


| | | |
|---|---|--|
| <p>Counsel for the State Bar DESIREE T. WASHINGTON, #217368 THE STATE BAR OF CALIFORNIA 180 HOWARD STREET, 7th FL. SAN FRANCISCO, CA 94105 (415) 538-2037</p> | <p>Case number(s) 02-0-10605 kwiktag® 031 975 359 </p> | <p>(for Court's use) PUBLIC MATTER FILED <i>ll</i> NOV 26 2003 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> |
| <p>Counsel for Respondent KATHLEEN J. SMITH P. O. BOX 284 VINEBURG, CA 95487 (707) 935-8471 IN PROPRIA PERSONA</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 STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>In the Matter of KATHLEEN JILL SMITH Bar # 182929 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 JUNE 12, 1996
(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." SEE ATTACHMENT A.
- (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:

SEE ATTACHMENT B.

- 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 A: TO STIPULATION RE
FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: KATHLEEN JILL SMITH

CASE NO.: 02-O-10605

STIPULATED FACTS:

Respondent admits that the following facts are true.

1. On or about March 31, 2000, Barbara Dumont (hereinafter "Dumont") met with respondent to obtain representation with regard to a personal injury claim.
2. As a family law specialist, respondent initially refused to represent Dumont. Soon after, however, respondent caused Dumont to believe that respondent had assumed full representation.
3. On or about May 26, 2000, respondent caused an independent paralegal, Robert H. Jackson, to prepare a complaint (MCV 163308, *Dumont v. McMickle*) to be filed in Sonoma Superior Court (hereinafter "court"). The complaint requested relief in the amount of \$22,500, listed Dumont as filing In Pro Per, and referenced Dumont's address as 158 W. Napa St., Sonoma, CA 95476.
4. At all times, Respondent maintained offices for purposes of practicing law at 158 W. Napa Street, Sonoma, CA 95476 (hereinafter "respondent's office").
5. On or about May 31, 2000, the court mailed to respondent's office a notice advising that the summons filed in Dumont's matter was returned for not matching the complaint and for containing an incomplete proof of service. The notice further advised Dumont to correct and resubmit the proof of service.
6. Respondent failed to serve defendant with the summons after the complaint was filed.
7. On or about September 26, 2000, respondent failed to attend an early mediation status conference and failed to advise Dumont that she would not attend the conference.
8. On or about September 29, 2000, the court mailed to respondent's office notice of entry of an Order to Show Cause re Dismissal and Sanctions (hereinafter "OSC"), and set the OSC hearing for February 23, 2001. The court also ordered that Dumont file a compliance statement no later than 10 days before the date set for the OSC hearing. The court further advised that Dumont could file a request for dismissal on or before two days prior to the OSC date to eliminate the need for an appearance.
9. Respondent failed to advise Dumont that the court issued an OSC re dismissal and sanctions.

10. Respondent failed to attend the OSC hearing, failed to file a compliance statement and failed to request a dismissal.
11. On or about March 5, 2001, Dumont's case was dismissed by order of the court.
12. Respondent failed to file a motion or appeal to reverse the March 2001 dismissal.
13. As a result of respondent's misconduct, Dumont has not received \$22,500 in compensation for injuries sustained with regard to her personal injury claim. Further, her claim is now time barred.
14. Between in or about March 2000 and May 2000, Dumont repeatedly attempted to contact respondent by telephone regarding the status of her claim. Dumont repeatedly left telephone messages with respondent's secretary. Respondent did not return Dumont's phone calls or keep her informed of the status of her claim.
15. Between in or about March 2000 and May 2000, Dumont contacted respondent by telephone on multiple occasions and inquired into the status of her claim. On multiple occasions, respondent represented she was attempting to contact defendant's insurance company (hereinafter "GEICO") to secure a settlement. In fact, GEICO had already closed the matter because the statute of limitations ran and negotiations had ceased.
16. Respondent failed to inform Dumont of the true status of her claim. Dumont learned of the status of her claim on November 30, 2001, when Dumont contacted Sonoma County Superior court.
17. On or about September 16, 2002, State Bar Investigator Podina C. Brown mailed to respondent a letter regarding Dumont's complaint filed with the State Bar. The letter asked for Respondent's written response to the allegations set forth in the aforesaid complaint. Respondent received the letter and failed to respond to it.
18. On or about October 8, 2002, State Bar Investigator Podina C. Brown mailed to respondent a letter regarding respondent's failure to respond to the State Bar's letter of September 16, 2002. Respondent received the letter and failed to respond to it.

STIPULATED CONCLUSIONS OF LAW:

Respondent admits she is culpable of violating the following statutes and/or Rules of Professional Conduct.

1. By failing to serve defendant after the complaint was filed, failing to attend an early mediation status conference, failing to advise Dumont that she would not attend the early mediation status conference, failing to file a compliance statement, failing to attend the OSC hearing, failing to file a request for dismissal, failing to file a motion or appeal to reverse the court's dismissal of Dumont's action, and otherwise failing to provide services of any value beyond filing the complaint, respondent recklessly and repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

2. By failing to advise Dumont that respondent would not correct defective service of defendant, would not file a compliance statement, would not attend an early mediation status conference, would not attend the OSC hearing, would not file a request for dismissal, and would not file a motion or appeal to reverse the court's dismissal, and by otherwise failing to provide services of any value beyond filing the complain in Dumont's personal injury matter, respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in wilful violation of Business and Professions Code, section 6068(m).
3. By repeatedly failing to respond to Dumont's messages left with respondent's secretary regarding the status of her claim, respondent failed to respond promptly to reasonable status inquiries of a client, in wilful violation of Business and Professions Code, section 6068(m).
4. By failing to respond to the State Bar's letters of September 16, 2002 and October 8, 2002, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in wilful violation of Business and Professions Code, section 6068(i).

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

IN THE MATTER OF: KATHLEEN JILL SMITH

CASE NO.: 02-O-10605

OTHER CONDITIONS:

During the first year of probation prescribed in the above-referenced matter, Respondent shall either satisfy the default judgment entered against her with regard to Barbara Dumont's malpractice claim (Sonoma County, MCV17032) or Respondent shall have the default judgment set aside. Respondent shall satisfy any further judgment entered against her with regard to Barbara Dumont's malpractice claim within six (6) months of its finality.

Date 10/27/03

Kathleen J. Smith
Respondent's signature

KATHLEEN J. SMITH
print name

Date 11/3/03

[Signature]
Respondent's Counsel's signature

DESIREE T.
print name

Date 11/3/03

[Signature]
Deputy Trial Counsel's signature

DESIREE T. WASHINGTON
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.

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.)

Nov 25, 2003
Date

Pat McElroy
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 November 26, 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:

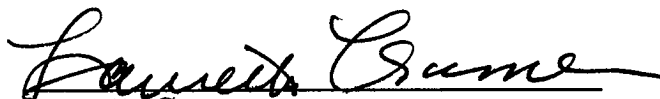
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**KATHLEEN J. SMITH
P O BOX 284
VINEBURG CA 95487**

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

DESIREE WASHINGTON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 26, 2003**.


Laurretta Cramer
Case Administrator
State Bar Court