


(Do not write above this line.)

State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
Counsel for the State Bar Esther Rogers Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Telephone: (415) 538-2445 Bar # 148246	Case number(s) PUBLIC MATTER 04-0-14427-JMR kwiktag® 022 605 375 	(for Court's use) FILED <i>RS</i> OCT 26 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent Jerome Fishkin 369 Pine St., Suite 627 San Francisco, CA 94104 Telephone: (415) 403-1300 Bar # 47798	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of FRANK Z. LEIDMAN Bar # 96294 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

December 6, 1980

- (1) Respondent is a member of the State Bar of California, admitted _____
(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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) 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.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- (a) ☐ costs added to membership fee for calendar year following effective date of discipline (public reproof)
- (b) ☐ case ineligible for costs (private reproof)
- (c) ☒ costs to be paid in equal amounts for the following membership years:
2006, 2007
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e) ☐ costs entirely waived

(9) 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 _____

(Do not write above this line.)

- (e) ☐ If Respondent has two or more Incidents of prior discipline, use space provided below or a separate attachment entitled "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.
See attached.
- (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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
See attached.
- (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.

(Do not write above this line.)

- (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 must comply with the conditions attached to the reproof for a period of one year.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office and to the Office of Probation of the State Bar of California ("Office of Probation"), 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) ☒ Within 30 days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must 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. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must 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.
- (6) ☐ Respondent must be assigned a probation monitor. Respondent must 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 must furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

(Do not write above this line.)

- (7) ☐ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation 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.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- ☐ No Ethics School ordered. Reason: _____
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.
- (10) ☐ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- ☒ No MPRE ordered. Reason: See attached.
- (11) ☐ 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 |

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Frank Z. Leidman

CASE NUMBER(S): 04-O-14427

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:

Case No. 04-O-14427

Count One

Statement of Facts

On or about January 15, 2002, Joaquin S. Loaiza, Jr., a prisoner at San Quentin State Prison, filed in pro per a petition for a writ of habeas corpus, Docket No. S103600, alleging that the terms of his 1984 plea bargain to second degree murder had been violated and that he had served time beyond the maximum sentence agreed upon. On or about August 23, 2002, the Supreme Court, acting by letter, requested an informal response by the California Attorney General's Office (hereinafter "Attorney General's Office").

On or about September 4, 2002, Mr. Loaiza hired Respondent to represent him in this habeas corpus proceeding. On or about September 9, 2002, Esther Loaiza, Mr. Loaiza's mother, paid Respondent \$3,000 by cashier's check to represent her son in this matter. On or about September 10, 2002, Respondent wrote separately to both the Supreme Court of California and the Attorney General's Office informing them that he was substituting into Mr. Loaiza's case and would be representing Mr. Loaiza in the habeas corpus proceeding. Mr. Loaiza signed the letter to the Supreme Court on or about September 13, 2002. Subsequently, Respondent mailed these letters to the Clerk of the Supreme Court and to the Attorney's General's Office.

On or about September 11, 2002, Respondent also prepared a fee agreement letter. That fee agreement required that Mr. Loaiza pay a flat fee of \$5,000 to Respondent. It also stated that the fee was earned upon receipt. In that letter, Respondent acknowledged receiving \$3,000 prior to that date. On or about September 13, 2002, Mr. Loaiza signed that fee agreement. Subsequently, Respondent received the final \$2,000, including that, on or about

October 17, 2002, Esther Loaiza, Mr. Loaiza's mother, paid Respondent \$1,000 by cashier's check.

On or about October 8, 2002, the Attorney General's Office responded to Mr. Loaiza's petition for a writ of habeas corpus. It served that response on Respondent. On or about October 17, 2002, Respondent wrote Mr. Loaiza requesting information in response to the claims of the Attorney General's Office in its response.

On or about October 21, 2002, Respondent filed a request to the California Supreme Court for a 32 day extension of time to reply to the Attorney General Office's response. Respondent informed the Supreme Court that he needed the time to obtain some documents and information regarding Mr. Loaiza's 1984 plea agreement. On or about October 22, 2002, the Supreme Court granted Respondent's request and gave him until November 25, 2002 to file Mr. Loaiza's reply. On or about October 28, 2002, Respondent sent a copy of the Supreme Court order to Mr. Loaiza by U.S. mail.

On or about November 22, 2002, Respondent filed a second request to the California Supreme Court for an extension of time to reply to the Attorney General's informal response. Respondent asked for until December 24, 2002 to file Mr. Loaiza's reply. Respondent informed the Supreme Court that he needed additional time to obtain some documents and information regarding the plea agreement. On or about December 2, 2002, the Supreme Court granted Respondent's request and gave him until December 24, 2002 to file the reply. On or about December 2, 2002, Respondent sent a copy of the Supreme Court order to Mr. Loaiza by U.S. mail.

On or about December 21, 2002, Respondent filed a third request to the California Supreme Court for an extension of time to reply to the Attorney General Office's response. Respondent asked for until January 24, 2003 to file the reply. Respondent informed the Supreme Court that he needed additional time to obtain some documents and information regarding the plea agreement. On or about December 30, 2002, the Supreme Court granted Respondent's request and gave him until January 24, 2003 to file the reply.

