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State Bar Court of California Hearing Department Los Angeles			PUBLIC MATTER
Counsel For The State Bar Kimberly G. Anderson 1149 S. Hill Street Los Angeles, CA 90015 Bar # 150359	Case Number (s) 05-O-01112-DFM	(for Court's use) <div style="text-align: center;"> FILED FEB 17 2009 <small>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</small> </div>	
In Pro Per Respondent David M. Rung 12005 Rocosso Road Lakeside, CA 92040 Bar # 135291	Submitted to: Assigned Judge		
In the Matter Of: David M. Rung Bar # 135291 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <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 **July 1, 1988**.
- (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 **15** 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.

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(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- costs added to membership fee for calendar year following effective date of discipline (public reproof)
- case ineligible for costs (private reproof)
- costs to be paid in equal amounts for the following membership years:
(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

(9) The parties understand that:

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 or a separate attachment entitled "Prior Discipline."

(2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to 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.
- (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.

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- (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. **See Additional Mitigating Circumstances below.**

Additional mitigating circumstances:

Respondent has practiced law for more than 20 years with no prior discipline.

Respondent was cooperative in this disciplinary proceeding. Respondent voluntarily provided declarations from himself and percipient witnesses setting forth his position under penalty of perjury during this matter. In his Response to the Notice of Disciplinary Charges, Respondent admitted the majority of the pertinent facts alleged in the State Bar's Notice of Disciplinary Charges, although he disputed some key facts and the issues of culpability.

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproval for a period of **one (1) year**.
- (2) During the condition period attached to the reproval, 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 condition period attached to the reproval. 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 the reproval during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

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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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproof.
- (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) 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 within one year of the effective date of the reproof.

No MPRE recommended. Reason: **Respondent will be completing ethics school, client trust account school and law practice management courses, which will specifically serve to address the conduct in this case and to protect the public, the courts, and the legal profession (See, In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181).**

- (11) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

Notwithstanding rule 3201 of the Rules of Procedure of the State Bar of California, Respondent shall be entitled to MCLE credit for his completion of the following courses:

**State Bar Ethics School
State Bar Client Trust Account School
Law Office Management, Attorney/ Client Relations and/ or General Legal Ethics Courses.**

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Attachment language (if any):

In the Matter of
David M. Rung

Case number(s):
05-O-01112-DFM

A Member of the State Bar

Law Office Management Conditions

- a. Within 30 days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ months/**one (1)** years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. ~~This requirement is separate from any MCLE requirements and Respondent will not receive MCLE credit for attending these courses (Rule 9201, Rules of Procedure of the State Bar).~~
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

In the Matter of David M. Rung	Case number(s): 05-O-01112-DFM
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
Don Kunit	\$75.00	Not applicable.

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **30 days after the effective date of discipline.**

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 revocation), 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:
 - a. 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";

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

- 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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: David M. Rung

CASE NUMBER(S): ET AL. 05-O-01112-DFM

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY.

The parties waive any variance between the Notice of Disciplinary Charges filed on June 30, 2008 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

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.

1. In June 2003, Don Kunit ("Kunit") hired Respondent to pursue a legal malpractice action against his former attorneys Patrick Lund, Thomas B. Goode and the law offices of Goode, Hemme, Peterson & Sayler (the "legal malpractice matter").
2. On June 14, 2003, Respondent and Kunit executed a written fee agreement whereby they agreed that Respondent's fees would be paid on a one-third contingency basis. Kunit and Respondent further agreed that Kunit would advance attorney's fees in the amount of \$2000, "intended to compensate [Respondent] for legal services rendered in pre-litigation investigation, research and preparation of the complaint to be filed in the matter." Pursuant to the written fee agreement, Kunit and Respondent also agreed that Respondent would bill at a rate of \$150 an hour against the \$2,000 in advanced attorney fees. In addition, Kunit agreed to advance \$2,500 in costs to retain experts, if the retention of experts became necessary in the legal malpractice matter. The retainer agreement also provided that Kunit would be solely responsible for payment of all costs and expenses in the malpractice action. Respondent was not obligated by the retainer agreement to advance payment for expenses, and at Respondent's discretion, the client would be required to advance payment for any such costs or arrange to have the client billed directly for such costs.
3. On June 14, 2003, Kunit paid Respondent \$4,500 in advanced fees and costs: \$2,000 as advanced attorney's fees for services in the legal malpractice matter and \$2,500 in advanced costs for experts. On or about June 16, 2003, Respondent deposited Kunit's check for \$4500 into his client trust account, California Bank and Trust, account no. 07-810768-01 ("CTA").
4. In August 2003, Kunit employed Respondent to represent him in a conservatorship matter involving Kunit's father. The parties did not execute a retainer agreement related to the conservatorship matter because it was impractical to do so (since the arrangement was made

during a telephone conversation while Respondent was on vacation in the Zuni Mountains) and also because of the urgency of the matter with an imminent court appearance.

