

<b>Counsel for the State Bar</b> <b>MARIA J. OROPEZA, #182660</b> <b>THE STATE BAR OF CALIFORNIA</b> <b>180 HOWARD STREET</b> <b>SAN FRANCISCO, CALIFORNIA 94105</b> <b>(415) 538-2000</b>	<b>Case number(s)</b>  00-H-15262  <div style="text-align: center;"> <small>kwiktag® 035 115 431</small>   </div>	(for Court's use)  <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div>  <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED <i>jm</i></div> <div style="text-align: center;">JAN 06 2004</div> <div style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
<b>Counsel for Respondent</b> <b>Matthew Bishop, #134936</b> <b>1475 Fourth Street</b> <b>Napa, California 94559</b> <b>(707) 258-8090</b>	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  STAYED SUSPENSION; NO ACTUAL SUSPENSION  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of</b> <b>HUGH E. COMISKY, JR.</b>  <b>Bar # 52292</b>  A Member of the State Bar of California (Respondent)		

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted JUNE 2, 1972  

(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 9 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) 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. (Check one option only):
  - costs added to membership fee for calendar year following effective date of discipline
  - costs to be paid in equal amounts prior to February 1 for the following membership years:

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(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

  - costs waived in part as set forth under "Partial Waiver of Costs"
  - costs entirely waived

**Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."**

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 97-C-13730

(b)  date prior discipline effective FEBRUARY 16, 2000

(c)  Rules of Professional Conduct/ State Bar Act violations: OTHER CONDUCT

**WARRANTING DISCIPLINE**

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(d)  degree of prior discipline PUBLIC REPROVAL

(e)  If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

(2)  Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3)  Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4)  Harm: Respondent's misconduct harmed ~~significantly a client, the public or~~ the administration of justice.

(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 to 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. *mfo* 
- (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. *mfo* 
- (9)  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.
- (10)  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.
- (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:

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of ONE (1) YEAR

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution to \_\_\_\_\_ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of \_\_\_\_\_, plus 10% per annum accruing from \_\_\_\_\_ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- iii. and until Respondent does the following: \_\_\_\_\_

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of TWO (2) YEARS, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

E. Additional Conditions of Probation:

- (1)  During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, 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.
- (3)  Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. If the first report would cover less than 30 days, that report shall 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.

- (4)  Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (5)  Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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.

- (6)  Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit 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. - **Respondent ordered to take State Bar Ethics in case no. 97-C-13730.**
- (7)  Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (8)  The following conditions are attached hereto and incorporated:
- Substance Abuse Conditions       Law Office Management Conditions
- Medical Conditions                       Financial Conditions
- (9)  Other conditions negotiated by the parties:

Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

No MPRE recommended. - Respondent took + passed the MPRE on November 7, 2003. Given that Respondent has taken the MPRE, the parties agree not to require Respondent to submit to another exam.

M. J. O. @

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        Hugh E. Comisky, Bar No. 52292

CASE NUMBER(S):        00-H-15262 ET AL.

**FACTS AND CONCLUSIONS OF LAW.**

**Statement of Facts: Count One (Case No. 00-H-15262)**

1.        Respondent, Hugh E. Comisky was admitted to the practice of law in the State of California on June 2, 1972, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2.        On January 2, 2000 and January 25, 2000 the respondent and the State Bar signed a stipulation in case no. 97-C-13730. The parties stipulated that the facts and circumstances surrounding respondent's conviction of Nevada Revised Statutes 484.379 and 484.3792 and Washoe County Code 70.3865 involved other misconduct warranting discipline.

3.        On January 27, 2000, the Honorable Judge Eugene Brott of the State Bar Court issued an order approving the stipulation and imposed a public reproof with conditions on respondent.

4.        Effective February 16, 2000, respondent was publicly reproofed by the State Bar. As a condition of his reproof, respondent was required to take and provide successful proof of passage of the Multi-State Professional Responsibility Examination to the Probation Unit by February 16, 2001.

5.        Thereafter, respondent failed to take and provide successful proof of passage of the Multi-State Professional Responsibility Examination to the Probation Unit by February 16, 2001.

6.        On January 30, 2001, respondent's counsel and the State Bar's counsel stipulated to an extension of time in which respondent was take and pass the Multi-State Professional Responsibility Examination. Respondent was to take and pass the Multi-State Professional Responsibility Examination no later than February 2002. The stipulation was not filed with the State Bar Court.

