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State Bar Court of California Hearing Department Los Angeles			PUBLIC MATTER
<p>Counsel For The State Bar</p> <p>Melanie J. Lawrence 1149 South Hill St. Los Angeles, CA 90015</p> <p>Bar # 230102</p>	<p>Case Number (s)</p> <p>07-O-13060 07-O-13869 08-O-12394</p>	<p>(for Court's use)</p> <p style="font-size: 24pt; font-weight: bold;">FILED</p> <p>MAR 25 2009</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>	
<p>Counsel For Respondent</p> <p>Daniel S. Agle 501 West Broadway, Suite 600 San Diego, CA 92101</p> <p>Bar # 251090</p>	<p>Submitted to: Settlement Judge</p>		
<p>In the Matter Of:</p> <p>Walter E. Albrecht 27740 Jefferson Ave. #300 Temecula, CA 92590</p> <p>Bar # 119497</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>		

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 10, 1985**.
- (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 **11** 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."



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- (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):
- 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: **two billing cycles following the effective date of the Supreme Court order.**
(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.

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- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to 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.

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- (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:

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 reproof for a period of **one year**.
- (2) During the condition period attached to the reproof, 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 reproof. 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 reproof 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.

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.

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- (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 reprobation.
- (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 reprobation.
- No MPRE recommended. Reason:
- (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 type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

In the Matter of
Walter E. Albrecht

Case number(s):
07-O-13060, 07-O-13869, 08-O-12394

A Member of the State Bar

Law Office Management Conditions

- a. Within 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/11 months/ 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 requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, 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.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Walter E. Albrecht

CASE NUMBER(S): ET AL. 07-O-13060, 07-O-13869

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 October 16, 2008, and the facts and/or conclusions of law contained in this stipulation and waive the issuance of an Amended Notice of Disciplinary Charges. The parties further waive the right to the filing of an Amended 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.

07-O-13060

Facts:

1. On April 3, 2006, Tina Venturo employed Respondent to represent her in a marital dissolution matter. On May 9, 2006, Venturo paid Respondent advanced fees in the sum of \$3,500 and advanced costs in the sum of \$370.
2. At the time Venturo made the payment, she first paid with two separate checks, one for the advanced fees and one for the advanced costs. When Respondent's staff ran the checks through the firm's check clearing program, neither check would clear. So, Respondent's staff accepted payment by way of a credit card. This was not Respondent's standard procedure.
3. Because Respondent did not have a practice of accepting advanced costs by way of credit card, he did not have an agreement with his credit card vendor to have charges deposited into his client trust account. So, the advanced costs accepted by Respondent's staff by way of credit card were deposited into Respondent's general account.
4. The \$370 in advanced costs were properly allocated by Respondent to pay for costs associated with Venturo's matter.

Conclusions of Law:

By depositing Venturo's advanced costs into his general account, Respondent willfully failed to deposit funds received on behalf of a client in a bank account labeled "Trust Account," "Client's Fund Account" or word of similar import in violation of Rule 4-100(A) of the Rules of Professional Conduct.

07-O-13869

Facts:

5. In October 2004, Susan Rebar ("Susan") hired Respondent to represent her in a civil dispute against Vanguard University ("Vanguard"). During the course of the representation, Respondent advance some costs in the matter. Respondent substituted out of the representation on August 30, 2006, because Susan wanted a different attorney to handle her appeal on a motion for summary judgment.
6. Prior to his substitution out, Susan inquired of Respondent's staff as to the costs being requested by Vanguard University in relation to the motion for summary judgment. In responding to that inquiry, on August 29, 2006, Respondent sent a letter to Susan informing her that Vanguard had not filed a request for costs and that she owed him \$1,943.25 in advanced costs for the Vanguard matter. That letter was accompanied by a detailed bill that identified the total "expenses" as \$2,258.25. The discrepancy was due to a clerical error. Respondent did not demand payment of the advanced costs at that time because he knew Susan did not have the means to pay the costs at that time.
7. Respondent also represented Susan's husband, Sam Rebar ("Sam") in an unrelated dispute against Bear Creek ("Bear Creek"). Attorney Steven Kirby ("Kirby") was associated in as co-counsel on Bear Creek. In the summer of 2007, Bear Creek settled for \$250,000 and Respondent agreed to reduce a portion of his fee.
8. Shortly after Sam received payment on Bear Creek, Respondent believed Susan and Sam were in a financial position to pay the costs that had been advanced on the two matters as Respondent no longer represented Susan. So, on June 6, 2007, Respondent sent a letter to Kirby in which he explained that Susan owed Respondent \$3,122.49 for advanced costs in the Vanguard matter and that Sam owed him \$2,145.75 in advanced costs for Bear Creek. Enclosed with the letter was a print-out of all the costs incurred on both matters, totaling \$5,268.24. The print-out clearly indicated that all amounts were categorized as "Client Costs." However, the print-out did not separate the costs for Vanguard from the costs for Bear Creek into two separate statements.
9. The June 6, 2007 demand was the first Respondent made for payment of the advanced costs in the Vanguard matter. The costs associated with Vanguard were higher than set forth in the August 2006 correspondence because some of the costs had not yet been incurred, paid, or entered into Respondent's accounting software at the time the August 2006 letter was transmitted to Susan.
10. In response to the June 6, 2007, letter Sam called Respondent and explained that neither he nor Susan believed they had to pay the Vanguard costs out of the Bear Creek settlement funds. In response, Respondent sent a letter to Susan in which he demanded payment of the advanced costs within five days. This was a community debt and Respondent had reduced Sam's attorney's fees owed to Respondent.
11. On August 7, 2007, Rebar sent Respondent a check for \$3,122.49. But, she never received a separate statement for costs and expenses that separated the costs and expenses Respondent advanced in the Vanguard matter alone.

