



~~CONFIDENTIAL~~

(Do not write above this line.)

State Bar Court of California Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar Cydney Batchelor Deputy Trial Counsel 180 Howard St, 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204 Bar # 114637	Case Number(s) 03-0-4796-PEM 04-0-11754 04-0-12662 04-0-13592	FILED OCT 24 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO LODGED MAY 15 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO PUBLIC MATTER
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per Michael E. Wine, Esq. 301 N. Lake Ave., Suite 800 Pasadena, CA 91101-5113 Tele: 626/796-6688 Bar # 58657	Submitted to Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of CHARLA R. DUKE Bar # 95518 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 12/16/1980 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (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, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of 11 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." See attached
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of

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- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [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 Action violations _____
- (d) Degree of prior discipline _____
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above) See attached
- (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.
- (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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
See attached
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

None

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C. Mitigating Circumstances [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) ~~xxx~~ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to the ~~view of the State Bar during disciplinary investigation and proceedings.~~ **See attached**
- (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 of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs 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.
- (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:

See attached

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **CHARLA R. DUKE**

CASE NUMBERS: **03-O-04796; 04-O-11754; 04-O-12662;**
 04-O-13592

DISMISSALS.

Upon the respondent's acceptance into the State Bar Court's alternative discipline program, the State Bar requests the Court to dismiss the following cases without prejudice: 04-O-11754, 04-O-12662, and 04-O-13592. These three cases are State Bar investigations which were opened upon bank reports of insufficient funds checks, all of which have been consolidated into State Bar case no. 03-O-4796 below.

FACTS AND CONCLUSIONS OF LAW.

Case Number 03-O-04796 (State Bar Investigation):

Facts: Prior to April 2003, respondent opened account no. 031-1361026 at Wells Fargo Bank and designated it an attorney-client trust account with the name "Law Office of Charla Duke Client Trust Account" ("CTA").

Between July 1, 2003 and December 31, 2003, respondent deposited settlement funds on behalf of 8 different clients in the approximate aggregate amount of \$101,400.00. During that period of time, respondent failed to maintain each client's settlement funds in the CTA until they were disbursed appropriately, but instead used the settlement funds of some clients to pay disbursements to or on behalf of other clients.

Between July 25, 2003 and December 19, 2003, respondent deposited 10 non-client and non-fiduciary related instruments by depositing them into the trust account.

Between May 1, 2003 and February 28, 2004, respondent issued in excess of 250 checks from her trust account to herself or third parties with whom she held no fiduciary relationship and who had no legal interest in the funds.

In May and June 2004, respondent issues 15 checks from her CTA, in the aggregate amount of \$2717.85, when there were insufficient funds in the account to pay for them.

Conclusions of Law: By not retaining settlement funds for each of the 8 clients in her CTA until she had properly disbursed them, respondent willfully failed to preserve the identity of client funds, in violation of Rule of Professional Conduct 4-100(A). By depositing personal funds and funds not related to client matters into, not withdrawing personal funds in a timely manner from, and withdrawing funds when not related to client matters from her CTA, respondent commingled funds belonging to her in her CTA, in violation of Rule of Professional Conduct 4-100(A). By repeatedly issuing checks drawn on the trust account when she knew or should have known that there were insufficient funds, respondent committed acts involving moral turpitude, dishonesty, or corruption in violation of Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A.(6), was March 17, 2005.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline: Respondent has two prior records of discipline since being admitted on December 16, 1980, as follows:

Case No. S032003 (90-O-14755): Effective 7/9/1993; 90 days actual suspension; 1 year stayed suspension; 3 years probation; violations unknown at this time, but will be provided to the Court before respondent enters into the alternative discipline program.

Case No. S073467 (95-C-12569): Effective 12/30/1998; 60 days actual suspension; 2 years stayed suspension and until compliance with std. 1.4(c)(ii), 3 years probation; violations of Business and Professions Code section 26 USC 7203 [3 counts of willful failure to file tax returns].

Multiple Acts of Misconduct: As stipulated to herein, respondent committed multiple acts of conduct to multiple clients and with regard to her CTA.

MITIGATING CIRCUMSTANCES.

Facts Supporting Mitigating Circumstances

Candor and cooperation: Through counsel, respondent has been candid and cooperative with the State Bar during its investigations and resolution of these cases.

Physical, Financial and Emotional Problems: Beginning in April 2000 and continuing through the end of 2001, respondent experienced severe physical problems that resulted in surgery and an extended period of recuperation. During that time, as a sole practitioner, respondent was unable to work and incurred \$200,000.00 in debt. As a result, respondent became extremely depressed.

Additional Mitigating Circumstances

Participation in Lawyer's Assistance Program. On August 16, 2004, respondent contacted the State Bar Lawyer Assistance Program ("LAP") and completed the intake process. On August 23, 2004, respondent signed a pre-enrollment assessment agreement with LAP. Respondent was then assessed and monitored for a period for time by the LAP. At the conclusion of the process, respondent signed a long-term participation plan on February 25, 2004. She has been in continuous compliance with LAP since that date.

