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<b>State Bar Court of California</b>		kwiktag® 018 038 664
<b>Hearing Department Los Angeles DISBARMENT</b>		
<b>Counsel For The State Bar</b>  AGUSTIN HERNANDEZ Deputy Trial Counsel State Bar of California 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1713  Bar # 161625	<b>Case Number(s):</b> 02-O-10239 06-O-10078 06-O-13175 06-O-13752	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>AS</i>  FEB 09 2011  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>In Pro Per Respondent</b>  GERALD MICHAEL SHAW 1282 Hillside Drive Claremont, CA 91711 (909) 452-9931  Bar # 60001	<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT  <b>DISBARMENT</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> GERALD MICHAEL SHAW  Bar # 60001  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 June 8, 1974.
- (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 (16) pages, not including the order.

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- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - 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 [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**
  - (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.
- (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. See paragraphs 10-13, 15-17, 25, 27, 28, 31-34, 38, 40, 41, 44-47, and 56-65 of the Attachment.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.



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- (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.
- (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.

(Effective January 1, 2011)

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- (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:**

During the time period covered by this stipulation the Respondent was experiencing marital difficulties. Respondent attempted to work out the marital issues through marriage counseling and selling the family home on August 25, 2003, to reduce overhead and to ease financial stress. Respondent's wife filed for divorce which was bifurcated and the divorce became final on December 28, 2004, and the divorce property judgment became final and entered on September 25, 2006.

Subsequent to the divorce, Respondent discovered that from January 12, 2004, to May 25, 2007, his law firm bookkeeper had embezzled \$225,645.35 by forging Respondent's signature on 154 law firm checks withdrawing law firm clients' funds and depositing them into her personal account. The funds in Case Nos. 02-O-10239, 06-O-10078 & 06-O-13752 were not part of the funds embezzled by the bookkeeper.

During the divorce and embezzlement the Respondent became depressed, suffered sleep disturbance, loss of energy, tension, anxiety, and difficulty in focusing and poor concentration, which contributed to the actions covered by this stipulation.

  
Disbarment

**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:** Restitution:

Respondent must make restitution (including the principal amount, plus interest of 10% per annum) to the payees listed below. If the Client Security Fund has reimbursed one or more of the payees for all or any portion of the principal amounts listed below, 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 30 days from the effective date of the Supreme Court order in this case.

Case No.	Payee	Principal Amount	Date Interest Accrues From
06-O-10078	Ross Yohonn or Representatives of Mark Yohonn's Estate	\$37,000.00	February 1, 2002
06-O-13572	Larry Channel or Representatives of Debbie Channel's Estate	\$72,811.14	June 19, 2009
06-O-13175	Carol M. Peloquin-Peirano	\$169,000.00	October 12, 2005
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Attachment language (if any):

**WAIVER OF VARIANCE BETWEEN NOTICES OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties waive any variance between the Notices of Disciplinary Charges filed on May 22, 2006 (Case No. 02-O-10239) and April 23, 2009 (Case Nos. 06-O-10078, 06-O-13175 and 06-O-13752), 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.

Respondent admits the truth of the facts comprising the stipulation and admits culpability for misconduct as follows:

**FACTS (Case No. 02-O-10239):**

1. On February 9, 1993, Marshall P. Gavin ("Gavin") hired Respondent to bring a wrongful termination lawsuit against Alta Pacific Multispecialty Medical Group ("Alta Pacific"), Integrated Health Management ("IHM"), and Alta Pacific's individual partners, including Doctors Mullen and Wrobel. The action was filed on April 19, 1993 in Orange County Superior Court and was assigned case number 709084 ("the wrongful termination case").
2. On June 4, 1993, Respondent filed another action on behalf of Gavin for slander and various business torts against many of the same Alta Pacific principals, including Doctors Mullen and Wrobel, and three outside doctors who worked for a competitor, Saddleback Memorial Medical Group. The lawsuit was assigned case number 711774 ("the defamation case").
3. In late 1993, the two lawsuits were consolidated. Gavin's claim against Alta Pacific was submitted to binding contractual arbitration. On January 13, 1994, the court severed his claims against the three outside doctors because they were not parties to Gavin's employment contract.
4. In September 1994, Gavin was awarded damages of approximately \$1.7 million against the defendants in the wrongful termination case. In early 1995, five of the defendants, including Doctors Mullen and Wrobel, filed Chapter 7 petitions in the U.S. Bankruptcy Court. Gavin filed a creditor's claim against the bankruptcy estates for his judgment in the wrongful termination case.
5. In late 1994, the bankruptcy court vacated its stay order as to the outside doctors and within two years, those doctors settled with Gavin in the defamation action. The action was stayed as to the remaining defendants due to their bankruptcies.
6. On May 14, 1996, Gavin moved to file a third amended complaint in the defamation case in which he sought to name new defendants. Although the motion was granted, Respondent did not serve the newly named defendants with the summons and third amended complaint within the statutory period. These defendants moved to dismiss the action and in January 1997, the action was dismissed. Gavin appealed, but the dismissal was affirmed on appeal.



