


<p><b>Counsel for the State Bar</b>                  THE STATE BAR OF CALIFORNIA                  OFFICE OF THE CHIEF TRIAL COUNSEL                  WILLIAM F. STRALKA, No. 056147                  1149 SOUTH HILL STREET                  LOS ANGELES, CA 90015-2299                  (213) 765-1091</p>	<p><b>Case number(s)</b>                  02-0-14784</p> <p>kwiktag® 022 606 942</p> 	<p>(for Court's use)</p> <p><b>PUBLIC MATTER FILED</b></p> <p>JAN 05 2004</p> <p>STATE BAR COURT                  CLERKS OFFICE                  LOS ANGELES</p>
<p><b>Counsel for Respondent</b>                  JOANNE EARLS ROBBINS, No. 82352                  KARPMAN &amp; ASSOCIATES                  9200 SUNSET BLVD., PH #7                  LOS ANGELES, CA 90069</p>	<p>Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p><b>In the Matter of</b></p> <p>DAVID L. ELLIS                  Bar # 42218                  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 19, 1968 (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 13 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 (public reproval)
  - case ineligible for costs (private reproval)
  - costs to be paid in equal amounts for the following membership years:  
2005, 2006, and 2007.  
 (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."

(8) The parties understand that

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 recognition 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. ~~Respondent has no prior record of discipline over many years of practice. Respondent's 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: Consider the 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:

See attached statement.

D. Discipline:

(1)  Private reproof (check applicable conditions, if any, below)

(a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).

(b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

(2)  Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproval:

(1)  Respondent shall comply with the conditions attached to the reproof for a period of One (1) year

(2)  During the condition period attached to the reproof, 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 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the 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 conditions attached to the reproof.
- (7)  Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered.
- (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 required to be filed with the Probation Unit.
- (9)  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 of the effective date of the reproof.
- No MPRE ordered.
- (10)  The following conditions are attached hereto and incorporated:
- |   |  |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions             |
- (11)  Other conditions negotiated by the parties:

In the Matter of  
DAVID L. ELLIS  
A Member of the State Bar

Case Number(s):  
02-0-14784

**Law Office Management Conditions**

- a.  Within \_\_\_ days/ \_\_\_ months/ \_\_\_ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.
- b.  Within \_\_\_ days/ \_\_\_ months 1 years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 9 hours of MCLE approved courses in law office management, attorney client relations and/ or general legal ethics. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for \_\_\_ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

In the Matter of

DAVID L. ELLIS

Case Number(s):

02-0-14784

A Member of the State Bar

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 \_\_\_\_\_
- 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: DAVID E. ELLIS

CASE NUMBER(S): 02-0-14784

**PENDING PROCEEDINGS:**

The disclosure date referred to, on page one, paragraph A.(6), was December 17, 2003.

**PARTIES ARE BOUND BY THE STIPULATED FACTS:**

The parties intend to be and are hereby bound by the stipulated facts contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law and/or stipulated disposition set forth herein are rejected or changed in any manner whatsoever by the Hearing Department or the Review Department of the State Bar Court, or by the California Supreme Court.

**STIPULATION AS TO 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, or has otherwise committed acts of misconduct warranting discipline:



**FACTS:**

**CASE NO. 02-O-14784**

1. On or about October 1, 2002, the State Bar opened an investigation, case no. 02-O-14784 pursuant to a report from Wells Fargo Bank pursuant to Business and Professions Code, section 6091.1(a) of checks drawn on Respondent's client trust account ("CTA") #061-7093422 against insufficient funds as follows:

**CTA # 061-3093422 (Adoption Law Center, Inc.)**

Check No.: 1689  
Date: 5-22-02  
Amount: \$250.00  
Paid on: 5-31-02

**New Account Balance:**  
**-\$239.59**

Check No.: 1693  
Date: 6-18-02  
Amount: \$164.82  
Status: Paid on 6-18-02

**Account Balance:**  
**-\$422.411**

Check No.: 1694  
Date: 6-21-02  
Amount: \$15,000  
Status: Paid on 6-24-02

**Account Balance:**  
**-\$14,900.41**

2. On May 22, 2002, Respondent wrote check no. 1689 on the CTA, for \$250.00. Due to an earlier mathematical error, payment of this check resulted in the CTA being overdrawn by \$239.59.

