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**State Bar Court of California
Hearing Department
San Francisco
DISBARMENT**

<p>Counsel For The State Bar</p> <p>Robin Brune Senior Trial Counsel 180 Howard Street San Francisco, California 94105 (415) 538-2218</p> <p>Bar # 149481</p>	<p>Case Number(s): 15-O-05214-LMA</p>	<p>For Court use only</p> <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED <i>RS</i></p> <p style="text-align: center;">NOV 05 2015</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Marc Anthony Guillory 4909 Stacey Street Oakland, California 94605 (510) 206-8490</p> <p>Bar # 214098</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: MARC ANTHONY GUILLORY</p> <p>Bar # 214098</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 12, 2001**.
- (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 **(9)** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."



(Effective July 1, 2015)

RS

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case **12-C-11576;12-C-11759;12-C-12032, 12-C-12883 (Cons.)**
 - (b) Date prior discipline effective **Still pending. See Attachment, p. 7.**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Moral Turpitude, See Attachment, p. 7.**
 - (d) Degree of prior discipline **See Attachment, p. 7.**
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.

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- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See Attachment, p. 7.**
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment, p. 7.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Lack of Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings. **See Attachment, p. 7.**
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony

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would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (9) **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-trial Stipulation, See Attachment, p. 7.

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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 **Eniko Seen** in the amount of \$ 3,000 plus 10 percent interest per year from **June 9, 2014**. If the Client Security Fund has reimbursed **Eniko Seen** 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 **120** days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MARC ANTHONY GUILLORY

CASE NUMBER: 14-0-05214-LMA

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 15-O-05214 (Complainant: Eniko Seen)

FACTS:

1. On March 14 2014 Eniko Seen (“Seen”) hired respondent to represent her in a family law matter. On March 24, 2014, Seen sent respondent \$3,000 via an electronic account. Respondent signed and sent a written fee agreement to Seen, but she never executed it. The draft fee agreement, and emails accompanying it, indicated that respondent charged \$175 an hour for his services. The \$3,000 served as an advanced payment towards his legal fees.

2. The parties exchanged over 34 emails between March 2014 and June 9, 2014. Seen sent respondent some financial information for a financial disclosure statement, which respondent received. Seen never received a draft financial disclosure statement from respondent. Seen also asked respondent to prepare a Legal Separation Agreement. Respondent sent Seen a template, fill-in-the-blank form for a Legal Separation Agreement. In response, Seen sent him some information, and asked him some questions about it. Seen never received a completed draft Legal Separation Agreement from respondent.

3. On June 9, 2014, Seen requested a refund and a final billing statement (i.e., an accounting) from respondent. Respondent sent Seen an email on June 12, 2014, acknowledging her request for a final billing statement and refund. Respondent requested from Seen her phone records so that he could prepare the billing statement. Respondent never provided Seen with a final billing statement, nor did he provide her with any refund.

4. Respondent admitted to the State Bar that Seen had requested a refund and a final billing statement. Respondent admits that he never provided a billing statement to Seen. As part of the stipulation in this matter, respondent agrees that due to his inability to account for her funds, he owes a full refund to Seen.

CONCLUSIONS OF LAW:

5. By failing to provide Seen with a final billing statement pursuant to her request on June 9, 2014, respondent failed to render an appropriate accounting to the client regarding the \$3,000 in client funds he received from Seen, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

6. By failing to provide an accounting justifying his retention of the funds, respondent's fees were not earned, and respondent failed, upon termination of employment, to refund \$3,000 in fees to Seen, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has prior discipline. On May 19, 2015, in case no. 12-C-11576 et. seq., the Review Department recommended that respondent be suspended for three years, stayed, with two years' probation, and until he proves his rehabilitation pursuant to Standards for Attorney Sanctions for Prof. Misconduct, std. 1.2(c)(1), for four alcohol-related driving convictions which constituted moral turpitude. This discipline is not yet final, but constitutes a prior for disciplinary purposes (See Rules of Procedure of the State Bar, rule 5.106(A)).

Harm (Std. 1.5(f)): Respondent has deprived his client of the value of her \$3,000 for over one year's time.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent has both failed to account and failed to refund, demonstrating two acts of disciplinary misconduct.

MITIGATING CIRCUMSTANCES.

Candor/Cooperation (Std. 1.6(e)): Respondent has cooperated with the State Bar by early in the proceedings admitting that he did not provide an accounting to Seen.

