

<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) 03-0-00885</p> <p>kwiktag® 022 606 962 </p>	<p>(for Court's use)</p> <p>PUBLIC MATTER FILED</p> <p>JAN 22 2004 STATE BAR COURT CLERKS OFFICE LOS ANGELES</p>
<p>Counsel for Respondent David Cameron Carr 5060 Shoreham Place, Ste 200 San Diego, CA 92122 Tel.: (858) 458-5845</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>	
<p>In the Matter of ALAN LOUIS GERACI</p> <p>Bar # 108324</p> <p>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 3, 1983
 (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 12 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 reparation 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.
SEE PAGES 9 AND 10 OF ATTACHMENT.

- (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) 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 Reproof:

- (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 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:

ALAN LOUIS GERACI

03-0-00885

A Member of the State Bar Bar #108324

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: ALAN LOUIS GERACI
CASE NUMBER: 03-O-00885

FACTS AND CONCLUSIONS OF LAW.

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

CASE NO. 03-O-00885

General Background

On or about July 15, 1996, Respondent and attorney James P. Frantz formed a limited liability partnership called Frantz and Geraci LLP (the "Partnership").

From in or about July 1996 through in or about July 2000, the Partnership held a Client Trust Account, Account Number 6010029463 ("CTA") at Union Bank of California in San Diego.

The Partnership terminated on or about July 28, 2000.

Facts

1. In or about September 1996, Floyd Cardinal ("Cardinal") retained Respondent to represent him in an inverse condemnation matter, on a contingent fee basis. In 1998, the Cardinal matter proceeded through trial and ended with a verdict for Cardinal.
2. After the judgment was entered, Cardinal disputed a portion of the attorney's fees earned in the amount of \$19,362.60. The disputed amount was held in trust by another attorney hired by Cardinal, pending a fee dispute arbitration.
3. The arbitration occurred in 1999 and the arbitration panel awarded all fees earned to the Partnership.

4. On or about August 5, 1999, Respondent issued CTA check #1906, payable to Frantz & Geraci, LLP, in the amount of \$5,000, and marked "Cardinal #5885 Atty Fee".
5. On or about September 25, 1999, Respondent issued CTA check #2185, payable to Frantz & Geraci, LLP, in the amount of \$5,000, and marked "Cardinal #5885".
6. In or about January 2000, the disputed amount of \$19,362.60 which was held in trust pending arbitration was released to the Partnership.
7. In or about January 2000, after receiving the Cardinal fees awarded by arbitration, Respondent reimbursed the Partnership's CTA by depositing \$5,000 of his attorney's fees into the CTA.
8. In or about August 2000, Respondent reimbursed the Partnership's CTA by depositing another \$5,000 into the CTA.
9. In or about June 1998, Hilda Mercado ("Mercado") retained Respondent to represent her in a Will Contest and Spousal Property Petition matter (the "Mercado matter"), on a contingent fee basis.
10. In or about March 2000, after settlement of the Mercado matter, the Partnership set up a Non-Iolita Trust Account that contained over \$189,000 in trust funds for Mercado's benefit. The reason for setting up a Non-Iolita Trust Account was to await clearance by the IRS that the funds would not be taxed. Respondent, acting as trustee, was a signatory on the Mercado Trust Account, Account Number 6011065304 held at Union Bank of California in San Diego (the "Mercado Trust Account").
11. The contingent attorney's fees earned by Respondent amounted to about \$30,000.
12. Between April 21 and June 1, 2000, Respondent withdrew \$10,000 from the Mercado Trust Account without Mercado's prior consent.
13. On or about May 15, 2000, Respondent made a reimbursement of \$10,000 to the Mercado Trust Account.
14. On or about August 10, 2000, the Mercado Trust Account was reimbursed another \$5,000 from the Partnership's funds.

Legal Conclusions

15. By depositing \$10,000 of personal funds into the Partnership's CTA, Respondent commingled funds belonging to Respondent in a client trust account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

16. By not maintaining funds to be held in trust in Mercado Trust Account for Mercado's benefit, Respondent failed to maintain client funds in a 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 November 25, 2003.

