

ORIGINAL

(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT

Counsel For The State Bar

Anand Kumar
Deputy Trial Counsel
845 South Figueroa Street
Los Angeles, CA 90017
(213) 765-1714

Bar # 261592

Case Number(s):
13-O-13344-RAP

For Court use only

FILED

AUG 27 2014
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In Pro Per Respondent

Azuka Amucha
Law Office of Amucha & Associates
1801 Century Park E Ste 2400
Los Angeles, CA 90067
(310) 272-8563

Bar # 233891

PUBLIC MATTER

Submitted to: Settlement Judge

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING; ORDER OF
INVOLUNTARY INACTIVE ENROLLMENT

DISBARMENT

PREVIOUS STIPULATION REJECTED

In the Matter of:
AZUKA AMUCHA

Bar # 233891

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 1, 2004**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (12) 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."

kwiktag® 048 638 720



(Do not write above this line.)

- (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):
- Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (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 intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See stipulation, at page 8.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See stipulation, at page 8.**

(Do not write above this line.)

- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See stipulation, at page 8.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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 subsequent rehabilitation.

(Do not write above this line.)

(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Lack of prior record of discipline, see stipulation, at page 9.

Pre-trial stipulation, see stipulation, at page 9.

(Do not write above this line.)

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.

- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.

- (3) **Other:**

Martinez's behalf. Accordingly, Martinez agreed to allow Respondent to maintain his share of the settlement funds until the CVCP application was resolved.

8. Between January 19, 2011 and August 16, 2013, Respondent was required to maintain \$6,960.77 in his CTA on behalf of Martinez.

9. On April 21, 2011, prior to any disbursements of the settlement funds to Martinez or anyone else on Martinez's behalf, the balance in Respondent's CTA fell to -\$4,844.45.

10. By April 21, 2011, Respondent failed to maintain \$6,960.77 in his CTA, which funds belonged to Martinez and intentionally misappropriated \$6,960.77 of Martinez's settlement funds.

11. At no time did Respondent inform Martinez that Respondent had misappropriated Martinez's settlement funds. Instead, Respondent concealed the misappropriation from Martinez as follows.

- a. In late 2011, Martinez had a telephone conversation with Respondent in which he requested his share of the settlement funds but Respondent advised him to be patient until the CVCP application was processed.
- b. In late 2012, Martinez had another telephone conversation with Respondent in which they discussed the fact that the CVCP application was not being processed timely. Again, at no point did Respondent inform Martinez that the funds had already been misappropriated.
- c. Thereafter, between late 2012 and May 2013, Martinez left ten voice messages for Respondent inquiring about the status of his settlement funds and requesting for return phone calls. Respondent received the voice messages, but failed to respond to the voice messages and failed to otherwise provide information to Martinez about the status of the settlement funds.
- d. On May 15, 2013, Martinez sent a letter to Respondent both by fax and certified mail, in which Martinez stated that he had repeatedly requested his share of the settlement funds from Respondent and that Respondent told Martinez to wait until Respondent had received additional funds from CVCP. In the letter, Martinez requested for Respondent to send his settlement funds by May 24, 2013, and indicated that if Respondent failed to do so, that Martinez would file a State Bar complaint.
- e. Respondent received the May 15, 2013 letter but failed to reply to the letter and failed to disburse the settlement funds by May 24, 2013.

12. On June 4, 2013, Martinez filed a State Bar complaint.

13. On August 16, 2013, Martinez met with Respondent to receive a settlement disbursement check. At the August 16, 2013 meeting, for the first time, Respondent provided a disbursement sheet accounting for Martinez's settlement funds, which disclosed that an investigator had been hired in Martinez's matter and that the costs for the investigator were \$2,918 and that the investigator had already been paid.

14. On August 16, 2013, Martinez received from Respondent \$6,960.77 in settlement funds.

CONCLUSIONS OF LAW:

15. By failing to maintain a balance of \$6,960.77 on behalf of Martinez in Respondent's client trust account between January 19, 2011 and August 16, 2013, Respondent failed to maintain funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

16. By intentionally misappropriating \$6,960.77 of Martinez's funds, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

17. By concealing from and misrepresenting to Martinez the true status of funds to which Martinez was entitled between April 21, 2011 and August 16, 2013, by stating to Martinez on at least two occasions that Respondent was waiting to disburse the settlement funds to Martinez until the CVCP application was processed when Respondent knew the statements were false, Respondent thereby committed acts involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

18. By failing to render an accounting to Martinez of the \$15,000 settlement funds received on Martinez's behalf for nearly two years and seven months after he had received Martinez's settlement funds, Respondent failed to render an appropriate accounting to Martinez regarding those funds until August 16, 2013, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

19. By failing to promptly pay out Martinez's \$6,960.77 share of settlement funds until August 16, 2013, despite repeated requests for the funds from Martinez, Respondent failed to pay promptly, as requested by Martinez, any portion of Martinez's funds in Respondent's possession to which Martinez was entitled, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

20. By failing to respond promptly to ten voice messages requesting status updates from Martinez, between late 2012 and May 2013, Respondent failed to that Respondent received in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent's misconduct has caused significant harm to his client, Alfredo Martinez by depriving him of at least \$6,960.77 of his settlement funds for over two and a half years and nearly twenty-eight months after his settlement funds had already been misappropriated.