7.        To date respondent has failed to take the Multi-State Professional Responsibility Examination or to seek any formal extension with the Probation Unit.

**Conclusions of Law: Count One (Case No. 00-H-15262)**

8.        By failing to take and provide successful proof of passage of the Multi-State

Professional Responsibility Examination to the Probation Unit by February 16, 2001 or by February 2002, respondent failed to comply with a condition of his reproof, a wilful violation of rule 1-110 of the Rules of Professional Conduct.

Statement of Facts: Count Two (Case No. 00-H-15262)

9. The allegations contained in paragraphs 1-7 of this stipulation are herein incorporated by reference as if they were set forth in full.

10. Respondent failed to comply with the State Bar Court order issued on January 27, 2000.

Conclusions of Law: Count Two (Case No. 00-H-15262)

11. By failing to abide by the State Bar Court order issued on January 27, 2000, respondent wilfully disobeyed or violated an order of the court requiring him to do an act, a wilful violation of Business and Professions Code, section 6103.

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

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was November 10, 2003.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 10, 2003, the estimated prosecution costs in this matter are approximately \$2296.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

**AGGRAVATING CIRCUMSTANCES.**

Prior Discipline: Respondent was publicly reproofed by the State Bar in February 2000.

**MITIGATING CIRCUMSTANCES.**

Respondent represents that during the period in which he was to take the Multi-State Professional Responsibility Examination that due to a calendaring error on his part he missed the registration deadline for the February 2002 examination.

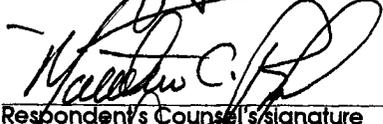
Respondent represents that from February 2002 and continuing thereafter that respondent suffered from fatigue, nausea, occasional light-headedness and shortness of breath. Respondent represents that he underwent cardiovascular surgery for mitral valve replacement, pacemaker implantation and a four vessel by pass. Based on his health condition his treating physician required respondent to refrain from high stress situations, inclusive of the Multi-State Professional Responsibility Examination and as such he could not take the Multi-State Professional Responsibility Examination.

Date 12/15/03

  
Respondent's signature

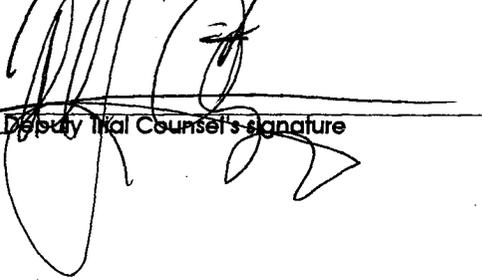
HUGH E. COMISKY  
print name

Date 12/15/03

  
Respondent's Counsel's signature

MATTHEW BISHOP  
print name

Date 12/15/03

  
Deputy Trial Counsel's signature

MARIA J. OROPEZA  
print name

**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.

*See attached Modifications.*

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

Date 1/6/04

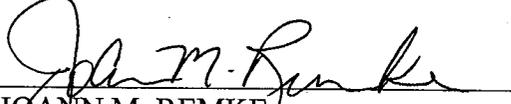
  
Judge of the State Bar Court

**IN THE MATTER OF HUGH E. COMISKY, JR.**  
**State Bar Court Case No. 00-H-15262**

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

1. On page 2, section B(1)(b) shall be modified to provide that the effective date of Respondent's prior discipline was February 12, 2000.
2. On page 6, attachment page 1, under "Statement of Facts: Count One," paragraph 4 shall be modified to provide that Respondent's prior discipline was effective February 12, 2000, and he was required to provide proof of passage by February 12, 2001.
3. On page 6, attachment page 1, under "Statement of Facts: Count One," paragraph 7 shall be deleted and replaced with: "Respondent failed to take and pass the Multistate Professional Responsibility Examination, or to seek any formal extension with the Office of Probation, by February 2002."

Dated: January 6, 2004

  
JOANN M. REMKE  
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 January 6, 2004, 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:

**MATTHEW C. BISHOP  
LAW OFC MATTHEW C BISHOP  
1475 4TH ST  
NAPA CA 94559**

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

**MARIA OROPEZA, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 6, 2004.**



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**Bernadette C. O. Molina**  
Case Administrator  
State Bar Court