Pretrial Stipulation: Respondent is stipulating to disbarment prior to trial in this matter thereby saving the State Bar and State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

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

Here the controlling Standard is Standard 1.8, which specifies that subsequent discipline should be greater than prior discipline. Although not yet final, the May 2015 decision of the Review Department is construed as prior discipline (See Rules of Procedure of the State Bar, rule 5.106(A)). The current misconduct is after the conduct that was subject to the prior disciplinary case, and after the Hearing Department issued a decision, but, due to respondent's appeal, prior to the imposition of actual discipline. Four months after the Hearing Department's February 13, 2014 recommendation for a two year suspension, in June 2014, respondent retained \$3,000 of his client's monies. On May 19, 2015, the Review Department affirmed the February 13, 2014 Hearing Department recommendation for two years actual suspension. Respondent failed to provide an accounting of his client's funds, or refund, despite acknowledging her request. In aggravation, respondent has prior discipline, has committed multiple misconduct, and has caused harm to his client. In mitigation, respondent admitted his misconduct to the Bar and is entering into this stipulation.

Generally, if the misconduct of a new disciplinary matter occurred prior, or simultaneous in time to the imposition of discipline in a prior matter, the Court in the subsequent disciplinary matter takes into consideration the overlapping time periods of the misconduct. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. In *Sklar*, the court acknowledged that ". . . part of the rationale for considering a prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms [citation]. It is therefore appropriate to consider the fact that the misconduct involved here was contemporaneous with the misconduct in the prior case." (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at 619.

However, unlike *Sklar*, in respondent's matter, the present and past misconduct is not contemporaneous. Respondent's most recent misconduct occurred in June, 2014, whereas his prior misconduct concluded with his last DUI in December, 2012. The only issue is the lack of finality of his prior disciplinary matter, which, for disciplinary purposes, is still considered a prior. In June 2014, when the respondent failed to respond to his client's request for an accounting, he was aware of the February 13, 2014 Hearing Department's recommendation for a two year actual suspension with 1.2(c)(1) conditions. Respondent should have been mindful of his ethical duties given his pending appeal of a lengthy period of suspension, yet instead committed additional misconduct. Given these circumstances, disbarment is the necessary disciplinary response for the protection of the public.

COSTS OF DISCIPLINARY PROCEEDINGS.

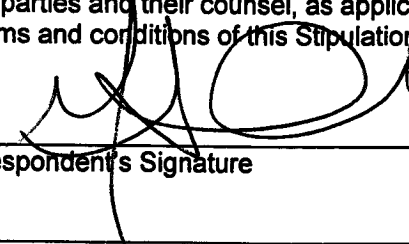
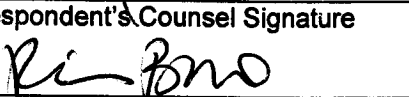
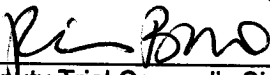
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of October 15, 2015, the prosecution costs in this matter are \$3,584.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: MARC ANTHONY GUILLORY	Case number(s): 15-O-05214-LMA
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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>10/19/15</u> Date	 Respondent's Signature	<u>MARC ANTHONY GUILLORY</u> Print Name
<u>11/2/2015</u> Date	 Respondent's Counsel Signature	<u> </u> Print Name
<u>11/2/2015</u> Date	 Deputy Trial Counsel's Signature	<u>ROBIN BRUNE</u> Print Name

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In the Matter of: MARC ANTHONY GUILLORY	Case Number(s): 14-O-05214
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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.

1. Case number "15-O-05214" is corrected to read "14-O-05214" on pages 1, 6, and 9.
2. On p. 1, respondent's address is corrected to read "Stacy" instead of "Stacey."
3. On p. 2, (1)(b) Date prior discipline effective - Delete "Still pending" and insert in its stead: "November 19, 2015."
4. On p. 2, (1)(d) Degree of prior discipline, insert: "three years' stayed suspension, four years' probation, and two years' actual suspension."
5. On p. 7, second paragraph, Prior Record of Discipline, delete "two years' probation" and replace it with: "four years' probation, and two years' actual suspension."
6. On p. 7, second paragraph, Prior Record of Discipline, delete "This discipline is not yet final, but constitutes a prior for disciplinary purposes" and insert in its stead: "This discipline is a prior record

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.)**

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Respondent Marc Anthony Guillory 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.

Date

November 5, 2015

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 5, 2015, 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:

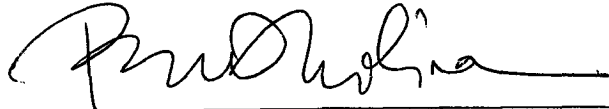
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MARC A. GUILLORY
4909 STACY ST
OAKLAND, CA 94605

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 5, 2015.



Bernadette C.O. Molina
Case Administrator
State Bar Court