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Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT LEE ANN KERN, No. 156623 1149 So. Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1000	Case number(s) 03-O-02067 03-O-02068  kwiktag® 031 975 271	(for Court's use) FILED SEP 30 2003 <i>YK</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER
Counsel for Respondent ANTHONY J. TURNER, ESQ. 10801 National Blvd., #545 Los Angeles, CA 90064-4134 Telephone: (310) 446-5434 IN PRO PER	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	
In the Matter of ANTHONY J. TURNER Bar # 139355 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted February 9, 1989
(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 10 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."

(Stipulation form approved by SBC Executive Committee 10/16/00)

Stayed Suspension

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 01-O-02605

(b) ☒ date prior discipline effective December 23, 2002

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: One count of rule 4-100(A),

RPC (failing to maintain funds in trust), one count of rule 4-100(A),

RPC (failing to deposit funds in trust), and one count of rule 4-100(A),

RPC (commingling).

(d) ☒ degree of prior discipline Public Reprimand

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

- (2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see Standard 1.2(e).] Facts supporting mitigating circumstances are required.

- (1) ☐ No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☒ No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ Good Faith: Respondent acted in good faith.
- (8) ☐ Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☒ 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:

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 Three (3) 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 he/she, 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: ANTHONY J. TURNER

CASE NUMBER(S): 03-O-2067 and 03-O-2068

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:

1. In or about January 2002, Respondent operated a law practice ("the law practice") with his wife, attorney Audra Delahoussaye-Turner ("Delahoussaye-Turner"). In or about January 2002, Respondent maintained primary control over the client trust account, account number 0007233329, at Union Bank of California ("the CTA").

2. On or about January 4, 2002, the balance in the CTA was \$6.27. On or about January 8, 2002, Respondent deposited a total of \$1,664 into the CTA, which was comprised of a \$500 check for costs paid to him by his client Steve Yang ("Yang"), as well as \$1,164 in fees paid to him by Chapter 13 Bankruptcy Trustee Nancy Curry. Because the trustee's check bore the name of Respondent's law practice, Union Bank would only permit Respondent to deposit the trustee's check into the CTA.

3. On or about January 8, 2002, Respondent transferred the fees paid to him by the trustee to his operating account, account number 07247257, at Union Bank of California ("the operating account"). Following the \$1,664 deposit and the transfer of Respondent's fees to the operating account, the balance in the CTA on January 8, 2002, was \$506.27.

4. On or about January 7, 2002, Respondent wrote Peter Han ("Han") check number 10497 from the CTA in the amount of \$500 for consulting services Han performed on Yang's case. On or about January 8, 2002, Respondent personally delivered check number 10497 to Han. Between on or about January 8 and on or about January 14, 2002, Han informed Respondent that Han had lost check number 10497. On or about January 14, 2002, Respondent mailed Han a replacement check, number 10498, from the CTA in the amount of \$500 ("the replacement check"). Respondent forgot to stop payment on check number 10497 prior to issuing the replacement check to Han.

5. On or about January 16, 2002, before Han received Respondent's replacement check in the mail, Han located check number 10497 and cashed it. After Han cashed check number 10497, the balance in the CTA on January 16, 2002, was \$6.27.

6. On or about January 17, 2002, Han received the replacement check in the mail and Han's office staff submitted the check to the bank for payment. The replacement check, number 10498, was paid by Union Bank against insufficient funds and on or about January 17, 2002, the balance in the CTA fell to -\$493.73.

7. On or about January 18, 2002, Union Bank charged the CTA \$22.00 for paying check number 10498. After deducting the bank fee, the balance in the CTA on January 18, 2002, was -\$515.73.

8. On or about January 22, 2002, Han returned the \$500 overpayment to Respondent and Respondent deposited the funds into the CTA bringing the balance to -\$15.73. On or about the same day, Respondent wrote Delahoussaye-Turner check number 10499 from the CTA in the amount of \$121.00. The bank paid check number 10499 against insufficient funds. On or about January 22, 2002, the balance in the CTA was -\$136.73. By January 31, 2002, the balance in the CTA was \$6.22.

9. On or about May 3, 2002, the balance in the CTA was \$11.26 and on or about May 7, 2002, Respondent wrote the superior court check number 10285 from the CTA in the amount of \$178 leaving a balance in the CTA of -\$166.74.

10. On or about May 9, 2002, and May 10, 2002, Respondent transferred non-client funds in the amounts of \$200 and \$100, respectively, from his operating account into the CTA to cover the negative balance in the CTA.

11. From in or about October 2001 through in or about December 2001, Respondent had agreed to refrain from electronically transferring funds between his operating account and the CTA and had agreed to relinquished control of the CTA to Delahoussaye-Turner, pursuant to the terms in the stipulation in Respondent's prior discipline (case number 01-O-02605).