5. In September 2003, Kunit employed Kunit to represent him in a collection matter involving Kunit's former attorney. The parties did not execute a retainer agreement related to the collection matter.
6. Kunit authorized Respondent to use the \$2,500 advanced for costs in the malpractice matter to satisfy the attorney's fees incurred in both the conservatorship and collection matters.
7. As of October 20, 2003, Respondent had billed a total of \$1,662.02 in attorney's fees for services performed in both the conservatorship and collection matters.
8. As of February 25, 2004, Respondent had erroneously billed \$2,113.00 in hourly fees related to pre-litigation services in the malpractice matter when he was only entitled to bill \$2,000.00 under the retainer agreement. Therefore, as of February 25, 2004, Respondent had earned all of the \$2,000 in attorney fees advanced by Kunit for pre-litigation services related to the malpractice matter and he was not entitled to the additional \$113.00 in fees.
9. On February 25, 2004, Respondent filed a legal malpractice complaint on Kunit's behalf entitled, *Kunit vs. Peterson, Goode, Hemme, Peterson & Saylor, a Professional Corporation, and Patrick Lund, Esq. and Thomas B. Goode, Esq., as individuals*, San Diego County Superior Court case number GIC826145 (the "malpractice action"). On or about February 25, 2004, Respondent paid \$300.50 in filing fees to file the complaint with the court in the malpractice action.
10. On April 7, 2004, Respondent wrote Kunit and included an accounting of his legal services. In the April 7, 2004 letter to Kunit, Respondent stated, "I know that you agreed to permit me to bill directly out of the trust account but I thought it best to first have you review the billing and, if you prefer, to pay these fees separately so that funds will remain available in the trust account to retain an expert." Kunit did not reply to the April 7, 2004 letter or to the invoice.
11. On June 1, 2004, Respondent served, or caused to be served, the malpractice complaint upon the defendants. In or about July 2004, Respondent issued CTA check no. 1572 in the amount of \$188.25 to Knox Attorney Service for costs for serving the complaint in the malpractice action. (This was billed to the client as part of the \$233 in costs described in paragraph 17, below.)
12. Between approximately June 2004 and August 2004, Respondent continued to render services in the malpractice action.
13. In August 2004, Respondent conveyed a settlement offer to Kunit whereby the defendants in the malpractice actions offered, as part of the settlement, to pay \$5,000 to Kunit.
14. On September 14, 2007, Kunit signed the settlement release in the legal malpractice action and sent it to Respondent. On or about September 17, 2004, the rest of the parties in the malpractice action executed a written settlement agreement. The parties agreed that the settlement proceeds would be paid in two installments: \$4,500 to be paid by Goode, Hemme, Peterson & Saylor and \$500 to be paid by Patrick Lund.

15. On or about September 17, 2004, Respondent received the settlement check for \$4,500. Respondent deposited the settlement check for \$4500 into his CTA.
16. On or about September 17, 2004, Respondent issued CTA check no. 1575 to himself for \$500. The memo portion of check no. 1575 stated "pt Kunit fees."
17. On or about September 20, 2004, Respondent wrote Kunit regarding the settlement in the malpractice action. In his September 20, 2004 letter, Respondent enclosed an accounting of the \$5,000 settlement and a CTA check no. 1586 made payable to Kunit for \$2,575.34. According to Respondent's letter and accounting, the check represented Kunit's portion of the malpractice settlement after Respondent deducted \$1,666.66 for his one-third contingency fee, \$233 for costs and an additional \$525 for three hours of legal work in the malpractice action at \$175 an hour. Specifically, Respondent charged an additional \$350 for a post-settlement meeting with Kunit to review the files and for delivering the case file and an additional \$175 for attending an OSC regarding dismissal of the malpractice action required by the delay in executing the settlement agreement.
18. On or about September 21, 2004, Respondent issued CTA check no. 1597 to himself for \$1,424.56. The memo portion of check no. 1597 stated "pt Kunit fees-bal owing \$500.00."
19. On or about November 6, 2004, Respondent received and deposited the settlement check for \$500 from Patrick Lund into his CTA. Respondent had already issued the check to Kunit for \$2,575.34, which was the funds he believed Kunit was entitled to based upon the entire \$5,000.00 settlement. Therefore, Respondent erroneously believed Kunit was not entitled to any further funds. However, Respondent had erroneously billed Kunit the additional \$525 for three hours of legal work in the malpractice action at \$175 an hour, instead of at the agreed price of \$150 per hour. Therefore, Respondent did owe Kunit an additional \$75.00 refund which is being made as a condition of this reapproval.
20. On or about November 9, 2004, Respondent issued CTA check no. 1595 to himself for \$500. The memo portion of check no. 1595 stated "Last Kunit fee". As of November 9, 2004, Respondent had disbursed \$2,424.56 in fees and costs to himself from the \$5,000 in settlement funds.
21. On or about December 4, 2004, Kunit sent a letter to Respondent requesting a refund of the retainer amount and the other half of the malpractice settlement funds. Respondent received Kunit's December 4, 2004 letter but did not respond.
22. On or about December 4, 2004, Respondent still held funds belonging to Kunit. Specifically, on or about December 4, 2004, after collecting \$1,662.02 for attorney fees incurred in the conservatorship and collections matters and after reimbursing himself for the \$300.50 in filing fees in the malpractice action, Respondent still held approximately \$537.50 in funds belonging to Kunit. The \$537.50 was comprised of \$236.25 of which was the unearned portion of the \$2,500.00, which Kunit authorized be used to pay fees in the conservatorship and collection matters, \$188.25, which was erroneously double billed, and the sum of \$113.00, which Respondent overcharged for pre-filing work in the malpractice case.