12. Business and Professions Code section 6148(b) requires all bills rendered by an attorney for costs and expenses to clearly identify the costs and expenses incurred and the amount of the costs and expenses. Separate matters require separate accountings.

Conclusions of Law

By failing to provide a separate statement to Rebar in order to collect from her, costs he had advanced in Vanguard, Respondent recklessly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional conduct.

AUTHORITIES SUPPORTING DISCIPLINE

Standards:

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 2.2(b) applies to rule 4-100(A) violations. It requires at least a three month actual suspension irrespective of mitigating circumstances.

Standard 2.4(b) applies to the rule 3-110(A) violation. It requires reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

Case Law:

To determine the appropriate level of discipline, the standards provide guidance. (*Drociak v. State Bar* (1991) 52 Cal. 3d 1085; *Matter of Sampson* (1994) 3 Cal. State Bar Ct. Rptr. 119.) They are entitled to "great weight." (*In re Silverton* (2005) 36 Cal. 4th 81, 92.) But, the recommended discipline must rest upon a balanced consideration of relevant factors. (*Sampson, supra*, 3 Cal. State Bar Ct. Rptr. 119.) The standards need not be applied in a talismanic fashion and may be tempered with considerations peculiar to the offense and the offender. (See *In re Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980.)

In *Matter of Respondent F* (1992) 2 Cal. State Bar Ct. Rptr. 17, an attorney's secretary mistakenly deposited a \$500 check that should have gone into the client trust account, into the general operating account. This misdeposit went undetected and none of the funds were ever transferred into a trust account. The Court found the rule violation inadvertent, involving a small sum, and unlikely to be repeated. The respondent received a private reproof.

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>
08-O-12394	5	3-110(A)

COSTS OF DISCIPLINARY PROCEEDINGS.

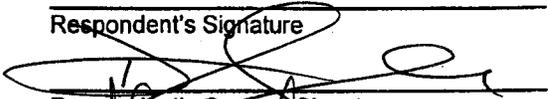
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 13, 2009, the prosecution costs in this matter are estimated at \$4,273. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of Walter E. Albrecht	Case number(s): 07-O-13060 et.al.
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SIGNATURE OF THE PARTIES

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

Date <u>3/23/09</u>	Respondent's Signature 	Print Name <u>DANIEL S. AGIZE</u>
Date <u>3/24/09</u>	Respondent's Counsel Signature 	Print Name <u>Melanie J. Lawrence</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of Walter E. Albrecht	Case number(s): 07-O-13060 et.al.
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3-23-09
Date

Walter Emil Albrecht
Respondent's Signature

Walter Emil Albrecht
Print Name

Date

Respondent's Counsel Signature

Print Name

Date

Deputy Trial Counsel's Signature

Print Name

(Do not write above this line.)

In the Matter Of Walter E. Albrecht	Case Number(s): 07-O-13060 et.al.
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED with ~~out~~ prejudice, and:

*RAP
3/25/07*

- 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 reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

03-25-07
Date



Judge of the State Bar Court

RICHARD A. PLATEL

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 March 25, 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:

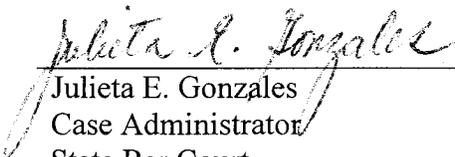
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DANIEL S AGLE ESQ
KLINEDINST PC
501 W BROADWAY STE 600
SAN DIEGO, CA 92101 - 3584

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

Melanie J. Lawrence, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 25, 2009.



Julieta E. Gonzales
Case Administrator
State Bar Court