

<p>Counsel for the State Bar Sherrill B. Melatchie Bar # 85447 180 Howard, 7th Floor San Francisco CA 94105 (415) 638-2297</p>	<p>Case number(s) 00-0-13996</p> <p>kwiktag® 031 978 453 </p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>OCT 23 2003</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel for Respondent Jerome Fishkin, Esq. Bar # 369 Pine, Suite 627 San Francisco CA 94104 (415) 403-1300</p>	<p>Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of Frank Sarro</p> <p>Bar # 129780</p> <p>A Member of the State Bar of California (Respondent)</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 17, 1987
(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:

(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 _____

(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 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.
- (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) 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.
- (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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Frank Sarro

CASE NUMBER: 00-O-13996

FACTS AND CONCLUSIONS OF LAW.

Frank P. Sarro ("respondent") admits that the foregoing facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

00-O-13996
Facts

1. On March 11, 1998, Wanda Vance ("Vance") hired respondent to represent her in a sexual harassment claim against her employer. Vance and Sarro executed an "Attorney-Client Fee Contract" drafted by respondent which provided in pertinent part for a 45% contingency fee "if Attorney has to take any action to collect on an arbitration award, court judgment, promissory note, breach of settlement, or breach of contract" and that "Client authorizes Attorney to seek and assigns to Attorney court-awarded costs, expenses, and attorney's fees from any and all defendants and third parties."

2. On March 24, 1999, after respondent filed a civil complaint against Vance's employer, Vance, through respondent, accepted a Code of Civil Procedure section 998 settlement offer of \$85,000 in settlement of her claim. Notice of Entry of Judgment on the acceptance of the offer to compromise was filed July 16, 1999.

3. By letter dated August 30, 1999, Vance requested an accounting of costs to date. Despite faxing Vance a settlement agreement for her signature under cover of a letter dated September 2, 1999, respondent did not give Vance the requested accounting. Instead, by faxed letter dated September 7, 1999, respondent complained that Vance had not yet sent an additional payment of \$100 toward unspecified costs and owed him \$550 for copying her file as part of the discovery process.

4. By letter dated September 10, 1999, Vance referenced her August 30, 1999 letter and asked for a response to it. By fax dated September 11, 1999, respondent told Vance that she would receive approximately \$10,000 out of an anticipated \$20,000 first payment "because of all

the costs in your case which you have not paid” and asked her to sign and return the enclosed revised settlement agreement. Respondent did not give Vance the requested accounting.

5. By faxed letter dated September 12, 1999, Vance demanded an “accounting of the costs (paid & unpaid).” On September 15, 1999, Vance signed the revised settlement agreement, and on September 25, 1999, respondent advised Vance that he had received \$85,000 from her former employer. Under cover of letter dated September 28, 1999, respondent sent Vance \$44,882.72 “which represents 55% of \$85,000 less \$1,867.28 in costs.”

6. By letter dated October 18, 1999, Vance requested a final accounting from respondent. Respondent did not respond in any way to the October 18, 1999 letter. By letter dated November 5, 1999, sent registered mail, return receipt requested, Vance again requested an accounting and for “[a]ny Court filings or documentation, regarding my case, that have not already been sent to me.”

7. By letter dated November 6, 1999, respondent provided Vance with an accounting which revealed that he had received a total of \$97,000 in settlement of Vance’s claim, including \$12,000 in exchange for dropping an attorney’s fees motion, and told her that the Attorney-Client Fee Contract provided that she had to pay in advance for any additional photocopies from her file. By letter dated November 14, 1999, respondent provided a breakdown of the costs deducted from the \$85,000. Respondent did not give Vance her file.

8. By letter dated December 3, 1999, Patrick J. Waltz (“Waltz”), an attorney representing Vance, requested that respondent send him a copy of Vance’s file and provided respondent with an authorization for release of records executed by Vance.

9. By letter dated December 6, 1999, again citing the Attorney-Client Fee Contract, respondent indicated to Waltz that he would not turn over Vance’s file without an advance payment of \$1,000, out of which he would refund any unused portion of the copying charge. Thereafter Waltz telephoned respondent and advised him that respondent had a duty to return Vance’s file to her. Respondent did not give Vance her file.

10. By letter dated February 28, 2000, Waltz repeated his request on behalf of Vance for her file. Respondent did not give Vance her file.

11. In August 2000 Vance filed a complaint against respondent with the State Bar. In August 2003 Vance and respondent entered into a civil settlement.

Conclusions of Law

1. By failing to return Vance's file as requested, respondent wilfully violated rule 3-700(D)(1), Rules of Professional Conduct.

2. By failing to immediately render a full and complete accounting to Vance regarding all funds coming into his possession in connection with Vance's case, respondent wilfully violated rule 4-100(B)(3).

PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A.(6), was September 17, 2003.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 17, 2003, the estimated prosecution costs in this matter are approximately \$1,983. 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.

STATE BAR ETHICS SCHOOL.

Respondent has agreed to attend State Bar Ethics School as part of this stipulation. Respondent may receive Minimum Continuing Legal Education credit upon satisfactory completion of State Bar Ethics School.

9-22-03
Date

Frank P. Sarro
Respondent's signature

Frank P. Sarro
print name

9-22-03
Date

[Signature]
Respondent's Counsel's signature

Jerome Fishkin
print name

9-23-03
Date

Sherrie B. McLetchie
Deputy Trial Counsel's signature

Sherrie B. McLetchie
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

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.)

October 21, 2003
Date

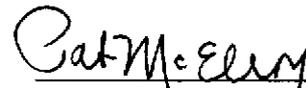
Pat McElroy
Judge of the State Bar Court

IN THE MATTER OF FRANK SARRO
Case Number 00-O-13996

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

1. On page 1, Section A(1) shall read the Respondent is a member of the State Bar of California, admitted December 11, 1987, instead of December 17, 1987.

October 21, 2003
Dated



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 October 23, 2003, 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:

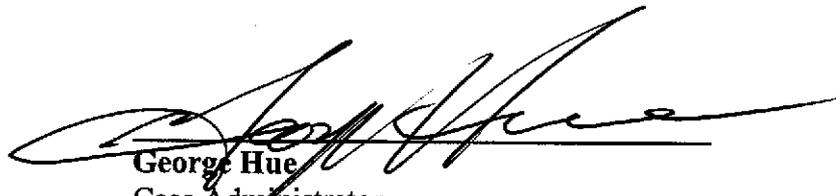
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JEROME FISHKIN
369 PINE STREET #627
SAN FRANCISCO CA 94104**

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

SHERRIE McLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 23, 2003.**


George Hue
Case Administrator
State Bar Court