23. On or about May 23, 2008, Respondent wrote the State Bar acknowledging that Kunit had a balance of \$537.50 remaining out of the funds originally advanced by Kunit. Respondent agreed to refund the \$537.50 to Kunit in two equal installment payments.
24. Respondent did pay Kunit the \$537.50. During the preparation of this stipulation, Respondent discovered that, in addition to the \$537.50, he also inadvertently failed to reimburse Kunit for the three hours \$75 of the \$525, as he had erroneously charged him at a rate of \$175 per hour where the malpractice retainer agreement permitted only hourly charges at \$150 per hour. Respondent made this error because he was billing \$175 per hour on the conservatorship and debt collection cases, and Respondent used the same word processing documents for the invoices on each of the three cases in which Kunit had retained him. As part of the resolution of this matter, Respondent will refund the \$75.00 to Kunit and provide proof of such refund to the Office of Probation of the State Bar of California.
25. By failing to promptly refund the \$612.50 (the \$537.50, plus the \$75.00) to Kunit, Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was February 4, 2009.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
05-O-01112	One	Rule 4-100(A)
05-O-01112	Two	Rule 4-200(A)
05-O-01112	Three	Rule 4-100(B)(4)

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.10 of the Standards for Attorney Sanctions for Professional Misconduct provides, "Culpability of a member of a violation of any provision of the Business and Professions Code, not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline under Standard 1.3.

In *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, an attorney received a public reproof for failing to promptly return an unearned legal fee to his client and failing to take reasonable steps to avoid foreseeable prejudice to the client upon termination of the relationship. In *Hanson*, the attorney had a prior record of discipline. In contrast, the Respondent in this case has no prior record of discipline. Therefore, a private reproof is warranted in the instant case.

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING ADDITIONAL MITIGATING CIRCUMSTANCES.

Respondent has practiced law for 20 years with no prior record of discipline.

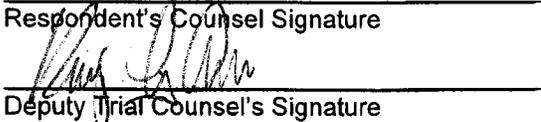
Respondent was cooperative in this disciplinary proceeding. Respondent voluntarily provided declarations from himself and percipient witnesses setting forth his position under penalty of perjury during this matter. In his Response to the Notice of Disciplinary Charges, Respondent admitted the majority of the pertinent facts alleged in the State Bar's Notice of Disciplinary Charges, although he disputed some key facts and the issues of culpability.

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In the Matter of David M. Rung	Case number(s): 05-O-01112-DFM
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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 Fact, Conclusions of Law and Disposition.

<u>2-3-2009</u> Date	 Respondent's Signature	<u>David M. Rung</u> Print Name
<u>2-3-2009</u> Date	 Deputy Trial Counsel's Signature	<u>Kimberly G. Anderson</u> Print Name

(Do not write above this line.)

In the Matter Of
David M. Rung

Case Number(s):
05-O-01112-DFM

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

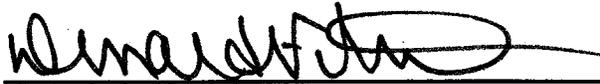
The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

2/17/09

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 17, 2009, I deposited a true copy of the following document(s):

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

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 M. RUNG, ESQ.
12005 ROCOSO RD
LAKESIDE, CA 92040 - 1039

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

KIMBERLY ANDERSON, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 17, 2009.



Rose Luthi
Case Administrator
State Bar Court