3. On May 29, 2002, Respondent wrote check no. 1691 for \$384.00 from his Wells Fargo Bank CTA #0617-093422 payable to the DMV for fees due on his personal vehicle.

4. On June 21, 2002, Respondent mistakenly wrote a check for \$15,000.00 from his Wells Fargo Bank CTA #0617-093422 payable to his account at Charles Schwab. On June 21, 2002, Respondent deposited from his own funds \$15,000.00 into Wells Fargo Bank CTA #0617-093422 to cover for the check written to his account at Charles Schwab. This transaction caused the \$15,000.00 check to be returned unpaid because of insufficient funds, which was reported to the State Bar pursuant to Business and Professions Code, section 6091.1(a).

#### **CONCLUSIONS OF LAW:**

By failing to properly maintain his CTA and by using his CTA to deposit funds and draw personal checks, Respondent violated Rules of Professional Conduct, rule 4-100(A).

#### **CASE SUPPORT:**

In Dudugjian v. State Bar (1991) 52 Cal.3d 1092, the client disputed the amount of legal fees due two attorneys from a settlement check. The attorneys applied the funds to their outstanding bill without authorization to do so. The Court imposed a **public reproof**.

In Fitzsimmons v. State Bar (1983) 34 Cal.3d 327, an attorney handling estate assets failed to maintain proper records, failed to obtain a receipt for disbursement of funds, failed to give a receipt for attorney fees, and failed to obtain the court approval required for disbursement. The Court found gross negligence and imposed a **public reproof**.

In Vaughn v. State Bar (1972) 6 Cal.3d 847, the balance in the trust account repeatedly fell below the balance required to be maintained. The Court found gross negligence and imposed a **public reproof**.

In Crooks v. State Bar (1970) 3 Cal.3d 346, the attorney knowingly disregarded his fiduciary duty as a holder of escrow funds, and withdrew \$790 that he contended was due him for attorneys fees. He received a **public reproof**.

**COSTS OF DISCIPLINARY PROCEEDINGS:**

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of November 25, 2003. The estimated prosecution costs in this matter are approximately \$1,983.00. 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.

V:\CTC\Staff\Trial Unit 2\William Stralka\Ellis.stipatt.wpd

(David L. Ellis, Mitigation, Attachment Page 5 - page 12)

MITIGATION:

Respondent underwent brain surgery on January 12, 2001. Surgeons removed a tumor and a significant portion of brain tissue. He was totally disabled for a period of time, but has now made a good recovery. However, he has lost the hearing in his left ear, some of his balance and some of his short-term memory.

During Respondent's long recovery, other attorneys took care of all legal matters. His office manager maintained the office records and his bank records. He gradually came back to full-time practice. He left on a much-needed three-week vacation and rest on July 29, 2002. His longtime office manager abruptly left his employment on the same day. When Respondent returned, and learned of the bank problems, he promptly took action to correct the mistakes and institute safeguards to avoid further errors, including retaining a bookkeeper and having his accountant supervise his handling of the trust account.

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DECEMBER 19, 2003  
Date

Respondent's signature

DAVID L. ELLIS  
print name

December 17, 2003  
Date

Respondent's Counsel's signature

JOANNE EARLS ROBBINS  
print name

12-29-03  
Date

Deputy Trial Counsel's signature

WILLIAM F. STRALKA  
print name

### ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

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.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

1-2-04  
Date

[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 January 5, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed January 5, 2004**

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

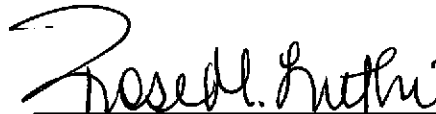
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOANNE ROBBINS, A/L  
KARPMAN & ASSOCIATES  
9200 SUNSET BLVD PH #7  
LOS ANGELES CA 90069**

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

**WILLIAM STRALKA, ESQ., Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 5, 2004.**



\_\_\_\_\_  
**Rose M. Luthi**  
Case Administrator  
State Bar Court