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State Bar Court of California  
Hearing Department  
San Francisco  
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p><b>Laura Huggins</b> Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2537</p> <p>Bar # 294148</p>	<p>Case Number(s): 15-O-10110-LMA</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p>OCT 24 2017 <i>W</i></p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Douglas Edward Stein</b> 892 Maria Vista Way Placerville, CA 95667 (916) 289-6072</p> <p>Bar # 131248</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>DOUGLAS EDWARD STEIN</b></p> <p>Bar # 131248</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 **December 11, 1987**.
- (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 consists of **15** 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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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- (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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **Three billing cycles immediately following the effective date of the Supreme Court order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

**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
  - (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)  **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.
- (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.

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- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Candor/Lack of 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 to Stipulation, at page 12.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution. See Attachment to Stipulation, at page 12.
- (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)  **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.
- (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 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.

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- (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. **See Attachment to Stipulation, at page 12.**
- (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 convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline - See Attachment to Stipulation, at page 12.**  
**Pre-Trial Stipulation - See Attachment to Stipulation, at page 12.**

**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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **three (3) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3)  **Actual Suspension:**
- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **one (1) year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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.
- (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 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **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.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 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:**

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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 in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Jaroslav Waszczuk	\$14,694.33	June 2, 2014

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than 120 prior to the expiration of probation, notwithstanding section (b) of the Financial Conditions.

#### 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
Jaroslav Waszczuk	\$50	Payment due on the 1st of each month

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- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

**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";
  - 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.



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**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.



6. On October 21, 2014, respondent deposited personal funds into the client trust account in the form of a \$600 check. The check was issued by Marilyn Stein, respondent's mother, and was payable to the order of respondent.

7. On November 12, 2014, respondent deposited personal funds into the client trust account in the form of a \$200.03 cash deposit.

8. On December 3, 2014, the client trust account had a negative balance of \$194.33.

9. On December 15, 2014, Wells Fargo Bank contacted Waszczuk to collect the negative balance.

10. On December 16, 2014, Waszczuk terminated respondent as legal counsel due to a disagreement regarding case strategy. Respondent provided Waszczuk with a signed Substitution of Attorney form on January 9, 2015.

11. On December 26, 2014, Waszczuk paid the negative balance of \$194.33 and requested closure of the account.

12. None of the funds in the client trust account were used for costs attributable to Waszczuk.

13. Between June 2, 2014, and December 16, 2014, respondent took no steps to monitor the client trust account balance. Respondent also failed to maintain an account journal or client ledger, and failed to track the withdrawals from the client trust account.

14. To date, respondent has not provided Waszczuk with an accounting of the \$20,000.

15. Between June 2, 2014, and December 16, 2014, respondent performed legal services related to the Regents case, which amounted to approximately 100 billable hours.

16. Between June 2, 2014, and December 16, 2014, respondent and Waszczuk developed a friendship. During this time, Waszczuk purchased gifts for respondent's daughter and offered to pay for respondent's living expenses. Waszczuk also encouraged and permitted respondent to use Waszczuk's credit cards for personal expenses.

17. Respondent never obtained Waszczuk's written authorization to designate all of the funds in the client trust account as attorney fees.

#### CONCLUSIONS OF LAW:

18. By converting advanced costs in the amount of \$14,500 into attorney fees without Waszczuk's authorization, and then disbursing this amount to himself between June 2, 2014 and December 3, 2014, respondent failed to maintain a balance of \$14,500 in the client trust account on behalf of respondent's client, Waszczuk, in willful violation of Rules of Professional Conduct, rule 4-100(A).

19. By converting advanced costs in the amount of \$14,500 into attorney fees without Waszczuk's authorization, and then disbursing this amount to himself between June 2, 2014 and December 3, 2014, respondent misappropriated through gross negligence, for respondent's own purposes, \$14,500 in advanced costs that belonged to Waszczuk, his client, and thereby committed an act involving moral turpitude, in willful violation of Business and Professions Code section 6106.

20. By depositing his personal funds and thereafter issuing checks and withdrawing cash directly from the client trust account between October 21, 2014 and December 3, 2014, for respondent's personal use, including payment of personal expenses, respondent commingled funds, in willful violation of Rules of Professional Conduct, rule 4-100(A).

21. By receiving the sum of \$20,000 in advanced fees and costs on June 2, 2014, from respondent's client, Waszczuk, for legal services to be performed, and subsequently failing to render any accounting to the client, even after the termination of respondent's employment on December 16, 2014, respondent failed to render an appropriate accounting to his client regarding those funds, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Between June 2, 2014, and December 16, 2014, respondent commingled on numerous occasions, misappropriated advanced costs, and failed to render an accounting to the client.

**Restitution (Std. 1.5(m)):** To date, respondent has not taken any steps to make Waszczuk whole.

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted to the practice of law in California on December 11, 1987. At the time of his misconduct, respondent practiced law for approximately 27 years without prior discipline. (See *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [practicing for over 20 years without prior discipline is a highly significant mitigating circumstance].)

