

<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT WILLIAM F. STRALKA, No. 056147 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1091</p>	<p>Case number(s) 03-0-01950-RAH [03-0-03567]</p>	<p>(for Court's use)</p> <p>FILED</p> <p>FEB 25 2004</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel for Respondent KENNETH A. ROBERTS, No. 62536 575 Anton Blvd., #300 Costa Mesa, CA 92626 (714) 432-6480</p>	<p>PUBLIC MATTER</p> <p>kwiktag® 035 117 085</p> 	
<p>In the Matter of JONATHAN EDWARD ROBERTS, Bar # 166043, 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>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted November 22, 1993
 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - costs added to membership fee for calendar year following effective date of discipline
 - 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 Circumstance: (definition, see Standards for Attorney Functions 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 [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) 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:

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of six (6) months

- 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 two (2) years 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 hearing, 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: JONATHAN EDWARD ROBERTS

CASE NUMBER(S): 03-O-01950 [03-O-03567]

PENDING PROCEEDINGS:

The disclosure date referred to, on page one, paragraph A.(6), was January 13, 2004.

PARTIES ARE BOUND BY THE STIPULATED FACTS:

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

STIPULATION AS TO THE FACTS AND CONCLUSIONS OF LAW:

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct, or has otherwise committed acts of misconduct warranting discipline.

FACTS:

CASE NO. 03-O-01950

1. On October 28, 2002, Geraldine McKenzie (“Geraldine”) on behalf of Gerald McKenzie (“Gerald”), employed Respondent to represent Gerald in a Petition for Writ of Habeas Corpus, filed on or about April 25, 2002 in the United States District Court entitled Gerald McKenzie v. J. McGrath, case no. 02-CV-3405 (“the petition for writ”). At that time, Geraldine paid Respondent \$2,000.00 in advanced fees.

2. From and after October 28, 2002, Respondent failed to contact Geraldine or Gerald.

3. On October 29, 2002, Brad McKenzie (“Brad”) on behalf of Gerald, paid Respondent an additional \$500.00 in advanced fees. After being employed by Geraldine in October 2002, Respondent failed to file a substitution of attorney in court to substitute in as attorney for Gerald.

4. Respondent failed to perform any legal services for Gerald and failed to file any pleadings in court to continue with the petition for writ process.

5. On March 2, 2003, after not receiving any communications from Respondent, Gerald sent a letter to Respondent at his membership records address by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return Gerald’s letter as undeliverable or for any other reason. In the letter, Gerald informed Respondent that Gerald still had not received confirmation from the court or from Respondent indicating that Respondent had substituted in as attorney of record to continue with the petition for writ on behalf of Gerald. Further, Gerald requested Respondent to contact him as soon as possible. Respondent failed to respond to Gerald’s letter or otherwise communicate with Gerald.

6. As of this date, Respondent has failed to file a substitution of attorney with the court and Gerald is still pro se in the case.

7. On May 16, 2003, the State Bar opened an investigation, case no. 03-O-01950, pursuant to a complaint filed by Gerald McKenzie (“the McKenzie matter”).

8. On February 17, 2004, Jonathan E. Roberts refunded advanced fees of \$2,500.00 to Geraldine McKenzie.

9. On June 4, 2003, State Bar Investigator Craig Von Freyman wrote to Respondent regarding the McKenzie matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records address at the time. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

10. The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the McKenzie matter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator

11. On July 14, 2003, the investigator wrote to Respondent again informing Respondent that he had not yet received a response to the allegations brought up in the McKenzie matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records address at the time. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

12. The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the McKenzie matter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

CONCLUSIONS OF LAW:

By failing to perform any services for Gerald and failing to file a substitution of attorney with the court, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violations of Rules of Professions Conduct, rule 3-110(A).

Respondent did not earn any portion of the fees advanced by Geraldine. By not promptly refunding the \$2,000.00 to Geraldine and the \$500.00 to Brad, Respondent failed to promptly refund unearned fees in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

By never meeting with Gerald or speaking to him on the telephone and by failing to respond to Gerald's letter, Respondent failed to respond to Gerald's reasonable status inquiries in wilful violation of Business and Professions Code, section 6068(m).

By not providing a written response to the allegations in the McKenzie matter or otherwise cooperating in the investigation of the McKenzie matter, Respondent failed to cooperate in a disciplinary investigation, in wilful violation of Business and Professions Code, section 6068(i).

CASE NO. 03-O-03567:

13. On July 28, 2002, Barbara E. Brown ("Brown") retained Respondent to represent her daughter, Lea Wooten ("Lea") and Robin Silver ("Robin") in the Orange County Superior Court entitled People v. Lea Wooten, case no. 02HM03456 ("the criminal matter"). At that time, Respondent agreed to accept a fee of \$2,500.00 to represent Brown during the pretrial stage, with the understanding that if the criminal matter went before a jury trial, Brown would pay an additional \$2,500.00. On July 31, 2002, Brown paid Respondent \$1,250.00 in advanced fees for his services. On or about August 31, 2002, Brown paid Respondent \$1,250.00 in advanced fees totaling \$2,500.00 for representation at the pre-trial stage.

14. Subsequently, on July 31, 2002, Brown sent a memo to Respondent with regard to her understanding of Respondent's representation and the advanced fees.

