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State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles		<input checked="" type="checkbox"/> San Francisco
Counsel for the State Bar Michael J. Seng SENG & STRATTON P.O. Box 14180 Fresno, CA 93650-4180 (559) 436-6111 Bar # 069384	Case number(s) . 02-0-14508 04-0-15353 kwiktag* 022 604 908 	(for Court's use) PUBLIC MATTER FILED  APR 14 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent Bar #	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge	
In the Matter of CARY O. LINDSTROM Bar # 129700 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 11, 1987
(date)
- (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 and order consist of 11 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

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

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) Prior record of discipline [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case _____
 - (b) Date prior discipline effective _____
 - (c) Rules of Professional Conduct/ State Bar Act violations: _____

 - (d) Degree of prior discipline _____
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

- (2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (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.

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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:

14. In November 2005, after notice of disciplinary charges were filed, Respondent did refund to Complainant Christopher A. Long the \$1,000 which Mr. Long had deposited with Respondent.

15. As a condition of his discipline, Respondent has agreed that not later than six months from the effective date of the discipline herein, he will refund \$2,698.56, plus ten percent (10%) interest thereon from and after October 6, 1995, to complainant Loreto Somero.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two (2) years
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of sixty (60) days

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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 period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (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 to the monitor 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 probation 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 probation conditions.

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

F. Other Conditions Negotiated by the Parties:

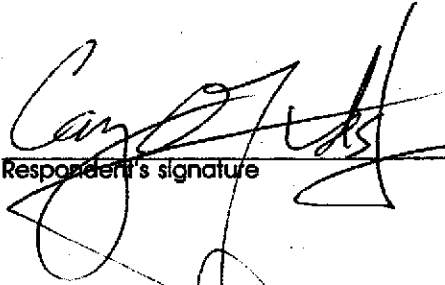
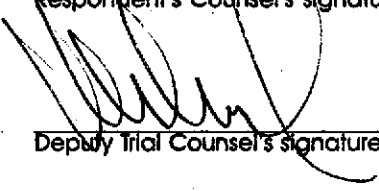
- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended. Reason: _____
- (2) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, 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.
- (3) **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: _____
- (5) **Other Conditions:**

(Do not write above this line.)

In the Matter of	Case number(s):
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SIGNATURE OF THE PARTIES

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

<u>2/18/06</u> Date	 Respondent's signature	<u>CARY O. LINDSTROM</u> Print name
<u>2/14/06</u> Date	 Respondent's Counsel's signature	<u>MICHAEL J. SENG</u> Print name

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In the Matter of Cary O. Lindstrom	Case number(s): 02-O-14508 04-O-15353
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ORDER

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

- The 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.

See the attached 7-page "Court's Modifications to Stipulated Facts, Conclusions of Law and Disposition."

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 135(b), 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 953(a), California Rules of Court.)

Date

4/14/06


JOANN M. REMKE
Judge of the State Bar Court

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In the Matter of CARY O. LINDSTROM	Case Number(s): 02-0-14508 04-0-15353
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF of the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Loreto Somera	\$2,698.56	October 6, 1995

- Respondent must pay the above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than six (6) months from the effective date of the discipline herein.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Do not write above this line.)

In the Matter of CARY O. LINDSTROM	Case Number(s): 02-0-14508 04-0-15353
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b. Respondent has kept and maintained the following:

- i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

In the Matter of CARY O. LINDSTROM	Case number(s) 02-O-14508 04-O-15353
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DISMISSALS

The State Bar, by and through its counsel Michael J. Seng, has, as a component of this Stipulation for discipline, agreed to and does hereby dismiss the following Counts of its Notice of Disciplinary charges:

Count 4 – RPC 4-100(A) [Failure to Maintain Client Funds in Trust Account]

Count 5 – Business and Professions Code § 6106 [~~Moral Turpitude~~]

Count 9 – RPC 4-100(B)(3) [Failure to Render Account of Client Funds]

Count 10 – Business and Professions Code § 6106 [~~Moral Turpitude~~]

Count 11 – RPC 3-110(A) [Failing to Act Competently]