7. On January 31, 1997, while the appeal was pending, Respondent filed a complaint on behalf of Gavin and Theodor Albert ("Albert"), the Chapter 7 Trustee for the Bankruptcy estates of five of the defendants in the wrongful termination case. This case was entitled Albert, et al. v. Saddleback Memorial Medical Group, et al., Orange County Superior Court case number 774852 ("the SMMG litigation"). The complaint alleged, among other things, interference with, and breach of, contracts by SMMG. There were seven plaintiffs in the action, including Gavin and the five bankrupt defendants from the wrongful termination case.

8. In March 2001, the SMMG litigation settled for \$325,000. The Settlement Agreement ("the settlement agreement") provided that Gavin was to receive 2/7 of the settlement proceeds or \$92,857.14 and that Albert was to receive 5/7 of the proceeds or \$232,142.86. Gavin and Respondent signed the settlement agreement in late March 2001.

9. The settlement agreement provided that within 10 days of the parties' execution of the document, Gavin's settlement check, which would be made payable to Respondent in the amount of \$92,857.14, would be sent to Respondent and Respondent would "deposit said funds into his trust account . . . and not distribute the funds from his trust account until such time as the terms of the settlement agreement are approved by the United States Bankruptcy Court . . . and the Superior Court . . . ."

10. On April 6, 2001, Respondent received the settlement check for \$92,857.14 on behalf of Gavin. On this date, Respondent deposited the check into his business account at Wells Fargo Bank, account number xxxxxx6801, which was not designated as a client trust account.

11. Respondent did not inform Gavin that Respondent had received Gavin's settlement funds in the SMMG litigation. Respondent relied on the fact that Gavin's bankruptcy lawyers had been given notice of Respondent's receipt of Gavin's funds.

12. By April 30, 2001, Respondent had used all of Gavin's \$92,857.14 in settlement proceeds for Respondent's own use and purposes.

13. Pursuant to Respondent's motion, on July 3, 2001, Judge Robert W. Alberts of the Bankruptcy Court issued an order allowing Respondent to collect \$82,326.67 in attorney fees plus \$67,489.51 for costs. Although Respondent obtained a court order allowing him to collect these fees and costs, which are in excess of the \$92,857.14 in settlement proceeds that he was required to be holding in trust on behalf of Gavin, Respondent had used all of the \$92,857.14 for his own use and purposes before he obtained this court order.

14. In 2002, Gavin filed a malpractice action against Respondent, alleging several causes of action including that Respondent misappropriated Gavin's settlement proceeds of \$92,857.14. In December 2005, the malpractice matter was settled and Gavin received \$356,000 to resolve all claims against Respondent.

#### CONCLUSIONS OF LAW (Case No. 02-O-10239):

15. By failing to inform Gavin that Respondent had received his settlement funds in the SMMG litigation, Respondent failed to notify a client promptly of the receipt of the client's funds, in wilful violation of rule 4-100(B)(1), Rules of Professional Conduct.



16. By depositing Gavin's settlement funds from the SMMG litigation into his business account, Respondent failed to deposit client funds in a trust account, in wilful violation of rule 4-100(A), Rules of Professional Conduct.

17. By misappropriating \$92,857.14 of Gavin's settlement funds from the SMMG litigation prior to obtaining a court order allowing him to collect attorney fees and costs, Respondent committed acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code, section 6106.

18. By failing to serve the summons and third amended complaint in the defamation action within the statutory period, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A), Rules of Professional Conduct.

FACTS (Case No. 06-O-10078):

19. On March 26, 2001, Mark Yohonn ("Mark") was a passenger in a vehicle driven by Debbie Channel ("Debbie"). Mark and Debbie were killed when their vehicle was involved in a motor vehicle accident with a vehicle driven by Jose L. Marin ("Marin"). The vehicle driven by Marin was insured by State Farm Insurance Companies ("State Farm").

