


<p>Counsel for the State Bar MIKE A. NISPEROS, JR. Chief Trial Counsel RICHARD A. PLATEL, Asst. Chief Trial Counsel TERRIE GOLDADE, Deputy Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1494</p>	<p>Case number(s) 02-0-15160</p> <p>kwiktag® 031 974 641 </p>	<p>(for Court's use)</p> <p>FILED MAY - 4 2004 <i>YK</i> STATE BAR COURT CLERK'S OFFICE</p>
<p>Counsel for Respondent Paul Francis Smith 6847 Adobe Rd. Twentynine Palms, CA 92277 (760) 361-8566</p>	<p>PUBLIC MATTER</p>	
<p>In the Matter of PAUL FRANCIS SMITH Bar # 42384 A Member of the State Bar of California (Respondent)</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" 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>	

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 11 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:
(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 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: *See Attachment.*

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 2 years.
- (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 reprobation.
- (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 reprobation.
- ☒ No MPRE ordered.
- (10) ☒ 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 |
- (11) ☐ Other conditions negotiated by the parties:

In the Matter of

Paul Francis Smith

Case Number(s):

02-0-15160

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 _____
- 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: Paul Francis Smith

CASE NUMBER: 02-O-15160

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 AND CONCLUSIONS OF LAW.

1. In or about March 2002, Priscilla Boyd ("Ms. Boyd") telephoned Respondent and informed him that Anne Boyd ("Anne"), his co-trustee for the Barbara Lynch Family Trust ("Trust"), was diagnosed with terminal cancer and told Respondent to distribute the remaining funds of the Trust's residue account maintained at Bank of America, account number 02135-31155 ("residue account"), to the appropriate beneficiaries.

2. The residue account was in the name of Anne E. Boyd and Respondent and was not labeled as "trust account," "client's funds account," or with any other words of similar import.

3. In or about March 2002 and after Ms. Boyd's telephone conversation with Respondent, Ms. Boyd met with Respondent and gave him Bank of America statements regarding the Trust residue account, a copy of Barbara Lynch's will, and the names and addresses of the living beneficiaries. Ms. Boyd also provided information to Respondent about the deceased beneficiaries' children.

4. During their meeting, Respondent and Ms. Boyd agreed that the 8 units' beneficiaries would divide \$24,000 from the Trust's residue account so that each unit would receive \$3,000, and that Respondent's fee would be \$1,179.06, which was the remaining amount from the Trust's residue account. Respondent agreed to order printed checks for the Trust's residue account and then send each beneficiary a proportional share of the residue account.

5. Approximately two weeks after Ms. Boyd met with Respondent, she telephoned Respondent and asked if he received the checks for the Trust's residue account. Respondent informed Ms. Boyd that the bank had made an error in the address, mailed the checks to the wrong address, and that he needed to re-order the checks.

6. In or about April 2002, Ms. Boyd informed Respondent that Anne had signed a power of attorney authorizing Ms. Boyd to act on behalf of Anne.

7. In or about April 2002, Ms. Boyd telephoned Respondent again to inquire about the checks for the Trust's residue account. Respondent told Ms. Boyd that he still had not received the checks. Ms. Boyd told Respondent she immediately needed her share (\$3,000) and Anne's share (\$3,000) for Anne's potential funeral expenses. Respondent withdrew money from

an account other than the residue account to pay the \$6,000 requested by Ms. Boyd.

8. On or about April 19, 2002 Ms. Boyd telephoned Respondent and informed him of Anne's death.

9. On or about May 30, 2002, Respondent wrote a check to himself in the amount of \$6,000 from the residue account, but did not distribute any of the funds to the remaining beneficiaries.

10. During the period from in or about May 2002 to October 2002, Ms. Boyd attempted to contact Respondent at least once a week at his home and office by telephone to inquire into the status of the residue account. Each time Ms. Boyd telephoned Respondent, she left a message asking Respondent to contact her. Respondent did not return her calls.

11. On or about September 19, 2002, Respondent wrote himself a check for \$6,187.17 from the Trust's residue account, but did not distribute the funds to any of the remaining beneficiaries at that time.

