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

<b>Counsel For The State Bar</b>  Charles A. Murray Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1236  Bar # 146069	<b>Case Number (s)</b> 02-C-14879	(for Court's use)  <b>FILED</b>  SEP 10 2009 <i>He</i>  STATE BAR COURT CLERK'S OFFICE LOS ANGELES  <b>PUBLIC MATTER</b>
<b>Counsel For Respondent</b>  Arthur L. Margolis Margolis & Margolis 2000 Riverside Drive Los Angeles, CA 90039-3758 (323) 953-8996  Bar # 57703	<b>Submitted to: Program Judge</b>  <b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter Of:</b> ANDREA SELENE BURGER  Bar # 173351  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 December 12, 1994.
- (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.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (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.  
*see page 8.*
- (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.
- (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 <sup>Six years, nine months</sup> ~~many years~~ of practice, ~~occupied 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.
- (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:**

COOPERATION with Law Enforcement: (see page 8.)

**ATTACHMENT TO**  
**ADP STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

IN THE MATTER OF:        **ANDREA BURGER** ("Respondent")        SB# 173351

CASE NUMBER:            **02-C-14879**

**PENDING PROCEEDINGS.**

The disclosure date referred to, page 1, item A.(7), was June 25, 2009.

**WAIVER OF FINALITY OF CONVICTION:**

Respondent waives finality of her conviction for disciplinary purposes, consenting to the State Bar Court's acceptance of this Stipulation as to facts and conclusions of law in all respects as if the conviction was final, including the entry of findings consistent with this Stipulation, imposition of discipline, or entry of a recommendation as to the degree of the discipline to be imposed, also waiving any right to challenge on the basis of a lack of finality of his conviction the State Bar Court's recommendation of discipline, if any, and the actual imposition of discipline, if any, by the State Bar Court or the California Supreme Court.

Respondent further waives any right she may have to seek review or reconsideration on the basis of any relief she may receive as a result of any appeal of, or petition regarding, the criminal conviction underlying any recommendation of and/or actual imposition of discipline by the State Bar Court or the California Supreme Court.

**PROCEDURAL EVENTS:**

By orders issued on April 4, 2008, and on August 28, 2008 the Review Department of the State Bar Court suspended Respondent from the practice of law effective May 4, 2008, ordered her to comply with the provisions of rule 9.20, California Rules of Court, and referred this matter to the Hearing Department for a hearing and decision recommending discipline to be imposed due to Respondent's conviction of violating Penal Code section 32 [Accessory After the Fact], a misdemeanor involving moral turpitude.

**STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct, or has otherwise committed acts of misconduct warranting discipline:

**STIPULATED FACTS:**

1. On August 2, 2001, Respondent, in violation of Penal Code section 32 (Accessory After the Fact) destroyed and attempted to hide or secret evidence of identity theft, possession of forged drivers' licenses, identity theft, and grand theft. The items involved were related

to felony criminal acts committed by her husband and of which he was convicted.

2. The conviction stems from Respondent's actions on August 2, 2001, as follows:

(a) Respondent's husband was arrested for possession of checks stolen from numerous apartment complex rental offices in San Diego and Orange Counties. He and an accomplice had previously filed several fictitious name statements forming non-existent businesses in names similar to the apartment complex names. They were attempting to open bank accounts in those new "company" names and deposit the stolen checks. The fraud was discovered and they were arrested in one of the banks that day. Respondent's husband, who was at that time on parole for the exact same scam committed a couple of years before, called Respondent at their home from the Irvine Police Department while he was being booked. That phone call was recorded, as are all such calls. Respondent's husband informed Respondent that he had been arrested and that she should "clean up the house before Parole comes over" or words to that effect.

(b) Upon ending the call, Respondent proceeded to collect numerous incriminating documents, shredding them, and attempting unsuccessfully to flush the shreds down the toilet. She also deposited numerous items and documents in her purse and the pockets of the clothes she was wearing. When state parole agents arrived at her door to conduct a parole search she initially denied them entry, and then tried to leave the residence herself. She was detained. In her purse and on her person were found:

- over twenty birth certificates for persons other than herself, her husband, or a relative (some of these documents had been altered);
- seventeen fraudulently obtained credit cards bearing other person's names;
- three notepad pages with names of other persons including what appeared to be their dates of birth, addresses, social security numbers (such notes are commonly used as crib sheets by those using false, forged or stolen identity information);
- Twenty-seven driver's licenses and ID cards from ten different states, all with her husband's photograph, but bearing other person's names, some of them related to the birth certificates and fraudulently obtained credit cards which had been recovered; and,
- one large wad of soaked and shredded documents.