20. On April 3, 2001, Debbie's husband, Larry E. Channel ("Channel"), employed Respondent to represent Debbie's estate and Channel in claims arising from the motor vehicle accident.

21. On June 5, 2001, Mark's brother, Ross Yohonn ("Yohonn"), accepted an offer from State Farm to settle the claims of Mark's estate against State Farm and its insured for payment of the policy limits of \$100,000.

22. Thereafter, on June 16, 2001, Yohonn employed Respondent to represent Mark's estate in claims arising from the motor vehicle accident because Respondent was familiar with this matter as he represented Debbie's estate and Channel. Yohonn signed a contingency fee agreement wherein he agreed to pay Respondent a contingency fee of 20% of any recovered amount if the matter was resolved before the filing of a lawsuit. If the matter was resolved after filing a lawsuit, the contingency fee would increase to 33-1/3% of any recovered amount. If the matter was resolved after a status conference, the contingency fee would increase to 40%. If the matter was resolved after trial or arbitration commenced, the contingency fee would increase to 45%.

23. On September 13, 2001, State Farm issued a check for \$100,000 payable to the representatives of Mark's estate, Respondent, and others to settle the claims of Mark's estate arising from the motor vehicle accident against State Farm and its insured ("Mark's estate \$100,000 settlement check").

24. In January of 2002, the payees endorsed Mark's estate \$100,000 settlement check and gave it to Respondent.

25. In January of 2002, Respondent deposited Mark's estate \$100,000 settlement check into his general office checking account which was not designated as a client trust account.



26. Pursuant to the terms of the contingency fee agreement, Respondent was entitled to receive 20% of the \$100,000 settlement or a contingency fee of \$20,000.
27. Respondent was required to maintain \$80,000 of the settlement proceeds in trust on behalf of Mark's estate.
28. Thereafter, Respondent used all of the \$80,000 that he received and was required to hold in trust on behalf of Mark's estate for Respondent's own use and purposes.
29. On February 16, 2006, Respondent issued a check from his general account in the amount \$43,000 and gave it to the representatives of Mark's estate. The check stated in the memo section that it was in "settlement of Yohonn attorney's fees." The check was returned by Respondent's bank due to insufficient funds.
30. In March of 2007, Respondent paid \$43,000 by Cashier's Check to the representatives of Mark's estate.
31. In addition to the \$100,000 received from State Farm, Mark's estate recovered \$135,000 from Debbie's insurance carrier USAA. The \$135,000 settlement occurred after Yohonn retained new counsel to represent Mark's estate and after Respondent had been substituted out. The USAA settlement proceeds were sent to Mark's estate's new attorney and Respondent did not receive any portion. Respondent believes that he provided legal services in furtherance of the USAA settlement while he was still employed as Mark's estate's attorney. Respondent believes that he was entitled to receive \$37,000 in attorney fees in furtherance of the USAA settlement. Based upon this belief, Respondent belatedly remitted only \$43,000 of the \$80,000 that he was required to be holding in trust on behalf of Mark's estate ( $\$80,000 - \$37,000 = \$43,000$ ). Despite his belief that he was entitled to an additional \$37,000 in fees, Respondent used the entire \$80,000 for his own use and purposes before he made any payment to Yohonn, Mark's estate, or on their behalf, and at no time did Respondent hold \$37,000 in trust as disputed fees pending a resolution of the disputed fees.
32. Despite Respondent's belief that he is entitled to some fees for the USAA settlement, for purposes of this stipulation, Respondent agrees to pay restitution of \$37,000 in principal, plus interest of 10% per annum accruing from February 1, 2002, on the unremitted amounts (for complete terms of restitution see page 5).

**CONCLUSIONS OF LAW (Case No. 06-O-10078):**

33. By depositing Mark's estate \$100,000 settlement check into his general office checking account, Respondent willfully failed to deposit 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 wilful violation of rule 4-100(A), Rules of Professional Conduct.
34. By misappropriating \$80,000 from the \$100,000 settlement proceeds, Respondent committed an act involving moral turpitude, dishonesty, or corruption, in wilful violation of Business and Professions Code, section 6106.

FACTS (Case No. 06-O-13752):

35. On April 3, 2001, Debbie's husband, Larry E. Channel ("Channel"), employed Respondent to represent Debbie's estate and Channel in claims arising from the motor vehicle accident. Channel signed a contingency fee agreement wherein he agreed to pay Respondent a contingency fee of 20% of any recovered amount if the matter was resolved before the filing of a lawsuit. If the matter was resolved after filing a lawsuit, the contingency fee would increase to 33-1/3% of any recovered amount. If the matter was resolved after a status conference, the contingency fee would increase to 40%. If the matter was resolved after trial or arbitration commenced, the contingency fee would increase to 45%.