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigation was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

**Family Problems:** Since 2008, respondent has maintained sole legal and physical custody of his daughter, who suffers from a chronic medical condition. In 2014, respondent dedicated a significant amount of time and financial resources to his daughter's wellbeing. Over the years, and during periods of heightened stress, respondent struggled with chemical dependency. Shortly before his legal representation of Waszczuk, respondent relapsed and subsequently completed an 18-day residential treatment program in April 2014. Although substance abuse did not play a role in the present misconduct, respondent's inattention to his legal practice and the client trust account resulted, in part, from his effort to maintain sobriety while addressing his daughter's medical condition.

#### 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).)

In this matter, respondent admits to committing four acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to respondent’s misconduct is found in standard 2.1(b), which applies to respondent’s misappropriation in violation of Business and Professions Code section 6106. Standard 2.1(b) provides that actual suspension is the presumed sanction for misappropriation involving gross negligence.<sup>1</sup>

Here, respondent’s careless misconduct and the accompanying need for public protection weigh in favor a one-year actual suspension. This disciplinary recommendation is at the mid-range of standard 2.1(b), and is supported by the underlying facts. Specifically, respondent engaged in grossly negligent misconduct when he abdicated his responsibility to monitor the client trust account and instead used the trust account as a personal bank account. Relying on his close friendship with Waszczuk, respondent allowed himself to become lax with Waszczuk’s funds. As a result, respondent’s handling of the client trust account constituted an extreme departure from the duties and responsibilities that he owed to Waszczuk as a fiduciary. Although respondent and Waszczuk developed a friendship and Waszczuk sometimes offered to assist respondent with personal expenses, these circumstances did not justify respondent’s grossly negligent misappropriation of the advanced costs and general misuse of the client trust account.

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<sup>1</sup> See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113 [gross negligence where the attorney’s misappropriation resulted from his poor management and misuse of the client trust account].

In mitigation, respondent practiced law for 27 years without discipline, experienced family difficulties at the time of his misconduct, and showed recognition of wrongdoing by entering into the present stipulation. These mitigating circumstances outweigh respondent's factors in aggravation. However, respondent's mitigation is not sufficiently compelling to merit a deviation from the standards.

Case law also supports a one year actual suspension. In *McKnight v. State Bar* (1991) 53 Cal.3d 1025, the Supreme Court imposed a one year actual suspension where the attorney willfully misappropriated \$8,665, but compelling mitigation predominated. There, the attorney handled a corporate dissolution matter on behalf of his client and ultimately received a check in the amount of \$17,331.85. Instead of promptly notifying the client, the attorney unilaterally deposited half of the funds in the client trust account and distributed the other half to himself in attorney fees. Around this time, the client offered to loan the attorney money towards a house down payment, and the attorney accepted. The client filed a State Bar complaint when she learned of the dissolution proceeds and after the attorney failed to timely repay the loan. With respect to the dissolution proceeds, the attorney denied wrongdoing on the grounds that the client later authorized him to keep these funds; the client disputed this assertion. The Supreme Court upheld the culpability finding, stating that the attorney "may not have acted with venal design, [but] his failure to verify and document the client's purported authorization . . . had the same perfidious effect: the client was . . . deprived of rightful and timely access to her funds." In mitigation, at the time of his misconduct, the attorney suffered from an untreated mood disorder, symptoms of which included impaired judgment. Prior to his misconduct, the attorney practiced law for eight years without prior discipline.

Similar to the attorney in *McKnight*, even where all inferences are resolved in respondent's favor, respondent's actions still rose to the level of a serious misappropriation. At no time did respondent seek written authorization from Waszczuk to convert advanced costs into advanced fees. As a result, respondent's depletion of the entire client trust account was a grossly negligent act that constituted a breach of the fiduciary duties that he owed to Waszczuk.

In summary, respondent should be actually suspended from the practice of law for a period of one year because this is a level of discipline that is consistent with the presumed sanction set forth in standard 2.1(b), it fulfills the purposes of discipline articulated in standard 1.1, and is supported by *McKnight*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of October 5, 2017, the discipline costs in this matter are \$7,793. 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.

#### **EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational courses to be ordered as a condition of probation. (Rules Proc. of State Bar, rule 3201.)

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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.

10/10/2017            Douglas Edward Stein  
Date      Respondent's Signature      Print Name

\_\_\_\_\_  
Date      N/A      \_\_\_\_\_  
Respondent's Counsel Signature      Print Name

10/11/17            Laura Huggins  
Date      Deputy Trial Counsel's Signature      Print Name

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### ACTUAL SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Oct 24, 2017  
Date

  
LUCY ARMENDARIZ  
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 October 24, 2017, 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:

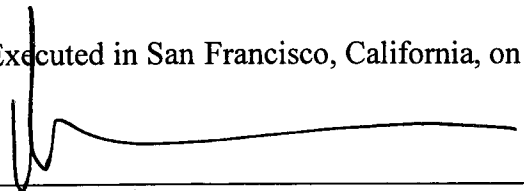
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DOUGLAS E. STEIN  
892 MARIA VISTA WAY  
PLACERVILLE, CA 95667 - 4500

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

Laura A. Huggins, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 24, 2017.

  
\_\_\_\_\_  
Vincent Au  
Case Administrator  
State Bar Court