

ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM



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Bar # 67900

In the Matter Of:
DANIEL MARTORELLA

Bar # 128700

A Member of the State Bar of California
(Respondent)

Case Number (s)
06-O-14748

(for Court's use)

PUBLIC MATTER

FILED

SEP 15 2010

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

RECEIVED

DEC 18 2008

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

Submitted to: **Program Judge**

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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 June 17, 1987.
- (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, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the 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 consists of 8 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (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 [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:
- (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 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.
- (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:

Respondent has no prior record of discipline since his admission to the practice of law on June 17, 1987.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DANIEL MARTORELLA

CASE NUMBER(S): ET AL. 06-O-14748

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on July 11, 2008, and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to the case that is the subject matter of this stipulation.

INCORPORATION OF PRIOR STIPULATION

This stipulation is an addendum intended to supplement the Stipulation re: Facts and Conclusions of Law in Case No. 05-O-01211, which the parties lodged with this Court on September 11, 2007 (the "Prior Stipulation"). The Prior Stipulation is also incorporated as if fully set forth herein.

FACTS AND CONCLUSIONS OF LAW IN CASE NO. 06-O-14748

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

FACTS

1. In 2004, Courtney Grenfell ("Grenfell") hired Respondent to represent her with regard to her claim for personal injury resulting from the 2004 accident. Grenfell agreed to pay Respondent attorney fees based upon a percentage of the recovered proceeds from a settlement or court judgment.
2. In 2004, Sam Maywood, M.D. ("Maywood") provided medical services and treatment to Grenfell for the injuries sustained in the automobile accident. Maywood, who is director of Coast Surgery Center ("Coast"), performed some of the medical services for Grenfell at Coast. Maywood billed his medical services for Grenfell through his medical office and through Coast. Maywood also provided Respondent with expert witness services regarding Grenfell's injuries resulting from the accident.

3. On September 4, 2004, Respondent and Grenfell executed an "Authorization and Lien" ("lien") authorizing and agreeing to pay Maywood out of future settlement or court judgment proceeds. The lien stated that Respondent was authorized and directed to withhold money, from any and all proceeds, to pay Maywood for all medical services provided to Grenfell. Respondent and Grenfell gave Dr. Maywood a valid lien for medical services rendered to Grenfell. Respondent and Grenfell had not executed a lien regarding Coast.
4. In April 2006, at the conclusion of Grenfell's medical treatment, Respondent owed Maywood \$10,000 for expert witness fees. Grenfell owed Maywood \$12,175 and Coast \$10,680. Grenfell disputed the medical billings submitted by Maywood through both his medical office and through Coast.
5. In April 2006, Respondent settled Grenfell's case with the other party's insurance carrier for a total amount of \$376,000.
6. On April 21, 2006, Respondent orally modified his fee agreement with Grenfell. On the same day, he wrote to Grenfell and confirmed the oral modification of their fee agreement of Grenfell's \$376,000 settlement, as follows: (i) Grenfell would receive a guaranteed amount of \$211,000 (56% of the gross proceeds); (ii) Respondent would keep \$165,000 and agree to be responsible for paying any and all medical expenses and other expenses.
7. On April 24, 2006, Respondent received the settlement check number 0275027 in the amount of \$376,000 for Courtney Grenfell's settlement.
8. Subsequent to April 24, 2006, Respondent failed to prepare, maintain or preserve any records of the funds received or disbursed on behalf of Grenfell or arising from Grenfell's matter.
9. On April 26, 2006, Respondent wrote to Maywood and stated that he had settled Grenfell's case and that it would be necessary to compromise Maywood's fees due to the limited money available for distribution. Respondent stated that he would contact Maywood once the case was "finalized".
10. On May 3, 2006, Respondent deposited the settlement check into his business account at Washington Mutual Bank, account number 8612292164 ("Business Account").
11. On May 11, 2006, Respondent issued a check payable to Grenfell, in the amount of \$211,000 drawn on his business account.
12. On August 17, 2006, Respondent wrote to Maywood and stated "The final payment will be sent soon. We are trying to resolve one other matter so that we need not interplead the remaining funds. Please be a bit more patience (sic) and we do appreciate the cooperation in the matter."

13. On September 21 and October 10, 2006, Maywood wrote to Respondent and complained that Respondent had not satisfied Maywood's medical lien and that he would pursue a civil action to collect his money from Respondent and Grenfell.