IN THE MATTER OF CARY O. LINDSTROM, CASE NOS. 02-O-14508, 04-O-15353

**COURT'S MODIFICATIONS TO STIPULATED FACTS,
CONCLUSIONS OF LAW AND DISPOSITION**

The parties failed to set forth in the Stipulation the findings of fact and conclusions of law that support the level of discipline. However, based on the court's involvement in the settlement conference, wherein the parties reached a final agreement as to the terms and conditions of the Stipulation that included the facts and law set forth below, the court hereby orders that the stipulation is MODIFIED to include the following:

A. Case No. 02-0-14508 (Somera)

Findings of Fact

In or about the fall of 1993, Respondent was employed by Loreto Somera ("Somera") to represent Somera in a lawsuit for breach of contract and promissory note against Danilo M. Nejal, William N. Ware and Roy Leal Lardizabal ("Defendants"). On or about October 7, 1993, Respondent filed a Complaint on behalf of Somera against Defendants in Santa Clara County Municipal Court, entitled *Somera vs. Nejal et al.*

On or about December 17, 1993, the Court entered a default judgment in favor of Somera in the amount of \$9,619.59. Respondent obtained a Writ of Execution and the Santa Clara County Sheriff collected a total of \$9,016.24 from Defendants in satisfaction of the judgment between approximately April 1994 and September 1995. The funds were delivered to Respondent on behalf of Somera in the form of County of Santa Clara Warrants issued by the Santa Clara County Controller-Treasurer Department.

Subsequent to in or about December 1993 through in or about 2002, Somera made several contacts with Respondent's office inquiring as to Respondent's efforts to collect on the judgment in Somera's case. On or about September 20, 1994, Respondent provided Somera with a written breakdown of attorney fees and costs stating that Respondent had received two checks for Somera totaling \$2,176.92. On or about December 14, 1994, Somera received written notice of six additional payments on Somera's judgment received by Respondent between September 23, 1994 and December 2, 1994. Somera signed and returned each of these notices. Thereafter, Somera did not receive notice of any of the additional funds Respondent received in satisfaction of the judgment in Somera's case.

In or about 2002, Somera reviewed the Court file on *Somera vs. Nejal* and discovered that \$9,016.24 in funds had been collected from the Defendants and of that amount, \$8,826.24 had been delivered to Respondent. Somera then contact Respondent's office inquiring about these funds. Respondent failed to respond to Somera and failed to inform Somera in writing or provide Somera with any documentation regarding Respondent's receipt of the \$8,826.24 in satisfaction of the Judgment in *Somera vs. Nejal*.

Pursuant to the terms of the fee agreement between Somera and Respondent, Somera was entitled to receive 60% of all money collected on his case less costs, which costs totaled \$138.00. Respondent was entitled to 40% of all money collected on the judgment in *Somera vs. Nejal*. The total amount of funds paid to Somera from Respondent in satisfaction of the judgment in Somera's case was \$2,514.38. The total amount of funds received by Respondent on the case was \$9,016.24 less \$138 in costs advanced by Respondent and \$190.00 in fees taken by the court. Somera was therefore entitled to receive 60 percent of \$8,688.24, namely \$5,212.94. Respondent

failed to disburse to Somera all or any portion of the remaining \$2,698.56 which Somera was entitled to receive.

While Respondent provided Somera with partial accountings of the funds received in satisfaction of the judgment in Somera's case, Respondent never provided Somera with an accurate and complete accounting for the \$8,826.24. Respondent also did not provide Somera with a complete and accurate accounting showing how much of the funds Respondent retained for his fees and what portion Somera was entitled to receive.

On or about September 17, 2002, the State Bar opened an investigation, Case No. 02-O-14508, pursuant to a complaint filed against Respondent by Somera. ("the Somera matter".)

On or about October 2, 2002, November 21, 2002, December 20, 2002, January 17, 2003, and February 27, 2003, State Bar Investigator Michael H. Hummer ("Hummer") through his office staff contacted Respondent by letter regarding the Somera matter. Hummer's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar of California membership address. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Hummer's letters as undeliverable for any other reason.

