

<p>Counsel for the State Bar Esther Rogers, No. 148246 Office of the Chief Trial Counsel The State Bar of California 180 Howard Street, 7th Floor San Francisco, CA 94105 (415) 538-2445.</p>	<p>Case number(s) 01-0-01131 kwiktag® 022 606 964 </p>	<p>(for Court's use) PUBLIC MATTER FILED <i>pm</i> FEB 11 2004 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel for Respondent Mark E. Ellis, Esq. Murphy, Pearson, Bradley & Feeney 701 University Sacramento, CA 94825 (916) 565-0300</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of MICHAEL P. WHITE Bar # 114595 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 3rd, 1984 *QMK*
(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)/counil(s) are listed under "Dismissals." The stipulation and order consist of 8 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 (public reproval)
 - case ineligible for costs (private reproval)
 - costs to be paid in equal amounts for the following membership years:
2005, 2006
(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."

(8) The parties understand that:

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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. See attached
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
See attached
- (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.
See attached
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ _____ on _____ In restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) No mitigating circumstances are involved.

Additional mitigating circumstances:

See attached

D. Discipline:

(1) Private reproof (check applicable conditions, if any, below)

(a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).

(b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

(2) Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproval:

(1) Respondent shall comply with the conditions attached to the reproof for a period of one (1) year

(2) During the condition period attached to the reproof, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) Within ten (10) days of any change, Respondent shall report to the Membership Records Office 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.

(4) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (5) 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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the monitor.
- (6) 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 conditions attached to the reproof.
- (7) Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered.
- (8) 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 required to be filed with the Probation Unit.
- (9) 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 of the effective date of the reproof.
- No MPRE ordered.
- (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 type="checkbox"/> Financial Conditions |
- (11) Other conditions negotiated by the parties:
- See attached

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Michael P. White

CASE NUMBER(S): 01-O-01131

FACTS AND CONCLUSIONS OF LAW.

Case No. 01-O-01131

Count One

Statement of Facts

Prior to December 1988, the Office of Criminal Justice Planning ("OCJP") employed Jo Ann McLevis. In or about December 1998, OCJP demoted Jo Ann McLevis. McLevis contested the demotion and filed an appeal with the State Personnel Board ("SPB"). On or about February 19, 1999, Jo Ann McLevis employed respondent to represent her before the SBP. On or about February 21, 2000, before the SBP appeal had resolved, McLevis and her husband, Anthony McLevis, employed respondent pursuant to a second retainer agreement to prosecute a related civil action against OCJP. On or about April 14, 2000, the parties executed a global settlement agreement which sought to resolve both the SPB appeal dispute, as well as the related civil suit claims. One of the terms of the settlement agreement required OCJP to pay McLevis's attorneys' fees and costs, which the McLevises and respondent calculated to total \$62,736.

On or about June 2, 2000, respondent received a check made payable to respondent for \$62,736 as reimbursement for attorneys' fees. On or about June 23, 2000, respondent deposited the \$62,736 check into Wells Fargo attorney client trust account number 0243-010550.

Between August and November 2000, respondent and McLevis engaged in negotiations over the allocation of the attorneys' fees.

On or about November 7, 2000 and before the parties had resolved their dispute, respondent transferred \$62,736 from his attorney client trust account into Wells Fargo savings account number 663-2497350, a personal account held in respondent's name. The account was not a trust account and did not name McLevis as an account holder.

On or about May 4, 2001, McLevis filed a complaint against respondent in the matter *McLevis v. White*, Sacramento County Superior Court, case number 01AS02719. On or about February 18, 2003, the parties settled *McLevis v. White*.

Respondent maintained the disputed funds in the account until the resolution of the dispute between he and the McLevises.

Conclusions of Law

Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A)(2) by failing to maintain disputed funds in trust until the resolution of the dispute.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was January 14, 2004.

MITIGATING CIRCUMSTANCES.

No Prior Record. Standard 1.2(e)(i). Respondent has been admitted since 1984 and has no prior record of discipline.

Candor and Cooperation. Standard 1.2(e)(v). Respondent agreed to the imposition of discipline without requiring a hearing.

No Harm. Standard 1.2(e)(iii). McLevis suffered no harm because the money was maintained inviolate in the segregated account, neither added to, nor drawn upon, by respondent from the time respondent transferred the funds, until the time the dispute between he and the McLevises was resolved.

Other Mitigation:

Respondent claims that he transferred the money into the savings account, which was interest bearing, so that he could mitigate further damage by permitting the money to compound while it was in dispute. Furthermore, Respondent transferred the funds upon advice of counsel.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Client Trust Account School

Respondent agrees that within one year of the effective date of this reproof, respondent will attend State Bar Client Trust Accounting School, will pass the test given at the end of the session and will provide the Probation Unit with proof of his attendance and passage of the test.

12-26-03

[Signature]

MICHAEL P. WHITE
print name

Date

Respondent's signature

12/29/03

[Signature]

MARK E. ELLIS
print name

Date

Respondent's Counsel's signature

1/14/04

[Signature]

ESTHER ROGERS
print name

Date

Deputy Trial Counsel's signature

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.



The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

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.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

2/11/04

[Signature]
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 February 11, 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:

**MARK E. ELLIS
MURPHY PEARSON ET AL
701 UNIVERSITY #150
SACRAMENTO CA 95825**

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

ESTHER ROGERS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **February 11, 2004.**



Bernadette C. O. Molina
Case Administrator
State Bar Court