FACTORS SUPPORTING MITIGATING CIRCUMSTANCES

1. Respondent has been a member of the State Bar of California for twenty years with no prior discipline.

2. Respondent did not harm Cardinal nor Mercado nor any other client. The momentary deficit of \$10,000 in the client trust account was remedied promptly so that no client suffered any pecuniary loss.

3. Respondent acted in good faith because he honestly believed that he was withdrawing funds that the firm was entitled to in both the Cardinal and Mercado matters:

- In the Cardinal matter, in or about January 1999, Cardinal had sent a check of \$14,249 in undisputed fees which the office manager deposited into the firm's general account. Respondent mistakenly thought the \$14,249 had been deposited into the client trust account and withdrew \$10,000, believing that he was withdrawing the earned fees that he was entitled to. Respondent is not offering the foregoing as a justification or an excuse, but simply as an explanation for causing a deficit in the client trust account.
- In the Mercado matter, Respondent relied on a prior December 1998 fee agreement which had authorized Respondent in the past to pay out fees and costs from the Mercado funds held in trust without obtaining Mercado's prior consent. Mercado had been Respondent's client since 1994 and had never before objected to the distribution of fees and costs from her funds held in trust. In addition, at the time Respondent withdrew the unauthorized \$15,000 from the Mercado Trust Account, Mercado owed Respondent \$30,000 in earned attorney's fees. Again, Respondent is not offering the

foregoing as a justification or an excuse but as an explanation for not having obtained Mercado's prior consent.

4. Respondent's remorse was demonstrated by Respondent's prompt restoration of funds to the firm's client trust account and prompt reimbursement to the Mercado Trust Account prior to the initiation of any State Bar disciplinary proceedings.

5. Respondent's good character is demonstrated by his prior and current active participation in the legal and general communities. Respondent is a former Deputy City Attorney for the City of San Diego (1983-1988.) He is active in bar association activities and a member of the San Diego County Bar Association, Consumers Attorneys of San Diego, Association of Business Trial Lawyers of San Diego, the Lawyers Club of San Diego, the American Inns Court-Welsh Chapter, and the San Diego Inns of the Courts. He serves as arbitrator for the San Diego Superior Court.

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 *In the Matter of Respondent E* (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716, the attorney was found to have negligently failed to place \$1,754 in trust while arbitrating his entitlement to fees and costs of a much larger amount. In mitigation, the attorney made voluntary restitution and was on the verge of retiring from a 40 years distinguished career.

In *Dudugjian v. State Bar* (1991) 52 Cal. 3d 1092, the Supreme Court ordered public reproof for two attorneys, in one matter, who violated former rule 8-101 of the Rules of Professional Conduct, by retaining client settlement funds in their own account and refusing to pay them to the clients, in the mistaken belief that the clients had given them the permission to retain the funds in partial payment of their fee.

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.

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 twenty years of practice with no prior record of discipline, Respondent should receive more discipline than Respondent E.

Respondent's case can be more closely analogized to *Dudugjian*. As in *Dudugjian*, Respondent's mistakes were made in good faith. Respondent honestly believed that the monies withdrawn from the CTA were attorney's fees for the Cardinal matter. In addition, Respondent honestly believed he was entitled to withdraw part of his attorney's fees from the Mercado Trust Account since he had already earned them. Similarly to *Dudugjian*, Respondent is not likely to commit such misconduct in the future since he has generally exhibited good moral character for the last 20 years and his failings here can be viewed as aberrational.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 1, 2003, the estimated prosecution costs in this matter are approximately \$2,143.70. 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 Jan 16, 2004

[Signature]
Respondent's signature

ALAN LOUIS GERACI
print name

Date 1/16/04

[Signature]
Respondent's Counsel's signature

DAVID CAMERON CARR
print name

Date Jan. 20th, 2004

[Signature]
Deputy Trial Counsel's signature

MONIQUE T. MILLER
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.

Date 1-22-04

[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 22, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed January 22, 2004**

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

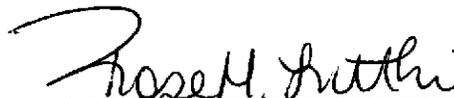
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID CARR, ESQ.
5060 SHOREHAM PL #200
SAN DIEGO CA 92122**

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

MONIQUE MILLER, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 22, 2004.**



Rose M. Luthi
Case Administrator
State Bar Court