Respondent, to be paid jointly and severally to Newton within 14 days of service of the order. The court further ordered Respondent to pay \$300 to the clerk of the court within 14 days of service of the order for failing to appear on January 7, 2009 and for failing to file a CMC statement by January 7, 2009. The court continued the CMC to March 24, 2009. The court also scheduled a hearing for March 24, 2009 on its order to show cause re: sanctions against Respondent for his failure to appear on January 13, 2009 and failure to file a CMC statement.

44. On January 15, 2009, Newton served notice of the court's orders, sanctions, the CMC and the second OSC on Respondent at his address of record.

45. On February 4, 2009, Newton sent a letter to Respondent at his address of record as he had not received Haywood's responses to the discovery. Newton informed Respondent that unless he delivered the responses to the discovery by February 16, 2009, he would be filing a motion for terminating and monetary sanctions. Respondent did not serve responses to the discovery on Newton.

46. On February 4, 2009, Respondent sent an e-mail to Haywood which reflected that Respondent knew the substitution of attorney had still not been filed in the action. Respondent failed to properly withdraw.

47. On February 17, 2009, Newton filed a motion for terminating sanctions, the striking of Haywood's answer, entry of Haywood's default and monetary sanctions against Haywood, as Newton had not received the responses to the discovery as ordered by the court. The motion reflected that a hearing on the motion was set for March 17, 2009. On February 16, 2009, Newton served the motion on Respondent at his address of record.

48. On March 17, 2009, the court held a hearing on the motion for terminating sanctions, the striking of Haywood's answer, and entry of Haywood's default. Respondent did not appear for the hearing or file any written opposition to the motion. The court advanced and vacated all future hearings, including the March 24, 2009 hearing. The court took the matter under submission and calendared a review of the matter for April 15, 2009, so that Newton could serve notice of the motion on Respondent at his official State Bar of California membership records address of 2411 Carnegie Ln., Unit A, Redondo Beach, CA 90278, which effectively had been updated by Respondent on January 28, 2009.

49. On March 18, 2009, Newton served the motion for terminating sanctions, the striking of Haywood's answer, and entry of Haywood's default, and notice that the court had taken the motion under submission and calendared a non-appearance review for April 15, 2009, on Respondent at his then current membership records address.

50. On April 14, 2009, Respondent was formally substituted out of his representation of Haywood in the action when Haywood provided a substitution of attorney to his new counsel, the Law Firm of Fox & Fox, and Fox filed the substitution of attorney with the court.

51. On April 15, 2009, the court granted Newton's motion for terminating sanctions. The court ordered that Haywood's answer be stricken and entered Haywood's default in the action. The court further ordered Respondent to pay Newton an additional sanction of \$1,840 by May 4, 2009.

52. Respondent did not timely pay the \$1,800 sanction imposed by the court on January 13, 2009, the \$300 sanction imposed by the court on January 13, 2009, or the \$1,840 sanction imposed by the court on April 15, 2009.

53. On May 14, 2009, The Law Firm of Fox & Fox substituted into the Haywood action and Haywood's new counsel, expended great time and effort to immediately and successfully ask the court to set aside the April 15, 2009 order granting Jordon's motion for terminating sanctions.

54. On May 20, 2009, Haywood's new counsel, forwarded a check from Haywood in the amount of \$1,830 to Newton in payment of the January 13, 2009 \$1,800 sanction.

CONCLUSIONS OF LAW

55. By not appearing for the January 13, 2009 hearing, and by not paying the sanctions imposed against Respondent on January 13, 2009, and April 15, 2009, Respondent wilfully disobeyed and violated orders of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to have done in wilful violation of Business and Professions Code section 6103.

56. By not formally substituting out of his representation of Haywood in the action until April 14, 2009, Respondent wilfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in wilful violation of Rules of Professional Conduct, rule 3-700(A)(2).

AUTHORITIES.

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.)

Standard 1.6(a) provides for the most severe discipline out of the applicable standards. (All further references to the "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, unless expressly noted.)

Standard 2.3 provides for actual suspension or disbarment for an act of moral turpitude, while standard 2.2(a) suggests disbarment for willful misappropriation unless “the most compelling mitigating circumstances clearly predominate,” in which case a one-year actual suspension is warranted. However, the Supreme Court does not apply the standards in a “talismanic fashion.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

Standard 2.2(b) provides that a violation of rule 4-100 shall result in at least a three-month suspension, irrespective of mitigation circumstances. Standard 2.4(b) provides for reproof or suspension for a failure to perform. The standards are guidelines (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and afforded great weight (*In re Silverton* (2005) 36 Cal.4th 81, 91-92), they are not applied in a talismanic fashion (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994).

The nature of Respondent’s misappropriation is such that applying the disbarment recommendation in standard 2.2(a) would be unduly harsh. “As used in attorney discipline cases, the term wilful misappropriation covers ‘a broad range of conduct varying significantly in the degree of culpability.’ [Citation.]” (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 518.) Respondent did not hide the disbursements and believed that the funds were available to pay fees. He clearly identified the source and the payments in his own accounting provided to subsequent counsel and opposing counsel in October 2006.