36. On June 22, 2001, State Farm issued a check for \$100,000 payable to Respondent and Channel as the representative of Debbie's estate to settle the claims of Debbie's estate from the motor vehicle accident against State Farm and its insured ("Debbie's estate \$100,000 settlement check").

37. In June of 2001, Channel endorsed Debbie's estate \$100,000 settlement check and gave it to Respondent.

38. On June 25, 2001, Respondent deposited Debbie's estate \$100,000 settlement check into his personal or office checking account which was not designated as a client trust account.

39. Pursuant to the terms of the contingency fee agreement, Respondent was entitled to receive 20% of the \$100,000 settlement proceeds or a contingency fee of \$20,000.

40. Respondent was required to maintain \$80,000 of the settlement proceeds in trust on behalf of Debbie's estate.

41. Thereafter, Respondent used all of the \$80,000 that he received and was required to hold in trust on behalf of Debbie's estate for Respondent's own use and purposes.

42. On March 9, 2006, Respondent mailed a check issued from his general account for \$40,000 to the representatives of Debbie's estate. The check stated in the memo section that it was in "full and final settlement of attorney's fees." This check was not negotiated as Channel's subsequent attorney disputed that this \$40,000 check represented a "full and final settlement of attorney fees."

43. On December 20, 2006, Respondent paid \$40,000 by Cashier's Check to the representatives of Debbie's estate. This Cashier's Check was to replace the March 9, 2006, \$40,000 check issued from Respondent's general account.

44. In addition to the \$100,000 received from State Farm, Channel and Debbie's estate recovered \$120,000 from Debbie's insurance carrier USAA, \$50,000 from a life insurance policy and \$30,000 from an additional insurance carrier. These additional settlements of \$120,000, \$50,000 and \$30,000 occurred after Channel retained new counsel to represent him and Debbie's estate and after Respondent had been substituted out. These additional settlement proceeds were sent to Channel and Debbie's estate's new attorney and Respondent did not receive any portion. Respondent believes that he provided legal services in furtherance of these three settlements while he was still employed as Channel and Debbie's estate's attorney. Respondent believes that he was entitled to receive \$40,000 in attorney fees in furtherance of

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these three settlements. Based upon this belief, Respondent belatedly remitted only \$40,000 of the \$80,000 that he was required to be holding in trust on behalf of Channel and Debbie's estate (\$80,000 - \$40,000 = \$40,000). Despite his belief that he was entitled to an additional \$40,000 in fees, Respondent used the entire \$80,000 for his own use and purposes before he made any payment to Channel, Debbie's estate, or on their behalf, and at no time did Respondent hold \$40,000 in trust as disputed fees pending a resolution of the disputed fees.

45. Respondent negotiated a settlement of the disputed fees with Channel's attorney which resulted in a stipulated judgment in the amount of \$112,811.14 on June 19, 2009. This amount consists of the principal amount of \$80,000, plus attorney fees and interest at the rate of 10% per annum accrued through to June 19, 2009. The stipulated judgment amount includes the \$40,000 that Respondent paid on December 20, 2006, leaving an unpaid balance of \$72,811.14, plus interest at the rate of 10% per annum accruing from June 19, 2009. By this stipulation, Respondent agrees to pay restitution of \$72,811.14 in principal, plus interest of 10% per annum accruing from June 19, 2009 (for complete terms of restitution see page 5).

#### CONCLUSIONS OF LAW (Case No. 06-O-13752):

46. By depositing the \$100,000 settlement re Debbie check into his personal or office checking account, Respondent willfully failed to deposit 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 wilful violation of rule 4-100(A), Rules of Professional Conduct.

47. By misappropriating \$80,000 from the \$100,000 settlement proceeds, Respondent committed an act involving moral turpitude, dishonesty, or corruption, in wilful violation of Business and Professions Code, section 6106.

#### FACTS (Case Nos. 06-O-10078 and 06-O-13752):

48. Respondent did not inform Yohonn of the potential conflicts between Mark's estate and Debbie's estate and Channel regarding their respective claims arising from the same motor vehicle accident. Respondent did not obtain Yohonn's written consent to represent Mark's estate while simultaneously representing Debbie's estate and Channel regarding their respective claims arising from the same motor vehicle accident.

