

Counsel for the State Bar Sherrie B. McLetchie Bar # 85447 180 Howard, 7th Floor San Francisco CA 94105 (415) 538-2297	Case number(s) 02-0-12269 kwiktag® 022 607 476 	(for Court's use) PUBLIC MATTER FILED SEP 05 2003 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent Jerome Fishkin Bar # 47798 369 Pine, Suite 627 San Fr	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 Joseph A. Parks Bar # 140473 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 8, 1992
(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 and 2005
 (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.~~ See "Facts", ¶¶ 2, 4, 5, 7, 8, 14, 15 & 16.
- (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. Respondent was admitted in 1992 and has not been disciplined.
- (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. Respondent, through his counsel, cooperated during the investigation and has entered into this stipulation.
- (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. Respondent sent the complaining witness a letter of apology dated April 15, 2003.
- (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:

Community Service/Pro Bono activity: Respondent participated in youth sports activities and represented tenant-defendants in Sonoma County unlawful detainer actions pro bono.

D. Discipline

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 two 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 five months
- 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

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.

- (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 checked="" type="checkbox"/> Financial Conditions |
- (10) 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 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) & (c), 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.

In the Matter of

Case Number(s):

A Member of the State Bar

Joseph A. Parks

02-0-12269

Financial Conditions

- a. Respondent shall pay restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount(s) of _____, plus 10% interest per annum accruing from _____, and provide proof thereof to the Probation Unit, Office of the Chief Trial Counsel,
- no later than _____
- or
- on the payment schedule set forth on the attachment under "Financial Conditions, Restitution."
- b. 1. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent shall file with each required report a certificate from respondent and/or a certified public accountant or other financial professional approved by the Probation Unit, certifying that:
- a. respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";
- b. respondent has kept and maintained the following:
- i. a written ledger for each client on whose behalf funds are held that sets forth:
1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Probation Unit for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.
- c. Within one (1) year of the effective date of the discipline herein, respondent shall supply to the Probation Unit satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Financial Conditions form approved by SBC Executive Committee 10/16/00)

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOSEPH A. PARKS

CASE NUMBER(S): 02-O-12269

FACTS AND CONCLUSIONS OF LAW.

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

Facts

1. On or about September 14, 1999, respondent was hired by Rebecca Knoblock ("Knoblock") to represent her on a one-third contingency fee basis on a personal injury claim arising out of an auto accident.
2. At all times mentioned herein, respondent maintained National Bank of Redwoods client trust account number 6700231 ("CTA").
3. Prior to negotiating Knoblock's final settlement with Continental Insurance Company ("CNA"), respondent did not communicate the proposed settlement amount to Knoblock. Nor did he obtain Knoblock's consent prior to accepting CNA's final settlement offer.
4. Prior to March 2001, respondent settled Knoblock's personal injury matter. On or about March 9, 2001, respondent received CNA settlement draft number 100406554, in the amount of \$18,900.00 payable to "Rebecca Knoblock and Joseph A. Parks, her attorney."
5. Upon receipt of the settlement draft, respondent did not notify Knoblock of its receipt, but instead, in reliance on a power-of-attorney clause contained in the Contingency Fee Agreement, signed Knoblock's name on the settlement draft. On or about March 15, 2001, respondent deposited the Knoblock settlement check into his CTA.
6. At the time of the receipt of the settlement draft, respondent was aware that there were two outstanding medical liens.
7. On or about March 18, 2001, respondent withdrew from his CTA the amount of \$6,437.00, representing payment of his one-third fee (\$6,300) and advanced costs in the Knoblock matter (\$137). After withdrawal of the \$6,437, and continually thereafter until the Knoblock settlement proceeds were appropriately paid out, the balance of respondent's CTA

should have been at least \$12,463.00, representing Knoblock's share of the settlement (\$8,163) and the amounts of the medical liens (\$2,500 + \$1,800 = \$4,300).

8. On or about June 29, 2001, the balance in respondent's CTA dropped to \$85.23.

9. In September 2001, respondent was contacted by Knoblock requesting a status report on her case. Respondent told Knoblock that her case had not yet been settled and would that they would probably have to go to arbitration.

10. Later in September 2001, respondent advised Knoblock that he had negotiated a settlement in her case. On September 27, 2001, at respondent's request, Knoblock signed a "Release of All Claims."

11. On October 26, 2001, respondent issued CTA check number 2105 in the amount of \$8,163.00 payable to Knoblock representing her share of the settlement proceeds.

12. By an accounting dated October 26, 2001, respondent represented to Knoblock that he had already disbursed \$2,500 to Dr. Oberstein and \$1,800 to Kaiser Permanente, the two lienholders.

13. In fact, as of October 26, 2001, respondent had not disbursed funds to either Dr. Oberstein or Kaiser Permanente.

14. On or about November 30, 2001, respondent paid Dr. Oberstein. Thereafter the balance in respondent's CTA should have been at least \$1,800.00 – the amount of the Kaiser Permanente medical lien.

15. On December 31, 2001, the balance in respondent's CTA dropped to \$364.36.

16. After Knoblock complained to the State Bar in April 2002, but before the State Bar contacted him, respondent satisfied the Kaiser Permanente lien.

Conclusions of Law

1. By accepting CNA's settlement offer without Knoblock's knowledge or consent, respondent violated Business and Professions Code section 6104.

2. By failing to notify Knoblock promptly of the receipt of her settlement funds, respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(1).

3. By misleading Knoblock about the status of her case, respondent committed an act of dishonesty in violation of Business and Professions Code section 6106.

4. By allowing the balance in his CTA drop to \$85.23 in June 2001, respondent misappropriated Knoblock's settlement funds in violation of rule 4-100(A) and Business and Professions Code section 6106.

5. By allowing his CTA to fall to \$364.36 in December 2001, respondent misappropriated Knoblock's funds held in trust to satisfy the Kaiser Permanente medical lien in violation of rule 4-100(A) and Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was July 24, 2003.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 24, 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 AND CLIENT TRUST ACCOUNTING SCHOOL.

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

Date 8/16/2003

Joseph A. Parks
Respondent's signature

Joseph A. Parks
print name

Date 8/11/03

Jerome Fishkin
Respondent's Counsel's signature

Jerome Fishkin
print name

Date 8/20/03

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.

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 Sept 5, 2003

Cat 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 September 5, 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 ST #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 **September 5, 2003**.


George Hue
Case Administrator
State Bar Court