Indifference (Std. 1.5(g)): Respondent's failure to pay out Martinez's funds for two years despite repeated requests for the funds demonstrates indifference toward rectification of or atonement for the consequence of his misconduct. (See *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 177; *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913.)

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed numerous State Bar Act and/or Rules of Professional Conduct violations. Multiple acts of misconduct is considered serious aggravation. (See *e.g.*, *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Lack of Prior Record of Discipline: Respondent has no prior record of discipline since being admitted in December 2004, but the current misconduct is serious due to significant trust account violations and moral turpitude involved. Accordingly, while he is not entitled to mitigation under standard 1.6(a), Respondent's approximately six year discipline-free record prior to the instant misconduct is entitled to little or nominal mitigation. (See *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67 [5 years entitled to nominal weight]; *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [7 years of discipline-free practice worth only slight mitigation].)

Pre-trial Stipulation: While some of the facts in this matter are easily provable, Respondent's agreement in the instant stipulation fully resolved this matter without the necessity of a trial, thereby saving State Bar resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent committed multiple acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed." The most severe sanction

applicable to Respondent here is standard 2.1(a), which applies to his intentional and dishonest misappropriation of Martinez's settlement funds, an act of moral turpitude in violation of Business and Professions Code section 6106.

Standard 2.1(a) provides that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds, unless the amount is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate. Here, the amount of funds misappropriated from Martinez is \$6,960.77, a significant amount. Additionally, Respondent concealed the misappropriation from Martinez by telling him that he was waiting for the CVCP application to be processed. "An attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) The nature of Respondent's trust account violations and the lengthy period over which his misconduct occurred (between January 2011 and August 2013) warrant disbarment. There are numerous aggravating circumstances present. Respondent deprived Martinez of his funds for over two and a half years, causing significant harm to a client and demonstrating indifference about his misconduct. There are no compelling mitigating circumstances. Therefore, disbarment is the only discipline appropriate to protect the public, the courts and the legal profession, to maintain high professional standards by attorneys and preserve public confidence in the legal profession.

The case law also supports disbarment in the instant matter. The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) The Supreme Court has also imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. (See e.g., *In re Abbott* (1977) 19 Cal.3d 249 [misappropriation of \$29,500.00]; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [attorney with over 11 years of discipline-free practice and no prior record misappropriated approximately \$29,500.00 in law firm funds over an 8-month period]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [misappropriated \$7,900.00]; *In the Matter of Blum, supra*, 4 Cal. State Bar Ct. Rptr. 403 [misappropriated \$55,000.00 from a single client]; *In re Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [misappropriation of nearly \$40,000.00 and mislead client for a year]; *Kennedy v. State Bar* (1989) 48 Cal.3d 610 [misappropriated over \$10,000.00 from multiple clients]; see also std. 1.8(c) [sanctions may be imposed, including disbarment, even if a member has no prior record of discipline].)

In *Chang*, the court reasoned that disbarment was the appropriate level of discipline in part because "misappropriation of a client's fund is a grievous breach of an attorney's professional ethics. Not only does it harm the individual client whose money has been taken, it also endangers the confidence of the public at large in the legal profession. In all but the most exceptional of case, we must impose the harshest discipline for such a breach in order to safeguard the citizenry from unethical practitioners." (49 Cal.3d at pp. 128-129.)

///
///
///
///
///
///

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>
13-O-13344	Seven	Business and Professions Code section 6069.5(a)(2)

COSTS OF DISCIPLINARY PROCEEDINGS.

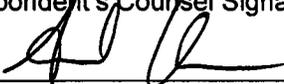
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 4, 2014, the prosecution costs in this matter are approximately \$3,497. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: AZUKA AMUCHA	Case number(s): 13-O-13344
-----------------------------------	-------------------------------

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, Conclusions of Law, and Disposition.

August 4, 2014 Date	 Respondent's Signature	Azuka Amucha Print Name
Date	Respondent's Counsel Signature	Print Name
August 4, 2014 Date	 Deputy Trial Counsel's Signature	Anand Kumar Print Name

(Do not write above this line.)

In the Matter of: AZUKA AMUCHA	Case Number(s): 13-O-13344
-----------------------------------	-------------------------------

DISBARMENT 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 and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates 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 5.58(E) & (F), 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.)**

Respondent Azuka Amucha is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

August 25, 2014
Date


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 August 27, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

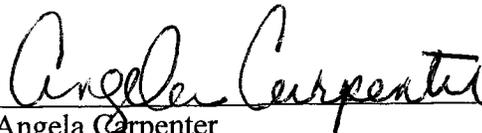
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

AZUKA AMUCHA
LAW OFFICE OF AMUCHA & ASSOCIATES
1801 CENTURY PARK E STE 2400
LOS ANGELES, CA 90067

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

ANAND KUMAR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 27, 2014.



Angela Carpenter
Case Administrator
State Bar Court