

**State Bar Court of California
Hearing Department**

kwiktag®

031 978 701



<p>Counsel For The State Bar</p> <p>ALLEN BLUMENTHAL Supervising Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2000</p> <p>Bar # 110243</p>	<p>Case Number (s) 04-O-14991</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>AS</i></p> <p>SEP 19 2007</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>DORON WEINBERG 523 Octavia St. San Francisco, CA 94102 (415) 431-3472</p> <p>Bar # 46131</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter Of: RICHARD PHILLIPS KOCH</p> <p>Bar # 85740</p> <p>A Member of the State Bar of California (Respondent)</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>	

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:

- (1) Respondent is a member of the State Bar of California, admitted **May 31, 1979**.
- (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 consists of **12** pages, not including the order.
- (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."

(Do not write above this line.)

- (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.
- (8) 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 in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or 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. **Respondent's misconduct impeded the court proceedings and the ability of the court to protect his former client, a juvenile.**
- (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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

Respondent has no prior record of discipline in 28 years of practicing law. Respondent also has emotional issues that contributed to his misconduct. He is obtaining treatment for his emotional issues.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one 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 as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **three years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar 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.
- (3) Within thirty (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.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 30 days, that report must 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.

- (5) 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 to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

(Do not write above this line.)

- (6) 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 probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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 to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** 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. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

(Do not write above this line.)

Attachment language (if any):

In the Matter of
RICHARD PHILLIPS KOCH

Case number(s):
04-O-14991

Medical Conditions

- a. Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of **three** times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for _____ days or _____ months or **three** years or, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: RICHARD PHILLIPS KOCH

CASE NUMBER(S): 04-O-14991

FACTS AND CONCLUSIONS OF LAW.

A. FACTS

On or about July 29, 2002, the Juvenile Division of the San Francisco Superior Court appointed respondent, Richard Phillips Koch (hereinafter "respondent"), as counsel for a minor, Ghianna W. ("Ghianna") in a juvenile dependency case. Respondent was a long time member of the Bar Association of San Francisco's mental health panel and had often represented juveniles in dependency cases.

Ghianna had been removed from the care of her mother, nineteen-year old Fanessa W. ("Fanessa"). Fanessa herself had a history of physical and sexual abuse. Ghianna was 2 months old at the time respondent was appointed to represent her.

Ghianna had been removed from Fanessa's care for general neglect. One of the conditions for Ghianna to be reunified with her mother was for Fanessa to prove that she could provide housing through legal means and a stable environment for Ghianna. Respondent's fiduciary duty in this matter was to Ghianna and her interests.

Subsequently, while representing Ghianna, respondent took a personal interest in Fanessa and provided money to Fanessa to assist Fanessa in paying her rent and to cover other personal expenses. By providing money to Fanessa, respondent interfered with respondent's responsibility to ensure that Fanessa could provide housing for Ghanna and a stable environment for her.

At no time did respondent inform the court that he was providing money to Fanessa to assist her in paying her rent and her other expenses. At no time did respondent obtain permission by the court or anyone else to provide monetary support to Fanessa.

In or about October 2002, Fanessa's then attorney learned that respondent had assisted her financially. Fanessa's attorney informed the court of this conflict of interest. On or about November 15, 2002, respondent resigned as counsel for Ghianna due to his conflict of interest in this matter as a result of his providing funds to Fanessa to pay her rent and other expenses. Attorney Hansa R. Patel was appointed to replace respondent as Ghainna's attorney.

Subsequently, in or about August 2003, respondent began having a personal and sexual relationship with Fanessa. He resumed assisting Fanessa financially, providing her with substantial financial support over the next several months, including paying for her psychiatric

and dental care, medications, and housing. He also gave her a computer and arranged for his friend to teach her how to use the computer.

In or about August 2003, respondent signed a lease guaranty promising to pay Fanessa's rent of \$850 a month to her landlord. Respondent paid Fanessa's rent from in or about August 2003 until at least in or about May 2004. He did this knowing that one of the conditions for Ghianna to be reunified with her mother was for Fanessa to prove that she could provide housing through legal means and a stable environment for Ghianna. During this time, he also met Fanessa at the night club where Fanessa worked as a dancer.