Hummer's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Somera matter and specifically requested Respondent to provide records accounting for the receipt and disbursement of Somera's funds pertaining to *Somera vs. Nejal*. Respondent did not respond to Hummer's letters or otherwise communicate with Hummer regarding the Somera matter for almost a three-month period.

On or about November 27, 2002, December 10, 2002, January 16, 2003, and March 14, 2003, Respondent provided responses but they did not include information as to the balance of the funds which Somera was entitled to receive.

On or about December 1, 2003, and January 12, 2004, Special Deputy Trial Counsel Michael J. Seng ("Seng") contacted Respondent by mail also requesting information as to the Somera funds for which Respondent had not accounted. Seng's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar of California membership address. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Seng's letters as undeliverable for any other reason. Respondent failed to respond to Seng's inquiries and failed to provide any of the additional information requested by Seng.

Conclusions of Law

By failing to promptly inform Somera regarding Respondent's receipt of the \$8,826.24 in satisfaction of the Judgment in *Somera vs. Nejal*, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code, section 6068(m).

By failing to pay Somera \$2,698.56 of the client's portion of the funds received by Respondent in satisfaction of the judgment in Somera's case, Respondent wilfully failed to pay client funds promptly in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

By not providing complete and accurate information to Somera regarding funds received by Respondent on behalf of Somera, Respondent wilfully failed to render appropriate accounts to

the client regarding the funds in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

By not timely responding to Seng's inquiries for information concerning the allegations in the Somera matter or otherwise cooperating in the investigation of the Somera matter, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code, section 6068(i).

B. Case No. 04-0-15353 (Long)

Findings of Fact

On or about October 3, 2003, Christopher A. Long ("Long") retained Respondent to represent Long in a legal matter and paid Respondent an agreed \$1,000 flat fee for Respondent's services.

Beginning in November 2003, and continuing periodically on multiple occasions thereafter, Long contacted Respondent's office to inquire into and determine the status of the legal matter Respondent had been hired to attend to. Initially Respondent reassured Long that he was taking care of the matter for him, but thereafter Respondent failed and refused to respond directly or indirectly to Long's status inquiries and failed and refused to return messages Long left with Respondent's secretary.

On or about November 13, 2004, Long wrote Respondent describing his repeated, unsuccessful attempts at contacting Respondent and ascertaining the status of his legal matter and requested Respondent's action or a refund of Long's \$1,000 fee deposit. Respondent never responded to Long's letter or otherwise communicated with him again.

Respondent was obligated either to perform the legal services for which he had been

retained or to issue a refund of Long's fee payment. Respondent did not perform the services he was hired to perform. In November 2005, after notice of disciplinary charges were filed, Respondent did refund the \$1,000 to Long.

On or about November 17, 2004, the State Bar of California opened an inquiry into the above-referenced allegations claimed by Long, and referred the matter to Special Deputy Trial Counsel Michael J. Seng ("Seng") for further investigation.

On or about February 15, 2005, Seng contacted Respondent by mail requesting information as Respondent's response to the allegations made by Long. Seng's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar of California membership address. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Seng's letters as undeliverable for any reason. Respondent failed to timely respond to Seng's inquiries and failed to timely provide information requested by Seng.

Conclusions of Law

By failing to respond to Long's inquiries and/or advise him of the status of his legal matter, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code, section 6068(m).

By failing to promptly refund the unearned \$1,000 fee payment, Respondent wilfully failed to pay promptly to his client, client funds in his possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

By not responding to Seng' s inquiries for information concerning the allegations in the Long matter or otherwise cooperating in the investigation of the Long matter, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code, section 6068(i).

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 San Francisco, on April 14, 2006, 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 San Francisco, California, addressed as follows:

**CARY O. LINDSTROM
LAW OFC CARY O LINDSTROM
65 E TAYLOR ST
SAN JOSE, CA 95112**

**MICHAEL J SENG
SENG & SENG
P O BOX 14180
FRESNO CA 93650-4180**

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

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **April 14, 2006.**



Laurretta Cramer
Case Administrator
State Bar Court