(c) More items, including a second water-soaked wad of shredded documents, were found inside the house. When Respondent was questioned by police at the scene, she admitted she had attempted to destroy and carry the items in order to protect her husband and to keep him from going back to prison. She was not arrested at the time, but was told that the district attorney might seek charges against her.

3. As a result of the arrests, Respondent's husband and one of his accomplices were found in violation of their paroles and sent back to state prison. While they were in prison, the investigation into their fraudulent activities as new crimes continued. Respondent's husband was released from prison early and absconded from parole.
4. In August 2002, two felony charges [conspiracy & accessory after the fact] were filed against Respondent and fifty-one counts of fraud, forgery, theft, and other related felonies were filed against Respondent's husband and the accomplice. Respondent remained out of custody and pleaded not guilty. The accomplice was in custody and eventually pleaded guilty and received a six year prison sentence.
5. Respondent's husband remained at large, an arrest warrant was issued against him, and he was considered a fugitive.
6. Eventually a preliminary hearing was held and Respondent was bound over to Superior Court on the two felony charges. Respondent's arraignment and subsequent hearing were repeatedly delayed due to legitimate and serious medical conditions involving separately herself, her mother and her attorney. During this period District Attorney Office investigators attempted to locate Respondent's husband.
7. In May 2005 Respondent's husband was discovered living and using a stolen identity at 1919 Gramercy Avenue in the city of Torrance (the "house"). The Torrance Police Department was supplied with photographs of Respondent and her husband. On May 14, 2005, Torrance police officers knocked on the door of the house and confronted Respondent's husband. Respondent's husband slammed the door in their faces, barricaded himself inside the house, and refused to come out. After twenty minutes and while waiting for the S.W.A.T. unit to arrive, the police officers observed Respondent come out of the house through the garage door. They contacted her whereupon she repeatedly refused to identify herself or answer any questions, except that she admitted she rented the house. However, the police officer questioning her at the scene recognized her from the photograph he had been provided. The police officer described Respondent as "completely uncooperative". When asked if there were any other persons inside the house or where her husband was in the house, Respondent refused to answer. When a police officer informed Respondent that they had observed her husband inside the house and that warrants for his arrest had been issued, and then asked Respondent to allow police inside, Respondent refused to let the police inside the house and refused to answer any other questions. The police continued to explain to Respondent that they knew from personal contact at the door that her husband was inside her house and continued to show Respondent the warrants for her husband arrest. Respondent continued to refuse to answer any questions or even provide her name. Respondent then began walking away from the officer questioning her. Being the only officer containing that side of the house and preventing the escape of Respondent's husband, the officer was unable to follow or detain Respondent. The officer did call after Respondent and instruct her to come back and not leave. However, Respondent failed to comply with instructions, and continued to walk away – eventually walking between two houses and disappearing from view. Respondent did not return.

8. Approximately seven hours later, Respondent's husband was arrested and the house searched. Inside were clear indicia that Respondent also lived at the house with her husband, including a closet with a large amount of woman's clothing and woman's shoes. Records obtained from utilities indicate that Respondent's husband was using a cell phone provided to him and paid for by Respondent. Respondent's husband told officers that the house was his residence and that he stayed at the house with Respondent. He was convicted of all fifty-one felony counts charges against him.
9. On January 24, 2008, Respondent executed an Advisement and Waiver of Rights for a Felony Guilty Plea in which she offered the following facts: "On August 2, 2001 I intentionally destroyed and attempted to hide evidence of identity theft, possession of fraudulently obtained driver's licenses and credit cards belonging to Daniel Pace and evidence against him regarding felonies committed by him in Orange County."
10. On January 24, 2008, Respondent entered a guilty plea to and was convicted of a felony violation of Penal Code section 32 [Accessory After the Fact]. A second felony charge was dismissed.
11. On May 9, 2008, the Court granted Respondent's motion to withdraw her felony guilty plea, the charge was reduced to a misdemeanor, and Respondent entered a guilty plea to and was convicted of a misdemeanor violation of section 32 [Accessory After the Fact]. Sentencing was imposed that day and included three years probation.
12. Thus, Respondent was convicted of a misdemeanor involving moral turpitude that included her destruction of and/or attempt to destroy evidence in a criminal case and after she was charged but before entering her plea, she continued to associate with and aid her husband.