12. In January 2002, Respondent again assumed control over the CTA and began electronically transferring funds between his operating account and the CTA.

13. The facts and circumstances giving rise to the legal conclusions set forth in paragraphs 14 and 15, below, occurred as a result of mismanagement of the CTA and no client funds were misappropriated.

COUNT ONE: Rule 4-100(A), Rules of Professional Conduct - Failure to Maintain Funds in Trust

14. The facts set forth in paragraphs 1 through 9 are incorporated herein by reference.

15. LEGAL CONCLUSION: By permitting the CTA to fall to a negative balance, Respondent failed to maintain the balance of funds received for the benefit of a client or clients in the CTA, in wilful violation of rule 4-100(A), Rules of Professional Conduct.

COUNT TWO: Rule 4-100(A), Rules of Professional Conduct - Commingling

16. The facts set forth in paragraph 10 is incorporated herein by reference.

17. LEGAL CONCLUSION: By depositing non-client funds from his operating account into the CTA, Respondent deposited or commingled funds belonging to Respondent and his client, in wilful violation of rule 4-100(A), Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was August 13, 2003.

STATE BAR ETHICS SCHOOL EXCLUSION.

It is not recommended that Respondent attend State Bar Ethics School since Respondent was ordered to attend Ethics School by December 23, 2003, in connection with case number 01-O-02605.

FINANCIAL CONDITIONS EXCLUSION.

Financial conditions are not requested as a condition of Respondent's probation since Respondent was ordered to complete sections "b" and "c" on the Financial Conditions form by December 23, 2003, in connection with his probation in case number 01-O-02605.

AUTHORITIES SUPPORTING DISCIPLINE.

One year stayed suspension and three years probation is appropriate and consistent with the case law.

Standard 2.2(b) requires a minimum of three months actual suspension, regardless of mitigating circumstances, for an attorney found culpable of violating rule 4-100, Rules of

Professional Conduct. The standards, however, are not mandatory sentences imposed in a blind or mechanical manner (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) and may be deviated from if there is a compelling reason to do so. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent and Delahoussaye-Turner, who is his law partner and his wife, have faced on-going marital difficulties for which Respondent has been receiving extensive counseling. In light of this fact, as well as the fact that the clients of the law partnership have not been harmed by the mismanagement of the CTA, sufficient compelling mitigation exists to deviate from the three months actual suspension required by standard 2.2(b).

Case law supports a reduction in the recommended discipline from that set forth in standard 2.2(b). In *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, Whitehead was given one year stayed suspension, five years probation with conditions, and forty-five days actual suspension in two matters in which personal funds were commingled with client funds, and where Whitehead failed to perform, failed to communicate with his clients, and failed to cooperate with the State Bar investigation. The Review Department concluded that the application of standard 2.2(b) was unnecessary (*Id.* at p. 371.) and found that the actual danger to Whiteheads clients' funds proved minimal and occurred under extenuating circumstances.

In *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, Respondent F received a private reproof for a violation of rule 4-100(A), Rules of Professional Conduct. Finding no actual suspension was warranted, the Review Department held that there "there appear[ed] to be little need for any suspension as a sanction to protect the public, the courts, or the legal profession, to maintain high professional standards and to preserve public confidence" (*Id.* at p. 29, citing standard 1.3) because Respondent F's violation of rule 4-100(A) "was inadvertent, involved a small sum, and is unlikely to be repeated." (*Ibid.*)

Respondent's misconduct was less severe than that engaged in in *Whitehead* and more serious than the misconduct found in *Respondent F*. Unlike Whitehead, Respondent's conduct did not involve any performance issues as to his clients. However, Respondent's prior record of discipline for similar CTA violations prove that discipline greater than a reproof is warranted.

As such, one year stayed suspension is justified and supported by the facts and the law.

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Date 9/12/03


Respondent's signature

ANTHONY J. TURNER
print name

Date _____

Respondent's Counsel's signature

print name _____

Date 9/22/03


Deputy Trial Counsel's signature

LEE ANN KERN
print name

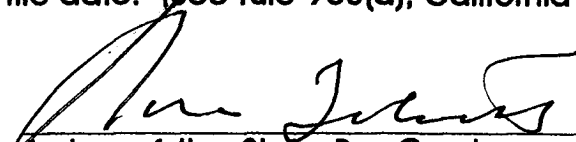
ORDER

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.

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 9/25/03


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 September 30, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL
SUSPENSION, filed September 30, 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:

**ANTHONY J. TURNER
10801 NATIONAL BLVD., #545
LOS ANGELES, CA 90064-4134**

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

LEE ANN KERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 30, 2003**.



Tammy R. Cleaver
Case Administrator
State Bar Court