On or about January, 24, 2003, Respondent filed a fourth request to the California Supreme Court for an extension of time to reply to the Attorney General Office's response. Respondent asked for until February 28, 2003 to file the reply. Respondent informed the Supreme Court that while he had now received all transcripts that existed and that there were no transcripts of the plea, he needed to return to San Quentin State Prison to consult with his client and obtain a declaration to some of the issues in the habeas petition. Respondent declared that he had attempted to make arrangements with the San Quentin officials to interview Mr. Loaiza and expected to be able to do so in the next two weeks or so. He requested until February 28, 2003 to file the reply. On or about January 30, 2003, the Supreme Court granted Respondent's

request and gave him until February 28, 2003 to file the reply. Subsequently, Respondent failed to meet with Mr. Loaiza or discuss the case with Mr. Loaiza. He also failed to obtain a declaration or file the reply brief.

Instead, on or about February 28, 2003, Respondent filed a fifth request to the California Supreme Court for an extension of time to reply to the Attorney General Office's response. (This request was mistakenly titled a fourth request for an extension of time.) Respondent asked for until March 21, 2003 to file the reply. Respondent informed the Supreme Court under penalty of perjury that on February 26, 2003, the day before he was scheduled to meet with Mr. Loaiza, he had an automobile accident and, while he was not seriously injured, he was "shook up" by the accident. The next day he did not feel up to meeting with Mr. Loaiza and had to miss his appointment with Mr. Loaiza. Respondent, therefore, requested until March 21, 2003 to file the reply.

On Friday February 28, 2003, Respondent wrote to Mr. Loaiza enclosing a copy of his request for a fifth extension of time. He also informed Mr. Loaiza that he was in an automobile accident on Wednesday and therefore had been unable to meet with Mr. Loaiza as scheduled on Thursday, February 27, 2003. On or about March 6, 2003, the Supreme Court granted Respondent's request and gave him until March 21, 2003 to file the reply. On or about March 7, 2003, Respondent sent a copy of the Supreme Court order to Mr. Loaiza by U.S. mail. Subsequently, Respondent failed to meet with Mr. Loaiza or discuss the case with Mr. Loaiza. He also failed to obtain a declaration from Mr. Loaiza or file the reply.

Instead, on or about March 21, 2003, Respondent filed a sixth request to the California Supreme Court for an extension of time to reply to the Attorney General's informal response, claiming he had not been able to meet with his client and, therefore, had not obtained the client's signature on a declaration that he drafted. He claimed to have spoken with Mr. Loaiza by telephone but re-scheduling a meeting with the San Quentin authorities had not gone smoothly. He requested until April 18, 2003 to file the reply. On or about April 3, 2003, the Supreme Court granted Respondent's request and gave him until April 18, 2003 to file the reply.

Subsequently, Respondent failed to file the reply or Loaiza's declaration and failed to file a further request for an extension of time to file the reply, and any supporting documentation. At no time did Respondent file a reply for Mr. Loaiza. On or about June 18, 2003, the Supreme Court denied the writ of habeas corpus, without Respondent ever filing a reply for Mr. Loaiza. Subsequently, Respondent failed to inform Mr. Loaiza of the denial of his petition.

Conclusions of Law

Respondent wilfully violated Rules of Professional Conduct, Rule 3-110(A) by failing to file the reply and a declaration in Mr. Loaiza's matter, despite six extensions of time, or by

failing to obtain a further extension of time.

Count Two

Statement of Facts

Count One is incorporated by reference as if fully set forth herein.

Subsequent to in or about April 2003, Respondent failed to communicate with his client, Mr. Loaiza, including failing to inform him that he had failed to file the reply to the petition and failing to inform him that the Supreme Court had denied Mr. Loaiza 's petition for a writ of habeas corpus.

Conclusions of Law

Respondent wilfully violated Business and Professions Code section 6068(m) by failing to inform Mr. Loaiza that Respondent had not filed the reply and that the Supreme Court had denied his writ.

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(i). No Prior Record. Respondent was admitted in 1980 and has no prior record of discipline.

Standard 1.2(e)(v). Cooperation. Respondent agreed to the imposition of discipline without requiring a hearing.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was September 13, 2005.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 4, 2005, the estimated prosecution costs in this matter are approximately \$2,000. Respondent acknowledges that this figure is an estimate only. 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.

NO MPRE.

Respondent is not required to take and pass the MPRE since the level of discipline is a public reproof.

(Do not write above this line.)

In the Matter of FRANK Z. LEIDMAN Bar no. 96294	Case number(s): 04-0-14427-JMR
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

9/23/05
Date

Frank Z. Leidman
Respondent's signature

FRANK Z. LEIDMAN
Print name

9/23/05
Date

[Signature]
Respondent's Counsel's signature

JEROME FISHKIN
Print name

9/24/05
Date

Esther Rogers
Deputy Trial Counsel's signature

ESTHER ROGERS
Print name

(Do not write above this line.)

In the Matter of FRANK Z. LEIDMAN	Case number(s): 04-O-14427
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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.
- ☒ All Hearing dates are vacated.

On page 6, an "x" is inserted in the box next to paragraph (7), indicating that respondent must answer fully, promptly and truthfully to any inquiries of the Office of Probation.

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 reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

10-26-05

JOANN M. REMKE

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 of California. 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 San Francisco, on October 26, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING**

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

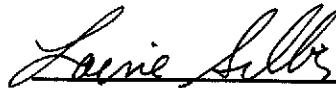
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JEROME FISHKIN
369 PINE ST #627
SAN FRANCISCO CA 94104

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

ESTHER ROGERS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 26, 2005.**



Laine Silber
Case Administrator
State Bar Court