


Counsel for the State Bar OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT DESIREE T. WASHINGTON, No. 217368 180 Howard Street San Francisco, CA 94105-1639 Phone: (415) 538-2000	Case number(s) 02-0-14481 kwiktag® 035 115 250 	(for Court's use) PUBLIC MATTER FILED _{LOS} JAN 13 2004 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent ALBERT M. KUN 318 Bush Street, #200 San Francisco, CA 94104 Phone: (415) 362-4000	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 ALBERT M. KUN Bar # 55820 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 28, 1973
(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 9 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:
(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 01-0-04505; 01-0-04646

(b) ☒ date prior discipline effective October 22, 2002

(c) ☐ Rules of Professional Conduct/ State Bar Act violations: 6068(m); 3-700(D)(1);
6068(e); 3-700(A)(2); 6090.5(a)(2)

(d) ☒ degree of prior discipline Private reproof, public disclosure

(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:

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of 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 2 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 30 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

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 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.~~ *DM*

- ☐ 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: ALBERT M. KUN, SBN 55820
CASE NUMBER: 02-O-14481

FACTS:

1. On or about April 13, 2001, Amal Ghishan, ("Ghishan"), employed respondent to file and pursue an appeal from a judgement in her marital dissolution matter. Ghishan paid respondent the sum of \$2,000, and respondent agreed that he would handle the appeal for \$2,000. Respondent did not execute a written engagement letter or agreement.
2. On or about May 10, 2001, respondent filed a notice of appeal, *Amal Ghissan v. Zaki Ghissan*, A094974 (San Francisco County No. FL031969), in the court of Appeal, First Appellate District ("the court"), on Ghishan's behalf.
3. On or about May 16, 2001, the court notified respondent by mail to file a docketing statement in the court within ten days after the filing of the notice of appeal. The court's notice was properly sent by first class mail to respondent at his address as listed in the caption of the Notice of Appeal filed with the court: 381 Bush Street, Ste. 200, San Francisco, CA 94104. The letter was not returned by postal authority as undeliverable or for any other reason.
4. On or about June 4, 2001, the court advised respondent by mail to file a docketing statement because one should have been filed within ten days of filing the notice of appeal. The court further advised respondent to file the required docketing statement within ten days of the date of the court's June 4, 2001 notice, to avoid dismissal. The court's notice was properly sent by first class mail to respondent at his address as listed in the caption of the Notice of Appeal filed with the court: 381 Bush Street, Ste. 200, San Francisco, CA 94104. The letter was not returned by postal authority as undeliverable or for any other reason. Respondent failed to file the docketing statement.
5. On or about June 27, 2001, the court dismissed Ghishan's appeal for failure to file a docketing statement, and sent respondent notice of the dismissal. The court's notice was properly sent by first class mail to respondent at his address as listed in the caption of the Notice of Appeal filed with the court: 381 Bush Street, Ste. 200, San Francisco, CA 94104. The letter was not returned by postal authority as undeliverable or for any other reason.
6. On or about July 27, 2001, respondent filed with the court a motion to reinstate the appeal. Respondent supported the motion with a declaration misrepresenting that Ghishan was in Jordan on July 27, 2001, and that her travel to Jordan formed the basis for why the docketing statement was not timely filed. In fact, Ghishan was not traveling on July 27, 2001 and had a telephone conversation with respondent that same day.
7. On or about July 27, 2001, the court denied the motion to reinstate the appeal, finding no colorable showing justifying reinstatement. The court's notice was properly sent by first class mail to respondent at his address as listed in the caption of the Notice of Appeal filed with the

Court: 381 Bush Street, Ste. 200, San Francisco, CA 94104. The letter was not returned by postal authority as undeliverable or for any other reason.

8. Between in or about June 2001 and August 2001, Ghishan spoke with respondent by telephone regarding the status of the appeal on multiple occasions. In the telephone conversations with Ghishan, respondent regularly misrepresented that the appeal was still pending. In one such telephone conversation, Ghishan inquired into whether travel to Jordan would impact her appeal. In that conversation, respondent advised Ghishan that travel to Jordan would not impact the appeal and further misrepresented that the appeal was still pending.
9. Between in or about August 2001 and July 2002, Ghishan traveled to Jordan for three months and spoke with respondent by telephone regarding the status of the appeal. In one telephone conversation with respondent while Ghishan was in Jordan, respondent misrepresented that the appeal was still pending.
10. On or about July 18, 2002, Ghishan spoke with respondent by telephone regarding the status of the appeal. In that telephone conversation, respondent misrepresented that the appeal was still pending and advised that it would be resolved in approximately three weeks from July 18, 2002.
11. Thereafter, Ghishan visited the San Francisco Superior Court and learned the appeal was dismissed in June. Ghishan then visited the court of Appeal and learned the court twice gave respondent notice to file a docketing statement, and that respondent failed to file the required docketing statement.
12. When Ghishan spoke with respondent on the telephone regarding the status of her appeal between in or about June 2001 and July 2002, respondent regularly advised Ghishan that the appeal takes time and advised her not to worry.
13. In or about January 2003, Ghishan informed respondent by mail that she had learned of the court's dismissal of the appeal, and demanded a refund of \$2,000 in unearned advanced fees. The letter was properly sent by certified mail to respondent at his address as listed in the caption of the Notice of Appeal respondent filed with the court: 381 Bush Street, Ste. 200, San Francisco, CA 94104. The letter was not returned by postal authority as undeliverable or for any other reason.
14. Respondent failed to promptly refund the unearned portion of the advanced fees once his representation was terminated by the Court's July 2001 denial. Instead, respondent refunded unearned fees totaling \$1,753 in or about January 2003, approximately ~~two~~ ^{one} and a half years after termination. *one on DTW*
15. Respondent provided no services of value to Ghishan, and thus earned none of the advanced fees paid by Ghishan, in that Ghishan's appeal never reached a hearing and determination on the merits.

CONCLUSIONS OF LAW:

16. By not filing Ghishan's docketing statement, and by not filing a motion containing facts sufficient to support a reinstatement of Ghishan's appeal, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

17. By failing to inform Ghishan that her appeal had been dismissed, by failing to inform Ghishan that a motion to reinstate had been filed and denied, and by otherwise misrepresenting to Ghishan that the appeal was pending, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).
18. By misleading Ghishan into believing that her appeal was pending when, in fact, it had been dismissed and the motion to reinstate denied, when respondent knew or should have known the appeal was dismissed and the motion to reinstate denied, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code, section 6106.
19. By providing no services of value, and by not promptly refunding all unearned fees advanced by Ghishan once his employment was terminated, respondent failed to refund promptly any part of a fee paid in advance that had not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

PENDING PROCEEDINGS:

The disclosure date referred to on page on, paragraph A (6), was November 25, 2003.

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

12-10-03
Date

Albert M. Kun
Respondent's signature

ALBERT M. KUN
print name

12/10/03
Date

Respondent's Counsel's signature

print name

12/10/03
Date

Desiree T. Washington
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.)

Jan. 13, 2004
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 January 13, 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:

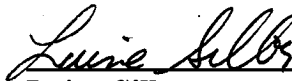
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ALBERT MIKLOS KUN
381 BUSH ST #200
SAN FRANCISCO CA 94104**

- [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 **January 13, 2004.**



Laine Silber
Case Administrator
State Bar Court