49. Respondent did not inform Channel of the potential conflicts between Debbie's estate and Mark's estate and Yohonn regarding their respective claims arising from the same motor vehicle accident. Respondent did not obtain Channel's written consent to represent Debbie's estate while simultaneously representing Mark's estate and Yohonn regarding their respective claims arising from the same motor vehicle accident.

#### CONCLUSIONS OF LAW (Case Nos. 06-O-10078 and 06-O-13752):

50. By failing to inform Yohonn and Channel of the potential conflicts between Mark's estate, Debbie's estate, Yohonn and Channel regarding their respective claims arising from the same motor vehicle; obtain Yohonn's written consent to represent Mark's estate while simultaneously representing Debbie's estate and Channel; and obtain Channel's written consent to represent Debbie's estate while simultaneously representing Mark's estate and Yohonn, Respondent willfully accepted representation of more than one

client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client, in wilful violation of rule 3-310(C)(1), Rules of Professional Conduct.

FACTS (Case No. 06-O-13175):

51. On February 9, 2000, Carol M. Peloquin-Peirano ("Peloquin") employed Respondent to represent her in a disability claim against her long term disability insurance carrier, the Equitable Life Assurance Society ("Equitable Life").
52. Between February 9, 2000 and July 15, 2003, Peloquin paid Respondent approximately \$154,872.02 in legal fees to represent her in her suit against Equitable Life pursuant to the fee agreement with Respondent which provided for an hourly fee.
53. On February 17, 2000, Respondent filed a complaint for breach of contract in the Superior Court of California, County of Orange, titled Peloquin v. The Equitable Life Assurance Society, Case No. 00CC02322 ("Peloquin v. Equitable Life").
54. On May 12, 2000, Equitable Life removed Peloquin v. Equitable Life to the United States District Court where it was assigned Case No. 00-CV-00460.
55. On September 14, 2005, Peloquin settled her claims against Equitable Life for \$769,000 in damages plus \$7,179.22 in costs (\$769,000 + \$7,179.22 = \$776,179.22 total settlement amount).
56. Between September 14, 2005 and October 12, 2005, Respondent received checks from Equitable Life on behalf of Peloquin for \$769,000 in damages and \$7,179.22 in costs, totaling \$776,179.22. Respondent deposited the checks totaling \$776,179.22 into his personal or office checking account which was not designated as a client trust account.
57. On October 12, 2005, Respondent faxed a letter to Peloquin that stated that he would wire transfer \$600,000 of the settlement proceeds to Peloquin on October 13, 2005, and that he would hold the balance \$176,179.22 until the United States District Court issued its final order.
58. On October 17, 2005, Respondent transferred \$600,000 of the settlement proceeds to Peloquin. Peloquin received the \$600,000. The \$600,000 payment reduced the amount Respondent should have been holding on behalf of Peloquin to \$176,179.22.
59. On December 2, 2005, Respondent sent Peloquin a check for \$7,179.22. The payment reduced the amount Respondent should have been holding on behalf of Peloquin to \$169,000.
60. On January 5, 2006, Peloquin's husband mailed a letter to Respondent that requested payment of the sum of \$169,000 or an explanation why the payment had not been paid. Respondent received the letter.
61. On June 19, 2006, Peloquin's husband mailed a letter to Respondent that requested payment of the sum of \$169,000 or they would report Respondent's conduct to the State Bar. Respondent received the letter.

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62. Respondent used \$169,000 that received and was required to hold in trust on behalf of Peloquin for Respondent's own use and purposes.

63. Respondent acknowledges that he still owes Peloquin \$169,000, and by this stipulation, Respondent agrees to pay restitution of \$169,000 in principal, plus interest of 10% per annum accruing from October 12, 2005 (for complete terms of restitution see page 5).

**CONCLUSIONS OF LAW (Case No. 06-O-13175):**

64. By depositing the sum of \$776,179.22 received on behalf of Peloquin into his personal or office checking account, Respondent willfully failed to deposit 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 wilful violation of rule 4-100(A), Rules of Professional Conduct.

65. By misappropriating the sum of \$169,000 received on behalf of Peloquin, Respondent committed an act involving moral turpitude, dishonesty, or corruption, in wilful violation of Business and Professions Code, section 6106.