15. The jury trial was scheduled to start on January 13, 2003, however, the jury trial was postponed to January 15, 2003. After Brown and Respondent left the court room, Respondent asked Brown to pay the jury trial fee of \$2,500.00. Brown immediately issued a check for \$2,500.00 to pay Respondent.

16. On January 15, 2003, Brown pled Nolo Contendere right before the case was to be called in court that day. Consequently, after Brown entered her plea, Respondent left the court premises before the paperwork had been finalized. As soon as Brown's paperwork was finalized, Brown immediately called Respondent on his cell phone and left a message requesting Respondent refund the \$2,500.00 she had paid to Respondent on January 13, 2003. Respondent failed to return Brown's call.

17. On January 17, 2003, Brown called Respondent at his cell phone telephone number and left a second message requesting Respondent refund the jury trial fee. Respondent failed to return Brown's calls.

18. On January 24, 2003, Brown called Respondent at his cell phone and another message requesting Respondent refund the jury trial fee. Respondent failed to return Brown's calls.

19. On February 7, 2003, Brown called Respondent at his cell phone telephone number and left another message requesting Respondent refund the \$2,500.00. Respondent failed to return Brown's calls.

20. Respondent did not provide services of any value to Brown. Respondent did not earn any of the advanced fees paid by Brown with regard to the jury trial.

21. On April 15, 2003, Brown called Respondent requesting Respondent to forward the case file in order for Brown to prepare for a civil suit stemming from the criminal matter. Respondent did not respond to Brown's message.

22. Subsequently, on April 17, 2003, Brown was served with a civil suit regarding the criminal matter.

23. On April 18, 2003, Brown called Respondent at his cell telephone number requesting Respondent to release her file as she has just been served with the civil suit. Respondent failed to return Brown's telephone call.

24. On May 1, 2003, Brown discovered through Lea, that Respondent did not have any files to return to Brown.

25. At no time did Respondent release Brown's file to Brown or communicate with Brown regarding how Brown could obtain the file.

26. On September 5, 2003, the State Bar opened an investigation, case no. 03-O-03567, pursuant to a complaint filed by Barbara E. Brown ("the Brown matter").

27. On February 17, 2004, Jonathan E. Roberts refunded advanced fees of \$2,500.00 to Barbara Brown.

28. On September 11, 2003, State Bar Investigator Craig Von Freyman wrote to Respondent regarding the Brown matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records address at the time. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business.

The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

29. The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Brown matter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

30. On September 29, 2003, Investigator Craig Von Freyman wrote to Respondent again informing Respondent that he had not yet received a response to the allegations brought up in the Brown matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records address at the time. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

CONCLUSIONS OF LAW:

The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Brown matter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator. By not providing a written response to the allegations in the Brown matter or otherwise cooperating in the investigation of the Brown matter, Respondent failed to cooperate in a disciplinary investigation, in wilful violation of Business and Professions Code, section 6068(i).

By not promptly refunding the \$2,500.00 to Brown, Respondent failed to promptly refund unearned fees in wilful violation of Rule of Profession Conduct, rule 3-700(D)(2).

By not releasing the client files to Brown, Respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers, in wilful violation of Rule of Professional Conduct, rule 3-700(D)(1).

CASE SUPPORT:

In the Matter of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716.

Respondent represented a mother and daughter, as well as other members of their family, in various legal matters. He was found culpable of failing to communicate adequately with both

clients, of failing to return the mother's file promptly on demand when she terminated his employment, and of failing to take steps to avoid prejudice to the daughter when he withdrew from representing her. The court recommended that respondent be suspended for six months, stayed, with two years probation on conditions, and no actual suspension.

COSTS OF DISCIPLINARY PROCEEDINGS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of January 9, 2004. The estimated prosecution costs in this matter are approximately \$2,969.35. 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.

WAIVER OF REVIEW BY REVIEW DEPARTMENT:

Pursuant to Rules of Procedure of the State Bar of California, rule 251, the parties hereto stipulate to a waiver of review by the Review Department and request that the disciplinary recommendation in this matter be transmitted to the Supreme Court on an expedited basis.

V:\CTC\Staff\Trial Unit 2\William Stralka\Roberts StipAtt.wpd

2-3-04
Date

[Signature]
Respondent's signature

JONATHAN EDWARD ROBERTS
print name

2-3-04
Date

Kenneth A. Roberts
Respondent's Counsel's signature

KENNETH A. ROBERTS
print name

2-18-04
Date

William F. Stralka
Deputy Trial Counsel's signature

WILLIAM F. STRALKA
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 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.

1. On page 2, B.(5), delete the "X" on the box before "Indifference."

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.)

2-20-04
Date

RICHARD A. HONN [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 February 25, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed February 25, 2004**

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

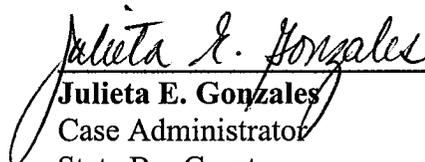
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KENNETH A ROBERTS ESQ
575 ANTON BLVD #300
COSTA MESA, CA 92626**

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

William F. Stralka, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 25, 2004.**



Julieta E. Gonzales
Case Administrator
State Bar Court