

<p>Counsel for the State Bar The State Bar of California Office of the Chief Trial Counsel - Enforcement Monique T. Miller, #212469 1149 South Hill Street Los Angeles, CA 90015-2299 Tel.: (213) 765-1486</p>	<p>Case number(s) 02-0-16009</p>	<p>(for Court's use) PUBLIC MATTER</p>
<p>Counsel for Respondent Michael E. Wine 3218 East Holt Ave., Ste #100 West Covina, CA 91791 Tel.: (626) 858-0602</p>	<p>kwiktag® 031 975 363 </p>	<p>FILED NOV - 6 2003 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In the Matter of PATRICIA OSHITA Bar # 120148 A Member of the State Bar of California (Respondent)</p>	<p>Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 10, 1985
 (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
 - 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 [i.e. Definition, see Standards for Attorney Actions 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 mitigation 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 extent 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. In March 2003, Respondent attended and successfully completed the State Bar's Client Trust Accounting School
- (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: No client was harmed by Respondent's misconduct. Due to the press of personal and professional business, Respondent did not devote adequate attention to the proper maintenance of her trust account.

No client funds were involved.

D. Discipline

1. Stayed Suspension.

- A. Respondent shall be suspended from the practice of law for a period of One (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 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 imposed, 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: PATRICIA OSHITA

CASE NUMBER: 02-O-16009

FACTS AND CONCLUSIONS OF LAW.

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

At all times relevant herein, Respondent maintained a client trust account at Wells Fargo Bank, Account number 0619084544 ("CTA").

CASE NO. 02-O-16009

Facts

Misuse of Client Trust Account

1. In or about April 2002, Respondent issued at least thirteen CTA checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
3391	4/26/02	\$395.00	United States Treasury
3395	4/29/02	\$3.13	Ralph's

2. In or about May 2002, Respondent issued at least thirty-two CTA checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
3413	5/11/02	\$182.14	Albertson's
3431	5/28/02	\$16.35	U.S. Post Office

3. In or about June 2002, Respondent issued at least thirty CTA checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
3444	6/7/02	\$200.00	Pacific Bell
3458	6/25/02	\$32.28	Albertson's

4. In or about July 2002, Respondent issued at least twenty-three CTA checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
2742	7/8/02	\$302.52	Barrister Executive Suites
3440	7/4/02	\$500.00	Aiodery Just for Kids

5. CTA check #3440 was paid against insufficient funds on or about August 12, 2002.

6. In or about August 2002, Respondent issued at least thirty-eight CTA checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
3561	8/13/02	\$46.00	Clerk of the Court
3563	8/13/02	\$6.27	Staples
3564	8/13/02	\$13.00	Office Depot

7. CTA checks #3561 and #3564 were paid against insufficient funds on or about August 14, 2002.

8. CTA check #3563 was paid against insufficient funds on or about August 15, 2002.

9. From on or about August 12 through on or about August 15, 2002, Respondent knew or should have known that her CTA contained insufficient funds to cover CTA checks #3440, 3561, 3564 and 3563.

10. In or about September 2002, Respondent issued at least twenty CTA checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
3601	9/4/02	\$36.23	Albertson's
3603	9/5/02	\$317.36	Barrister Executive Suites

11. CTA check #3601 was paid against insufficient funds on or about September 6, 2002.

12. On or about September 6, 2002, Respondent knew or should have known that her CTA contained insufficient funds to cover CTA check #3601.

13. In or about October 2002, Respondent issued at least five CTA checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
3634	10/10/02	\$304.00	Barrister Executive Suites
3640	10/10/02	\$48.20	Albertson's

14. In or about November 2002, Respondent issued at least thirty-five CTA Checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
3689	11/20/02	\$380.00	E Z Storage
3693	11/26/02	\$43.26	Babies R Us
3694	11/28/02	\$369.00	Barrister Executive Suites
3696	11/28/02	\$5.98	Robertson Center Pharmacy

15. CTA checks #3689, 3693 and 3694 were paid against insufficient funds on or about December 2, 2002.

16. CTA check #3696 was returned to Respondent because of non-sufficient funds on or about December 4, 2002.

17. From on or about December 2 through on or about December 4, 2002, Respondent knew or should have known that her CTA contained insufficient funds to cover CTA checks #3689, 3693, 3694, and 3696.

18. In or about December 2002, Respondent issued at least twenty-one CTA checks to pay for her personal debts and/or expenses, including but not limited to:

<u>Check #</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Payee</u>
3701	12/9/02	\$30.95	Albertson's
3706	12/19/02	\$11.37	Staples

Legal Conclusions

19. By issuing checks from her client trust account to pay for her personal expenses, Respondent improperly treated her client trust account as a personal or general office account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

20. By issuing client trust account checks when there are insufficient funds in the client trust account, Respondent improperly treated her client trust account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was August 22, 2003.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards of Attorney Sanctions for Professional Misconduct, Title IV, of the Rules of Procedure of the State Bar of California (hereinafter "Standard(s)").

Standard 2.2(b): commingling of entrusted funds with personal property, not resulting in wilful misappropriation of entrusted funds, shall result in at least a three month actual suspension.

Case Law

In The Matter of Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47 - Trust accounts, open or closed, are never to be used for personal purposes. Using checks from that account to pay personal expenses constituted a violation of the rule prohibiting use of a client trust account for personal purposes, even though there was no evidence that there were any client funds in the account.

In The Matter of Respondent E (1991) 1 Cal. State Bar Ct. Rptr. 716 - The attorney received a private reproof, where there was negligence in handling one check. A check which should have been placed in his trust account was erroneously placed in his general account. The funds

remained in his general account throughout a dispute with the client, until it was later returned to the client. The attorney had forty years of blemish-free career. Also, there was no intention whatsoever to depart from the accepted Rules of Professional Conduct, nor any motive for personal gain.

Application

Although Standard 2.2(b) sets forth a minimum discipline for trust account violations, numerous Supreme Court and Review Department opinions establish that the Standards are guidelines only, and that the correct discipline in each case must be determined on its individual merits.

In the instant matter, Respondent's trust account violations did not involve client funds. However, unlike the situation in *In The Matter of Respondent E*, Respondent mishandled not one but many client trust account checks. Thus, notwithstanding due consideration given to Respondent's eighteen years of practice with no prior record of discipline, Respondent should receive more discipline than Respondent E

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 9, 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.

Date 9/17/03

Pat O'Hita
Respondent's signature

PATRICIA O. HITA
print name

Date 9/30/03

[Signature]
Respondent's Counsel's signature

MICHAEL E. WINE
print name

Date 10/1/03

Monique T. Miller
Deputy Trial Counsel's signature

MONIQUE T. MILLER
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 IS RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

Date 11/4/03

[Signature]
Judge of the State Bar Court
RICHARD A. HONN

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 6, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed November 6, 2003**

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:

**MICHAEL E WINE ESQ
3218 E HOLT AVE #100
WEST COVINA, CA 91791**

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

Monique Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **November 6, 2003**.



Milagro del R. Salmeron
Case Administrator
State Bar Court