Respondent’s misconduct was unaccompanied by acts of deceit. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) In *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, the court found a 30-day actual suspension for wilful misappropriation of community property funds held in trust account which were applied to attorney’s fees without consent of opposing counsel or her client. In *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, the court found 60-days actual suspension for misappropriation involving moral turpitude due to gross carelessness in commingling trust fund and using CTA’s operating account, plus additional act of moral turpitude due to use of CTA to conceal assets from IRS levy.

“[A]n attorney’s failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]” (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.) Moreover, misappropriation may occur where a fiduciary duty is owed to a third party (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, 123) and then funds are withdrawn without the permission of that third party. (*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 330.)

Respondent is culpable of wilful misappropriation because he disbursed the funds which were intended for construction costs only, to his attorney fees without consent from Della or a court order to do so. He compounded his error when he did not accede to Brandelli’s 2006 demand to return the remaining funds. Although Brandelli did not seek the return of the funds until almost

two years later, Respondent should have made efforts to maintain in trust those remaining funds, ie. \$723.74.

The primary purpose of disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession. (Std. 1.3.) No fixed formula applies in determining the appropriate level of discipline. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403,) The appropriate discipline is determined in light of all relevant facts, including mitigating and aggravating circumstances. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The aggravating force of Respondent's prior discipline is slightly diminished because the underlying misconduct in the Reed matter occurred during the same time period in 2006 as Respondent's prior discipline of 30 days actual suspension in State Bar Case Nos. 06-O-11728 and 06-O-13919, which has not yet become effective for any time period long enough for Respondent to benefit from the rehabilitative effect that discipline affords. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) The present additional 150 days actual suspension is sufficient to satisfy the purposes of attorney discipline.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was June 9, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 9, 2010, the estimated prosecution costs in this matter are approximately \$4,892.00. Respondent acknowledges that this figure is an estimate only and that it might not include State Bar Court costs that will be included in any final cost assessment (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)), which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings. It is also noted that if Respondent fails to pay any installment of disciplinary costs within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision(c), the remaining balance of the costs is due and payable immediately unless relief has been granted under the Rules of Procedure of the State Bar of California (Rules Proc. of State Bar, rule 286). The payment of costs is enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent will receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

In the Matter of
Keith Hammond Bray

Case number(s):
08-O-13061, 08-O-14778 & 09-O-13237

A Member of the State Bar

Financial Conditions

a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Della Reed	\$431.42	10/20/2006
Della Reed	\$292.32	10/17/2008
Dion Miles	\$443.84	6/19/2008

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- ☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

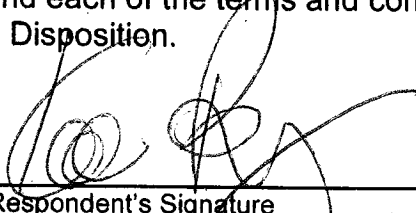
In the Matter of
Keith Hammond Bray

Case number(s):
08-O-13061, 08-O-14778 & 09-O-13237

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 Fact, Conclusions of Law and Disposition.

6/29/10
Date


Respondent's Signature

Keith H. Bray
Print Name

7/1/10
Date

Respondent's Counsel Signature

Print Name


Deputy Trial Counsel's Signature

Jean Cha
Print Name

(Do not write above this line.)

In the Matter Of
Keith Hammond Bray

Case Number(s):
08-O-13061, 08-O-14778 & 09-O-13237

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

Page 1, ¶A(3): The last sentence of the paragraph is modified to read: "The stipulation consists of 21 pages, not including the order."

Page 9, ¶12: The first sentence of the paragraph is modified to read: "On November 1, 2005, Reed purchased a \$37,143.73 cashier's check, payable to reed and Della, with a portion of the \$87,825 loan funds."

Page 9, ¶13: The first sentence of the paragraph is modified to read: "On December 16, 2005, Reed purchased a \$37, 143 cashier's check, payable to Respondent, with a portion of the loan funds."

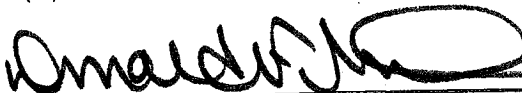
Page 11, ¶23 The following language is added to the beginning of the paragraph: "Between May 30, 2006, and October 20, 2006, Respondent disbursed funds from the \$37,143 to pay the legal fees owed to Respondent by Reed. The dates and amounts of such disbursements are accurately set forth in the accounting subsequently provided by Respondent to Nolan and quoted in paragraph 21, above."

Page 18, Costs of Disciplinary Proceedings: The following language is added to the end of the paragraph: "Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5. (Rules Proc. of State Bar, rule 291.)"

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

7/16/2010

Date



Judge of the State Bar Court

DONALD F. MILES

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension Order

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 July 19, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

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:

**KEITH H. BRAY
ATTORNEY AT LAW
940 S COAST DR STE 215
COSTA MESA, CA 92626**

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

JEAN CHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 19, 2010.



Tammy Cleaver
Case Administrator
State Bar Court