14. On September 28, 2006, Maywood wrote to the State Bar lodging his complaint for failed payment by Respondent to him and Coast.

15. Sometime between September and October 2006, Maywood retained the services of Preferred Western Collection, Inc. to pursue a civil action to collect his and Coast's fees. Maywood also assigned his interest to Preferred Western Collection, Inc.

16. On November 28, 2006, Preferred Western Collection, Inc., as the assignee of Maywood and Coast, filed a lawsuit against Respondent in the San Diego Superior Court.

17. On March 7, 2007, Respondent issued check number 9269 in the amount of \$12,575.20, from his general account at Washington Mutual Bank to his attorney, Madeline Clogston ("Clogston"), who then issued on March 12, 2007, from her client trust account check number 2569, for the amount of \$12,575.20 to Preferred Western Collections regarding the Coast outstanding balance. (Respondent mistakenly wrote March 7, 2006 on check number 9269)

18. On March 28, 2007, Respondent issued check number 9306 in the amount of \$10,400.00, from his general account at Washington Mutual Bank to Clogston.

19. On April 17, 2007, Respondent entered into an agreement to settle the outstanding balances between Grenfell, Respondent, Preferred Western Collection, Inc., Maywood and Coast.

20. On April 23, 2007, Clogston issued a check as payment in full to Preferred Western Collection regarding money owed to Maywood.

CONCLUSIONS OF LAW

21. By depositing the settlement check into his general account, respondent failed to deposit the funds received for the benefit of the client into a client trust account or an account labeled "Trust Account", "Client's Funds Account" or words of similar import, Respondent willfully failed to deposit client funds in a trust account, in violation of Rules of Professional Conduct, rule 4-100(A).

22. By not maintaining or preserving, for five years from the final appropriate disposition, a record of the client's funds coming into Respondent's possession, Respondent willfully failed to maintain records of client funds, in violation of Rules of Professional Conduct, rule 4-100(B)(3).

RULE 133 NOTICE OF PENDING PROCEEDINGS

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on December 9, 2008.

POTENTIAL INCREASE IN DISCIPLINE

Respondent understands that the matters in this addendum, being additional misconduct, may result in the Office of Chief Trial Counsel seeking – and/or the State Bar Court recommending – additional ADP conditions or increased discipline in the underlying cases, up to and including disbarment. In addition, his length of participation in the court's Alternative Discipline Program may be extended.

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In the Matter of DANIEL MARTORELLA Bar # 128700	Case number(s): 06-O-14748
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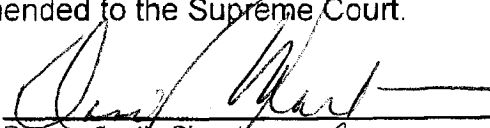

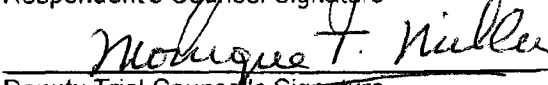
SIGNATURE OF THE PARTIES

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, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>12-15-08</u> Date	 Respondent's Signature	Daniel Martorella Print Name
<u>12/18/2008</u> Date	 Respondent's Counsel Signature	Paul J. Virgo Print Name
<u>December 18, 2008</u> Date	 Deputy Trial Counsel's Signature	Monique T. Miller Print Name

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In the Matter Of DANIEL MARTORELLA Bar # 128700	Case Number(s): 06-O-14748
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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(a), Rules of Procedure.)

10-9-10
Date


Judge of the State Bar Court

RICHARD A. PLATEL

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 17, 2010, I deposited a true copy of the following document(s):

ORDER AMENDING CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS

AGREEMENT AND ORDER AMENDING CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

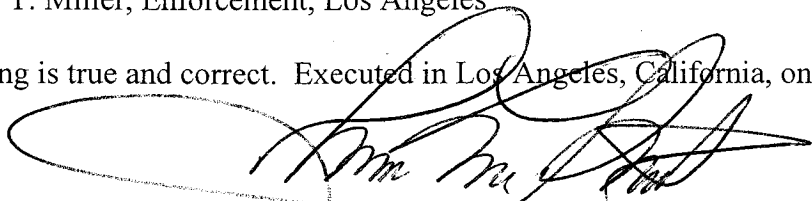
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PAUL JEAN VIRGO
PO BOX 67682
LOS ANGELES, CA 90067 - 0682

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

Monique T. Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 17, 2010.



Johnnie Lee Smith
Case Administrator
State Bar Court