


Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL KIMBERLY G. ANDERSON, No. 150359 1149 SOUTH HILL STREET LOS ANGELES, CA 90015-2299 TEL.: 213-765-1083	Case number(s) 01-0-04683 kwiktag® 031 974 762 	(for Court's use) PUBLIC MATTER FILED DEC 18 2003 STATE BAR COURT CLERKS OFFICE LOS ANGELES
Counsel for Respondent ERICA TABACHNICK, No. 94324 900 WILSHIRE BLVD., #1000 LOS ANGELES, CA 90017 TEL.: 213-895-4640	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of DAVID SERGI Bar # 135201 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted July 11, 1988
(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 10 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):
 - ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years:
2004, 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."

(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) ☐ 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:

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of TWO YEARS

- ☒ 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 THREE YEARS which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

A. Respondent shall be actually suspended from the practice of law in the State of California for a period of SIXTY (60) DAYS

- ☐ 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: _____

E. Additional Conditions of Probation:

- (1) ☒ If Respondent is actually suspended for two years or more, he/she shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, 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 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.
- (4) ☒ 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

than 30 days, that report shall be submitted on the next quarterly 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.

- (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 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.
- (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 probation conditions.
- (7) ☒ 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.
- (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 to be filed with the Probation Unit.
- (9) ☐ 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 |
- (10) ☒ Other conditions negotiated by the parties: CTA SCHOOL WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE OF THE DISCIPLINE HEREIN. RESPONDENT TO PROVIDE PROOF OF ATTENDANCE TO THE OFFICE OF PROBATION.
- XX 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 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 951(b), California Rules of Court, and rule 321(a)(1) & (b), Rules of Procedure.
- ☐ No MPRE recommended.
- ☐ Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- ☐ Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- ☐ Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: David Sergi

CASE NUMBER: 01-O-04683

FACTS AND CONCLUSIONS OF LAW.

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.

Statement of Facts:

On or about August 9, 1996, Steve Noland ("Noland") employed Respondent to represent Noland's seven year old daughter, Samantha Noland ("Samantha") in a personal injury claim. Respondent's office was located in Texas, but he had a partnership with Timothy F. Perry ("Perry"), who worked in California. Respondent and Noland agreed that Respondent would be compensated by a contingency fee.

On or about June 19, 1997, Respondent received a public reprimand from the State Bar of Texas. Respondent failed to report this matter to the State Bar of California.

On or about August 16, 2000, the court in the personal injury matter approved the order on minor's compromise, finding the proposed settlement of \$30,000 reasonable. The court limited Respondent's attorney fees to 25%, and further ordered that Samantha's recovery be placed in a blocked account to be released only upon order of the court.

On or about August 28, 2000, Respondent deposited the \$30,000 settlement check into his Texas client trust account ("CTA"). Between August 2000 and January 2001, Respondent made disbursements from Samantha's fund, which still remained in his CTA, to pay for attorney fees, a medical lien, and miscellaneous expenses incurred by Samantha's case without court approval. At no time did Respondent obtain the written consent of Noland prior to depositing Samantha's funds in his Texas CTA.

On or about October 18, 2001, attorney William Burns ("Burns") contacted Respondent on behalf of Noland. Burns sent Respondent a letter requesting a copy of the order on minor's compromise, an accounting of Samantha's funds, and a verification of deposit of the funds.

By Respondent's own accounting, he was required to maintain \$17,348.47 on behalf of

Samantha. Between January 2001 and November 2001, the balance in Respondent's CTA fell below \$17,348.47 on repeated dates, including, but not limited to, the following:

<u>DATE</u>	<u>BALANCE</u>
1/23/01	13,654.25
2/28/01	4,733.99
3/6/01	3,092.54
7/30/01	11,325.01
10/24/01	1,735.46
11/5/01	4,176.94

On or about November 23, 2001, Respondent wired \$18,528.75, to a Washington Mutual Bank where a blocked account had been created on behalf of Samantha. This amount included Samantha's settlement funds, interest and attorney costs to Burns.

From in or about August 2000 through in or about October 2000, Respondent failed to review or reconcile his CTA records. During this time period, Respondent delegated the responsibility to his bookkeeper and failed to adequately supervise the bookkeeper.

Conclusions of Law:

By not reporting the public reprimand imposed by the State Bar of Texas to the State Bar of California, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of discipline against Respondent by any professional or occupational disciplinary agency or licensing board, whether in California or elsewhere, in violation of section 6068(o)(6), Business and Professions Code.

By not obtaining the written consent of Noland, Respondent failed to obtain the consent of his client prior to depositing funds received for the benefit of that client in a bank account outside the jurisdiction of the State of California, in violation of rule 4-100(A), Rules of Professional Conduct.