**DISMISSALS:**

The parties stipulate to dismiss the following alleged violations in the interest of justice:

Case No.	Count	Alleged Violation
02-O-10239	Four	Business and Profession Code § 6106
02-O-10239	Five	Rule 3-310(C)(2), Rules of Professional Conduct
02-O-10239	Six	Business and Profession Code § 6106
02-O-10239	Seven	Business and Profession Code § 6106
02-O-10239	Eight	Rule 3-700(B)(2), Rules of Professional Conduct
02-O-10239	Ten	Business and Profession Code § 6068(m)
02-O-10239	Eleven	Business and Profession Code § 6068(m)

**SUPPORTING AUTHORITY**

**Standards:**

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

The Supreme Court emphasized the importance of the standards and held that great weight should be given to the application of the standards in determining the appropriate level of discipline. The Court indicated

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that unless it has “grave doubts as to the propriety of the recommended discipline,” it will uphold the application of the standards. In re Silverton (2005) 36 Cal. 4th 81, 91-92.

Standard 1.7(c), Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that a record of prior discipline is not a prerequisite for imposing any appropriate sanction, including disbarment.

Standard 2.2(a) states that “[c]ulpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of the mitigating circumstances.”

Standard 2.2(b) states that “[c]ulpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.”

Standard 2.3 provides that “[c]ulpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to the court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

Standard 2.4(b) provides that “[c]ulpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.”

Standard 2.6(a) provides that Respondent’s violation of Business and Professions Code, section 6068(m) shall result in suspension or disbarment “depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

**Case Law:**

“Misappropriation is more than a grievous breach of professional ethics. It violates basic notions of honesty and endangers public confidence in the legal profession. [Citations.] In all but the most exceptional of cases, it requires the imposition of the harshest discipline. [Citations.] The seriousness of the offense and the propriety of disbarment as the appropriate discipline have long been recognized by this court [Citation] and are reflected in the standards. Standard 2.2(a) provides that wilful misappropriation of entrusted funds shall result in disbarment unless the amounts are insignificant or the most compelling mitigating circumstances clearly predominate.” (Grim v. State Bar (1991) 53 Cal.3d 21, 29.)

An attorney was disbarred after misappropriating nearly \$40,000. The attorney represented a widow and her minor children after her husband was killed in an automobile accident. Spaith withdrew nearly \$40,000 belonging to the client from his trust account to pay office expenses, and then misled the client for about

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one year about the status of the funds. (In the Matter of Spait, (Review Dept. 1996), 3 Cal. State Bar Ct. Rptr. 511.)

Another respondent was also disbarred for misappropriating approximately \$66,000 from a client and then also lied to the client over an 18-month period to conceal his theft. This respondent had no record of prior discipline. (In re Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583.)

An attorney was disbarred after misappropriating approximately \$29,000. The respondent was a partner in a large California law firm. Between February and September 1985, he deposited 24 checks totaling approximately \$29,000, payable to the law firm into his personal account. When confronted by the managing partner, the respondent repeatedly denied knowledge of the missing checks. He then admitted taking some of the checks but offered untruthful excuses for needing the money. Kaplan also misrepresented to the State Bar that he needed the money to finance medical care for his mother-in-law. He finally admitted that he used the money to purchase gifts for his wife and to maintain a standard of living beyond his means. Kaplan had no record of prior discipline. (Kaplan v. State Bar (1991) 52 Cal.3d 1067.)

Given the seriousness of Respondent's misconduct and the large amount of money misappropriated by Respondent, disbarment is the appropriate level of discipline and the only way to adequately protect the public.

**PENDING PROCEEDINGS:**

The disclosure date referred to on page 2, section A.(7), was on January 19, 2011.

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In the Matter of: GERALD MICHAEL SHAW	Case Number(s): 02-O-10239, 06-O-10078, 06-O-13175 & 06-O-13752
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### DISBARMENT ORDER

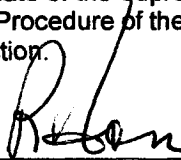
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

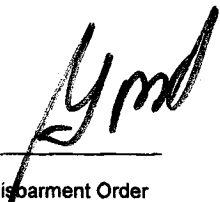
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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 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.

2-4-11  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court  
RICHARD A. HONN

  
Disbarment Order

**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 San Francisco, on February 9, 2011, 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:

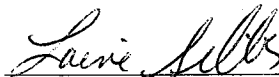
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

GERALD MICHAEL SHAW  
1282 HILLSDALE DR  
CLAREMONT, CA 91711

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

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 9, 2011.



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Laine Silber  
Case Administrator  
State Bar Court