#### **CONCLUSIONS OF LAW:**

13. The facts and circumstances surrounding Respondent's May 9, 2008 conviction for a misdemeanor violation of section 32 [Accessory After the Fact] involve moral turpitude and the misconduct warrants discipline.

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#### **AGGRAVATING CIRCUMSTANCES:**

**B.(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.

See Facts above, including:

- paragraph 2(b) where Respondent denied state parole agents entry to conduct a parole search after her husband's arrest and then tried to leave the residence herself with several documents that incriminated her husband; and,

- paragraph 7 where Respondent repeatedly refused to identify herself or answer any questions, except that she admitted she rented the house. The police officer described Respondent as "completely uncooperative". When asked if there were any other persons inside the house or where her husband was in the house, Respondent refused to answer. When a police officer informed Respondent that they had observed her husband inside the house and that warrants for his arrest had been issued, and then asked Respondent to allow police inside, Respondent refused to let the police inside the house and refused to answer any other questions. The police continued to explain to Respondent that they knew from personal contact at the door that her husband was inside her house and continued to show Respondent the warrants for her husband arrest. Respondent continued to refuse to answer any questions or even provide her name. Respondent then began walking away from the officer questioning her. When the officer called after Respondent and instructed her to come back and not leave, Respondent failed to comply with instructions, and continued to walk away – eventually walking between two houses and disappearing from view. Respondent did not return.

**B.(4) Harm:** Respondent's misconduct harmed the public and the administration of justice.

Inherent in the criminal act of being an Accessory After the Fact, and in the particulars of Respondent's acts thereafter (see Facts above) was harm to the public and to the administration of justice. However, the district attorney stipulated in the January 24, 2008 Advisement and Waiver of Rights for a Felony Guilty Plea that "the gravity of this offense does not warrant a state prison commitment."; and, the District Attorney and the Court ultimately agreed that this was more appropriately considered a misdemeanor offense and not a felony. Therefore this was not considered to have significantly harmed the public and the administration of justice.

**MITIGATING CIRCUMSTANCES:**

**C.(1) No Prior Discipline:**

Respondent was admitted to the practice of law December 12, 1994 and practiced law for six years, nine months before her misconduct/criminal activity began on August 2, 2001.

[continued on next page]

**Cooperation with Law Enforcement:**

Respondent contacted law enforcement after she received information that drug traffickers were looking for a female to drive a car carrying drugs across state lines. Respondent offered this information to and cooperation with law enforcement in exchange for favorable mention of her cooperation in her criminal prosecution [above]. The drug trafficking operation turned out to be one already being investigated by law enforcement. Respondent did in fact cooperate with law enforcement in their investigation by picking up and driving a large quantity of illegal drugs in a car, monitored by law enforcement, who then performed a traffic stop and obtained the drug evidence. Respondent has expressed a continuing willingness to cooperate in the prosecution of this matter, including testifying at trial if necessary.

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In the Matter of ANDREA SELENE BURGER	Case number(s): 02-C-14879
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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.

6/30/09

Date

6/30/09

Date

7/13/09

Date

Andrea Burger

Respondent's Signature

Arthur L. Margolis

Respondent's Counsel Signature

Charles A. Murray

Deputy Trial Counsel's Signature

ANDREA SELENE BURGER  
Print Name

ARTHUR L. MARGOLIS  
Print Name

CHARLES A. MURRAY  
Print Name

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In the Matter Of <b>ANDREA SELENE BURGER</b>	Case Number(s): <b>02-C-14879</b>
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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.)

9/8/09  
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 September 10, 2009, 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:

**ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039**

- 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 September 10, 2009.



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Tammy Cleaver  
Case Administrator  
State Bar Court