By failing to set up a blocked account for Samantha's settlement funds, failing to obtain court approval prior to disbursement of settlement funds, failing to adequately supervise his bookkeeper and reconcile bank accounts, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of rule 3-110(A), Rules of Professional Conduct.

By not maintaining at least \$17,348.47 received on behalf of Samantha, Respondent wilfully failed to maintain client funds in a trust account, in violation of rule 4-100(A), Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was August 14, 2003.

AUTHORITIES SUPPORTING DISCIPLINE.

Rules of Procedure of the State Bar of California, Title IV, Standards for Attorney Sanctions for Professional Misconduct, 1.2(b)(ii)

Rules of Procedure of the State Bar of California, Title IV, Standards for Attorney Sanctions for Professional Misconduct, 2.2(a)

Rules of Procedure of the State Bar of California, Title IV, Standards for Attorney Sanctions for Professional Misconduct, 2.3

In the Matter of Barry Lee Silver (1998) Calif. Op. LEXIS 12

Respondent misappropriated \$4,800 in a single matter. Respondent had no prior discipline in eleven years of practice. In addition, he displayed candor and presented convincing evidence of his good character. The court found respondent's misappropriation did not involve dishonesty. Respondent received 90 days actual suspension.

In re Bleeker (1990) 1 Cal. State Bar Ct. Rptr. 113

The fact that the balance in an attorney's trust account has fallen below the amount due his client will support a finding of wilful misappropriation. Even if respondent's conduct was not wilful and dishonest, gross negligence constitutes a violation of an attorney's oath to faithfully discharge his duties. The rules protecting client trust accounts leave no room for inquiry into the attorney's intent. The hearing department recommended a two-year stayed suspension and a sixty-day actual suspension.

Attachment 3(a)

STATEMENT OF MITIGATION

Mr. Sergi has been very involved in legal and community activities. Those activities include:

1994-Present: Board member and officer of the Hays County United Way. Appointed treasurer in 1999.

2001 - Present: Board member of the San Marcos Educational Foundation. This foundation distributes locally raised money to worthwhile projects. It provides scholarships for minorities and youths at risk for continuing their education.

City of San Marcos Ethics Commission. Commissioned member for the City of San Marcos to make decisions at the request of city officials and the general public regarding ethical matters.

Hays County Democratic Party. Precinct Chairman and County Vice-Chairman.

Mustard Seed Productions. Founding board member of a community theater group for San Marcos, Texas.

American Cancer Society. Work with the Board to raise funds for the American Cancer Society.

San Marcos Playscape. Actively involved in raising funds for San Marcos Playscape, Inc., a multi-acre playground open to all children and visitors. It contains stimulating, state-of-the-art playground equipment that is safe.

State Bar of Texas Jury Service Committee

State Bar of Texas Alternative Dispute Resolution Committee

Member of the State Bar of Texas College

Mr. Sergi is a member of the Texas National Guard, serving in the JAG Corps. He has also been involved in significant pro bono legal work. Given Mr. Sergi's commitment to death-penalty litigation, he consults on a pro bono basis with numerous young lawyers involved in both Texas and federal writs of habeas corpus and death-penalty cases.

Since moving to Texas, Mr. Sergi's wife developed severe allergies and asthma which made living conditions in Texas difficult for her. One of the reasons Mr. Sergi opened a California office was to explore the possibility of moving back to California.

24 Sept 03
Date

[Signature]
Respondent's signature

ID SERGI

print name

11/25/03
Date

[Signature]
Respondent's Counsel's signature

ERICA TABACHNICK
print name

12/3/03
Date

[Signature]
Deputy Trial Counsel's signature

JAYNE KIM

print name

KIMBERLY ANDERSON

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.

On page 1, item A.(7) regarding payment of disciplinary costs, change the installment payment schedule to "2004, 2006 and 2007" rather than "2004, 2005 and 2006" because the billing statements for 2004 have already been processed.

On page 4, item E.(1) delete the "X" in the box because the recommended actual suspension is not conditional, but rather, a straight 60 days.

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

12/18/03

Protem

[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 Los Angeles, on December 18, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed December 18, 2003**

in a sealed envelope for collection and mailing on that date as follows:

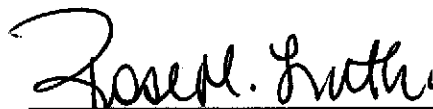
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ERICA TABACHNICK, A/L
900 WILSHIRE BLVD #1000
LOS ANGELES CA 90017**

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

KIMBERLY ANDERSON, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 18, 2003.



Rose M. Luthi
Case Administrator
State Bar Court