12. Between on or about September 19, 2002 and January 30, 2003, the balance in the Trust's residue account was always below the \$18,000 required to pay the 6 other units of beneficiaries. On or about September 20, 2002, the balance was \$13,003.89.

Legal Conclusions:

By not depositing and maintaining the Trust's residue account in a trust account, Respondent failed to deposit and maintain funds received for the benefit of a client in an appropriately labeled bank account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

By not paying the remaining beneficiaries from the Barbara Lynch Trust residuary account as requested by Ms. Boyd, Respondent failed to pay funds as requested in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

By not timely disbursing the trust assets to the beneficiaries and by not returning Ms. Boyd's telephone calls between approximately May and October of 2002, Respondent intentionally, recklessly, or repeatedly failed to perform services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was April 14, 2004.

OTHER FACTORS FOR CONSIDERATION.

Respondent was admitted to the State Bar of California June 19, 1968 and has no prior record of discipline.

Between in or about 1982 through 1997, Respondent served as a Judge Pro Tempore with the Pasadena Municipal Court on approximately one to two matters each month.

During the time period at issue, Respondent was in bad health. However, it was not until in or about June 2002 that Respondent's fevers and infections were finally diagnosed as viriciditis. Respondent was hospitalized. After he was released, he was placed on medication to which he had an adverse reaction which included blinding Respondent for five days. As a result of Respondent's health conditions, Respondent stopped accepting new clients, began closing files, and transferring clients out of his practice between summer of 2002 until November 2003. In November 2003, Respondent suffered a heart attack. While recovering, Respondent attempted to clear his pending matters, including making the distributions requested by Ms. Boyd. It was at that time Respondent first realized that he had mistakenly reimbursed himself for the same advance twice. He redeposited \$6,000 back into the account in or about February 2004. Respondent provided the checks to the remaining beneficiaries on or about March 1, 2004.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

COMPLIANCE WITH THE LAWYER ASSISTANCE PROGRAM (LAP):

Compliance with LAP Evaluation:

Within thirty (30) days of the effective date of this order, if he has not done so already, Respondent shall:

- report to the Lawyer Assistance Program of the State Bar of California (LAP) for an evaluation regarding substance abuse and mental health issues;
- sign a written agreement with LAP to be evaluated; and,
- sign a waiver directing and authorizing LAP to timely notify the Office of Probation of his compliance and noncompliance with the terms and conditions of his LAP evaluation agreement, according to the protocol for such reporting developed by the LAP and the State Bar Court.

Throughout the period of his evaluation with the LAP, Respondent shall comply with the terms and conditions of LAP for his evaluation.

Reporting LAP Evaluation compliance to the Office of Probation:

Respondent shall provide satisfactory evidence to the Office of Probation of compliance with all of the above-stated LAP Evaluation conditions, according to the protocol for such reporting developed by the LAP and the State Bar Court

Compliance with LAP Participation Agreement:

At the conclusion of his evaluation by LAP, Respondent shall execute the LAP participation agreement presented to him and he shall sign a waiver directing and authorizing LAP to timely notify the Office of Probation of his compliance and noncompliance with the terms and conditions of his LAP participation agreement, according to the protocol for such reporting developed by the LAP and the State Bar Court.

Within ten (10) days of signing his LAP participation agreement, Respondent shall provide satisfactory evidence of such compliance to the Probation Unit.

Respondent shall remain in compliance with all conditions of his LAP participation agreement, whether as initially recommended or as LAP may change or modify those conditions thereafter.

Reporting LAP Participation Agreement compliance to the Office of Probation:

Respondent shall provide satisfactory evidence to the Office of Probation of compliance with the conditions of his LAP participation agreement, according to the protocol for such reporting developed by the LAP and the State Bar Court

Date April 21, 2004

Respondent's signature

print name

Date

Respondent's Counsel's signature

print name

Date April 29, 2004

Deputy Trial Counsel's signature

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 reproof, 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 reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

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 May 4, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING PUBLIC REPROVAL, filed May 4, 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:

**PAUL F. SMITH
6847 ADOBE RD.
TWENTYNINE PALMS, CA 92277**

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

TERRIE GOLDADE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 4, 2004.



Tammy R. Cleaver
Case Administrator
State Bar Court