

<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT ELI D. MORGENSTERN, No. 190560 1149 South Hill Street, 10th Fl. Los Angeles, CA 90015-2299 Telephone: (213) 765-1334</p>	<p>Case number(s) 03-0-01272</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED</p> <p>JAN 15 2004</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel for Respondent PHILLIP BARRY GREER IN PRO PER 1280 Bison Rd. #B9-531 Newport Beach, CA 92660 (949) 640-8911</p>	<p>kwiktag® 022 606 931</p> 	
<p>In the Matter of PHILLIP BARRY GREER Bar # 96438 A Member of the State Bar of California (Respondent)</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>	

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 7, 1981 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 9 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - case ineligible for costs (private reproof)
 - 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 93-0-20098
- (b) Date prior discipline effective January 26, 1996
- (c) Rules of Professional Conduct/ State Bar Act violations: rule 4-100(A) of the
Rules of Professional Conduct
- (d) degree of prior discipline Public Reproval
- (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. See "Mitigating-Circumstances," Page 8
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrated remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. See "Mitigating Circumstances," Page 8.
- (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 type="checkbox"/> Financial Conditions
- (11) Other conditions negotiated by the parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PHILLIP BARRY GREER

CASE NUMBER(S): 03-O-01272

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct.

Facts

1. In or about February 2002, Max Bowers ("Bowers"), President of BF/Ink Jet Media Inc. ("BF"), employed Respondent to represent BF in litigation involving the protection of BF's patent.

2. On or about June 19, 2002, Respondent caused a civil complaint to be filed on behalf of BF in the United States District Court for the Northern District of Georgia-Newnan Division, in a matter entitled *BF/Ink Jet Media, Inc. v. Lexjet Corporation, et. al.*, case no. 3:02-CV-65-JTC ("the BF District Court lawsuit"). The complaint in the BF District Court lawsuit was never served on any of the defendants. On or about June 19, 2002, Respondent also caused to be filed in the BF District Court lawsuit an application for admission pro hac vice.

3. On or about August 5, 2002, Respondent, while still attorney of record on behalf of BF in the BF District Court lawsuit, caused a complaint for damages for breach of contract, intentional interference with economic advantage, and negligent interference with prospective economic advantage, to be filed in Orange County Superior Court against BF in a matter entitled, *TMS Plotter, Inc. v. BF Ink Jet Media, Inc., and Max Bowers*, case no. 02CC12937 ("the TMS state court lawsuit"). The complaint in the TMS state court lawsuit was not served on any of the defendants while Respondent was attorney of record.

4. Respondent accepted representation of TMS in the TMS state court lawsuit without obtaining the informed written consent of either Bowers, or any other authorized officer, of BF; or Carol Manning ("Manning"), the President of TMS, or any other authorized officer, of TMS. Respondent continued as attorney of record in the BF District Court lawsuit and the TMS state court lawsuit until in or about October 2002, at which time Respondent was substituted out of the TMS state court lawsuit. At no time did Respondent obtain the informed written consent of

any authorized officer of either BF or TMS.

5. In or about April 2003, the BF District Court lawsuit was dismissed without prejudice pursuant to rule 41(a) et. seq. of the Federal Rules of Civil Procedure.

Legal Conclusion

By filing the complaint in the TMS state court lawsuit on behalf of TMS against BF, while he was attorney of record on behalf of BF in the BF District Court lawsuit, without the obtaining the informed written consent of each client, Respondent accepted and continued representation of more than one client in a matter in which the interests of the clients actually conflicted without the informed written consent of each client, in wilful violation of Rules of Professional Conduct, rule 3-310(C)(2).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was November 24, 2003.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 24, 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards

Standard 2.10 of the Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California ("Standards") states: "Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in Standard 1.3."

Case Law

Hawkins v. State Bar (1979) 23 Cal. 3d 622. An attorney was retained to represent the insured in a declaratory relief action brought by their insured to determine coverage for an automobile accident. The attorney entered into a contingent fee splitting agreement with the attorney representing the plaintiff in the personal injury action against the insured arising out of the accident. The attorney agreed to share equally in any attorney's fees ultimately derived by plaintiffs from the insured's policy proceeds. Despite the fact that the attorney would not be paid his fees unless a settlement occurred or a verdict was entered adverse to the insured, he at no time disclosed his contingent interest in any such settlement or verdict to his clients. The Court found that the attorney had violated, what is now, rule 3-310 of the Rules of Professional Conduct. The Court found that the attorney had accepted professional employment without fully disclosing his relation with an adverse party. The Court ordered that the attorney be publicly reprimanded. The Court considered as mitigating factors the fact that the attorney had no prior discipline record, and the fact that the clients had suffered no financial loss as a result of the attorney's actions.

MITIGATING CIRCUMSTANCES.

Respondent displayed spontaneous candor and cooperation to the State Bar during the disciplinary investigation and proceedings. (Standard 1.2(e)(v).) Respondent responded promptly to all State Bar inquiries and willingly provided any and all documentation requested.

Respondent met with the State Bar on Tuesday, November 18, 2003, and admitted that his conduct created a conflict. Respondent expressed remorse for his actions. (Standard 1.2(e)(vii).)

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

12/5/03
Date

[Handwritten Signature]
Respondent's signature

PHILLIP BARRY GREER
print name

Date

[Handwritten Signature]
Respondent's Counsel's signature

print name

12/12/03
Date

[Handwritten Signature]
Deputy Trial Counsel's signature

ELI D. MORGENSTERN
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.

1-15-04
Date

[Handwritten Signature]
RICHARD A. HONN
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 15, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed January 15, 2004**

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

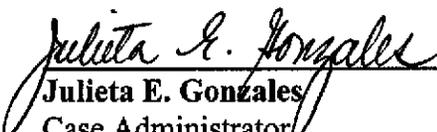
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**PHILLIP B GREER ESQ
1280 BISON RD #B9-531
NEWPORT BEACH, CA 92660**

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 15, 2004.**



Julieta E. Gonzales
Case Administrator
State Bar Court