Certified Public Accountant: In January 2006, in response to a State Bar request, respondent hired a certified public accountant to determine audit her trust account records to determine how much restitution is owed to various clients, at a cost to her of \$7500.00. Pursuant to that audit, as a demonstration of her remorse and good faith, respondent has agreed to make restitution as set forth below.

No financial losses to clients: Although the misconduct stipulated to herein regarding respondent's CTA is extremely serious, it should be noted that none of the 8 clients for whom respondent received settlement funds incurred a financial loss as a result of respondent's misconduct regarding her CTA. To the contrary, the audit reveals that respondent overpaid an aggregate amount of approximately \$23,000.00 to the clients from their settlements. Moreover, none of these 8 clients has filed a complaint with the State Bar regarding respondent's handling of the case or the disbursement of settlement funds.

No further complaints: No additional complaints have been filed regarding respondent's management of her CTA since June 2004.

ADDITIONAL ALTERNATIVE DISCIPLINE PROGRAM CONDITIONS.

Client Funds Certificate

- I. If Respondent possesses client funds at any time during the period covered by the ADP contract or the State Bar probation which is imposed in this case subsequent to her participation in the ADP, Respondent must file with the State Bar Court (during the ADP) and/or the Office of Probation (during the ADP and the period of probation), quarterly written reports with a certificate from a CPA, 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";
 - B. Respondent has kept and maintained the following:
 - (1) A written ledger for each client on whose behalf funds are held that sets forth:
 - (a) the name of such client;
 - (b) the date, amount and source of all funds received on behalf of such client;
 - (c) the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - (d) the current balance for such client.
 - (2) A written journal for each client trust fund account that sets forth:
 - (a) the name of such account;
 - (b) the date, amount and client affected by each debit and credit;
 - (c) the current balance in such account.
 - (3) All bank statements and cancelled checks for each client trust account; and
 - (4) Each monthly reconciliation (balancing) of (1), (2) and (3) above, and if there are any differences between the monthly total balances reflected in (1), (2) and (3), above, the reasons for the differences.

(C) Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- (1) Each item of security and property held;
- (2) The person on whose behalf the security or property is held;
- (3) The date of receipt of the security or property;
- (4) the date of distribution of the security or property; and
- (5) The person to whom the security or property was distributed.

II. 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 ADP judge and/or Office of Probation for that reporting period. In this circumstance, Respondent need not file the CPA's certificate described above.

III. The requirements of this condition are in addition to those set forth in Rule of Professional Conduct 4-100(A).

(Do not write above this line.)

In the Matter of CHARLA R. DUKE	Case number(s): 03-0-4796-PEM, et al.
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SIGNATURE OF THE PARTIES

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

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, the Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

3-17-06
Date

Charla Duke
Respondent's signature

CHARLA R. DUKE
Print name

3
Date

Respondent's Counsel's signature

MICHAEL E. WINE
Print name

3/27/06
Date

Cydney Hatchelor
Deputy Trial Counsel's signature

CYDNEY HATCHELOR
Print name

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In the Matter of CHARLA R. DUKE	Case number(s): 03-0-4796-PEM, et al.
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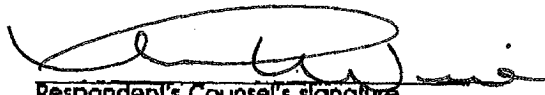
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Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, the Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date _____	Respondent's signature _____	CHARLA R. DUKE Print name
Date <u>3/24/06</u>	 Respondent's Counsel's signature	MICHAEL E. WINE Print name
Date _____	Deputy Trial Counsel's signature _____	CYDNEY BATCHELOR Print name

(Do not write above this line.)

In the Matter of CHARLA R. DUKE	Case number(s): 03-0-4796-FEM, et al.
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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 stipulation as to facts and conclusions of law is APPROVED,
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

May 15, 2006
Date

Dorinda McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

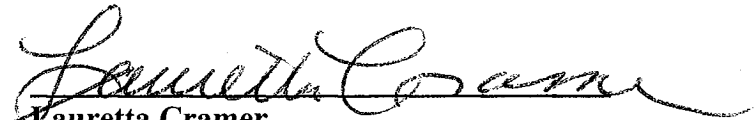
I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on May 15, 2006, I personally served a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW;
CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND
ORDERS (Rules Proc. of State Bar, rule 803(a));
CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR
COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

by personal delivery and addressed as follows:

**CYDNEY BATCHELOR
CHARLA RAE DUKE
180 HOWARD ST 6TH FL
SAN FRANCISCO, CA 94105**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 15, 2006.


Lauretta Cramer
Case Administrator
State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 7, 2007, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

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

**CHARLA RAE DUKE
360 GRAND AVE #150
OAKLAND CA 94610**

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

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 7, 2007**.


George Hue
Case Administrator
State Bar Court