State Bar Court of the State Bar of California

Hearing Department ☒ Los Angeles ☐ San Francisco

ORIGINAL

Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT SHARI SVENINGSON, BAR NO. 195298 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1004	Case number(s) 02-O-13084 kwiktag® 031 974 736	(for Court's use) FILED NOV 26 2003 STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER
Counsel for Respondent Bryan D. Kamenetz 2131 Gower Street Los Angeles, CA 90068 Telephone: (323) 463-5112 IN PROPRIA PERSONA	Submitted to ☐ assigned judge ☒ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of BRYAN D. KAMENETZ Bar # 208678 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted November 21, 2000 (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):

☒ 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 (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 wrong-doing or demonstrates a pattern of misconduct.

(8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [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 ninety (90) 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: _____.

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of one (1) year, 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: Bryan D. Kamenetz

CASE NUMBER(S): 02-O-13084

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:

1. On or about June 10, 2000, Steven Johnson ("Johnson") employed Kenneth Spring, Esq. ("Spring") to represent him in a personal injury matter.

2. On or about June 5, 2001, Spring filed a Complaint in the Los Angeles Superior Court on behalf of Johnson in the personal injury matter in Johnson v. Solomon, case no. SC066529.

3. On or about February 8, 2002, Spring filed a Notice of Association of Counsel ("Notice") in the Los Angeles Superior Court which associated the Law Offices of Bryan Kamenetz, Bryan Kamenetz ("Respondent Kamenetz") as co-counsel in Johnson v. Solomon, case no. SC066529. The Notice stated that all further correspondence and pleadings should be directed to Respondent Kamenetz.

4. On or about February 8, 2002, Respondent Kamenetz mailed, or caused to be mailed, a letter to Johnson. In the letter, Johnson was advised that the Law Offices of Unger had changed its name to the Law Offices of Kamenetz. The letter further stated that Unger would still be working directly with Johnson on the personal injury matter.

5. On or about April 17, 2002, the status of Unger's membership with the State Bar of California became that of "Resigned".

6. In or about the month of May 2002, Unger regularly communicated with Johnson regarding the status of the personal injury matter. In Unger's communications to Johnson, Unger discussed negotiation tactics that he, Unger, was performing in an effort to achieve a favorable

settlement in the personal injury matter. The actions Unger undertook on behalf of Johnson were the practice of law.

7. On or about May 29, 2002, Johnson mailed a letter to Spring, which Spring received. In the letter, Johnson terminated Spring's employment in the personal injury matter due in part to the fact that he had recently learned Unger was not entitled to practice law.

8. Spring and Respondent Kamenetz hired Unger to represent Johnson in the personal injury matter. Unger had been an attorney entitled to practice law in the State of California until he became involuntarily inactive on or about December 7, 2001 and until he subsequently resigned from the State Bar on or about April 17, 2002. Unger was not entitled to practice law when he was working for Spring and Respondent Kamenetz in May 2002.

9. Spring and Respondent Kamenetz failed to provide written notice of Unger's employment to the State Bar either prior to or at the time of employing Unger. Spring and Respondent Kamenetz also failed to notify Johnson, whose specific matter Unger perform legal work, of the current State Bar status of Unger either prior to or at the time of employing him.

LEGAL CONCLUSIONS

By not taking any action to prevent Unger from practicing law in the personal injury matter during or subsequent to in or about May 2002, when the status of Unger's membership with the State Bar of California had become that of "Resigned" on April 17, 2002, Respondent Kamenetz aided a person in the unauthorized practice of law in wilful violation of Rules of Professional Conduct, rule 1-300(A).

By allowing Unger to negotiate or transact the settlement with the opposing party in the personal injury matter, Respondent Kamenetz wilfully violated Rules of Professional Conduct, rule 1-311(B)(4).

By failing to provide written notice of Unger's employment to the State Bar either prior to or at the time of employing Unger, or to the affected client, Respondent Kamenetz wilfully violated rule 1-311(D).

PENDING PROCEEDINGS.
The disclosure date referred to, on page one, paragraph A.(6), was by letter dated October 30, 2003.

COSTS OF DISCIPLINARY PROCEEDINGS.
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of **October 30, 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.

AUTHORITIES SUPPORTING DISCIPLINE.

In the Matter of Jones, (Review Dept. 1993), 2 Cal. State Bar Ct. Rptr., 411, WL 156262.
In this case, respondent Jones was found culpable of violating wilfully former rule 3-101(A) (aiding the unauthorized practice of law) by placing a non-lawyer in a position of being able to represent clients without adequate supervision; former rule 3-102(A) by dividing fees with a non-lawyer and former rule 3-103 by forming a partnership with a non-lawyer. The court also found a violation of former rule 6-101(A)(2)(intentional or reckless failure to act competently and breached his fiduciary duties amounting to an act of moral turpitude under Business and Professions Code section 6106.

In aggravation, the court found multiple acts of wrongdoing over a three year period (Std. 1.2(b)(2); considerable harm to medical lien holders caused by respondent's gross neglect, and the failure to observe and maintain minimal standards of professional responsibility for the operation of a law practice. (Std. 1.2(b)(iv).) The court did not consider aggravating the fact that each count showed violations of the same Rules of Professional Conduct.

The Review Department recommended a three year stayed suspension, three years probation with the first two years of probation being actually suspended. In addition, the court recommended 1.4(c)(ii) requirement.

<u>In the Matter of Bragg</u> (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615
In this case, Respondent was found culpable of violating several provisions of the Rules of Professional Conduct and the Business and Professions Code including a violation of rule 1-300(A). This finding also supported a finding of a 6106 violation for abdicating his responsibilities as an attorney and for acting purposefully in allowing a non-lawyer to essentially practice law.

Respondent admitted to violating former rule 6-101(A)(2) (failing to perform with competence); former rule 6-101(2) (requiring reasonable diligence on the part of the attorney to accomplish the purpose for which the attorney was hired); Business and Professions Code section 6068(a)(requiring an attorney to observe and support the state and federal laws and constitutions); and Business and Professions Code section 6103 (prohibiting disobedience to an order of the court, that an attorney, in good faith, ought to obey.

Bragg was given a one year actual suspension recommendation by the Review Department.

In this matter, substantially less discipline is warranted because Respondent Kamenetz' misconduct involved only one client over approximately a four month period. Respondent Kamenetz' misconduct did not involve any act of moral turpitude, failure to perform competently or any failure to obey a court order.

11/10/03		BRYAN D. KAMENETZ
Date	Respondent's signature	print name
Date	Respondent's Counsel's signature	print name
11/12/03		SHARI SVENINGSON
Date	Deputy Trial Counsel's signature	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.)

11/26/03
Date

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 November 26, 2003, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION, filed November 26, 2003

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

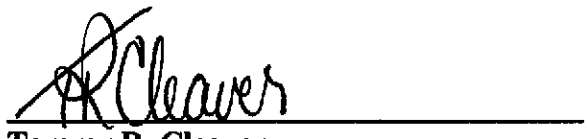
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRYAN D. KAMENETZ
2131 GOWER ST.
LOS ANGELES, CA 90068

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

SHARI SVENINGSON, Enforcement, Los Angeles

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



Tammy R. Cleaver
Case Administrator
State Bar Court