Beginning in or about January or February 2004, respondent began interfering with the dependency court proceedings. He contacted Ghianna's new attorney and Fanessa's new attorney to inquire about the matter. He also contacted the social workers and the court appointed special advocate to inquire about Ghianna's matter. He told them that he was still involved in the case. On or about March 11, 2004, respondent telephoned the court appointed special advocate, Maya Durrett, and left a message seeking to discuss Fanessa with her. His message stated he was assisting Fanessa financially, but that she was sabotaging his efforts to help her.

During this time, respondent continued to contact the individuals involved in this matter, even though he was told that this could have an adverse impact on Ghianna's case. In fact, Mr. Patel advised him that he was also jeopardizing his license as an attorney. Mr. Patel informed respondent that he could not discuss the matter with him. During this time, respondent also told Fanessa that he had relationships with Ghianna's social worker and her husband.

He did all this even though he continued to owe a fiduciary duty and duty of loyalty to Ghianna and her interests. He failed to inform the court that he was assisting Fanessa and had a personal and sexual relationship with her.

In or about April 2004, the Superior Court learned of respondent's relationship and support of Fanessa. On or about April 26, 2004, respondent was temporarily suspended by the Superior Court from representing clients or patients assigned to him by the court, due to respondent's conduct with Fanessa. On or about April 27, 2004, the court referred this matter to the State Bar. Subsequently, the court allowed respondent on a probationary status to continue receiving court appointments in juvenile matters.

B. Conclusions of Law

By paying Fanessa's funds so that she could pay her rent and other expenses while representing Ghianna and by not providing written notice of this to the court, despite respondent's fiduciary duty to Ghianna, his client, respondent wilfully continued representation of a client without providing written disclosure to the client, its guardian, or the court that respondent has a personal relationship with a party or witness in the same matter, in wilful violation of rule 3-310(b)(1) of the Rules of Professional Conduct.

By having a relationship with Fanessa after respondent resigned from representing Ghianna, even though he still owed Ghianna fiduciary duties and a duty of loyalty, by paying for Fanessa's rent and other personal expenses, by asserting himself in the juvenile proceedings, and attempting to discuss Ghianna's cases with the attorneys, social workers, and the court appointed special advocate in this matter after he was told that his actions might be detrimental to having Fanessa reunify with Ghianna, respondent engaged in behavior that violated his continuing duty to Ghianna and the court, in wilful violation of Business & Professions Code section 6068(a) by violating his common law fiduciary duty to Ghianna (see *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798) and his common law duty of loyalty to her. (See *Santa Clara County Counsel Attorney Ass'n v. Woodside* (1994) 7 Cal.4th 525, 547-8.)

SUPPORTING AUTHORITY

The Standards recommend a broad range of discipline in this matter. Standard 2.6 applies to respondent's culpability for violating 6068(a) of the Business & Professions Code. Standard 2.6 states: Culpability of a member of a violation of any of the following provisions of the Business & Professions Code shall result in disbarment or suspension depending on 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:

(a) Sections 6067 and 6068

...

Standard 2.10 applies to the finding of culpability for violating 3-310(b)(1) of the Rules of Professional Conduct. Standard 2.10 states: Culpability of a member of a violation of any provision of the Business & Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct 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.

The Supreme Court recently re-affirmed that great weight is to be given the Standards and that they should be followed whenever possible. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.) Thus, while the Standards are not mandatory, the Supreme Court has held that they should be followed unless the charged attorney can demonstrate the existence of extraordinary circumstances justifying a lesser sanction. (*In re Silvertown*, supra, 36 Cal.4th at 92.)

Case law also provides a very broad range of discipline for these types of violations. Conflicts of interest have ranged from reproof to long actual suspensions. (See *Gendron v. State Bar* (1983) 35 Cal.3d 409 [public reproof]; *Codiga v. State Bar* (1978) 20 Cal.3d 788 [one year actual suspension for conflict of interests and moral turpitude for altering a will]; *Berry v. State Bar* (1987) 43 Cal.3d 802 [two year actual suspension for soliciting a client to invest in company

respondent had an interest in.]; *In the Matter of Crane & DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139 [a two year actual suspension for Crane and a 45 day actual suspension for DePew for a conflict of interest]; *In the Matter of Dale*, supra, 4 Cal. State Bar Ct. Rptr. 798 [four months actual suspension for a breach of the duty of loyalty and moral turpitude].)

The parties were unable to find any case similar to the misconduct by respondent. The parties believe that the recommendation here for all stayed time will protect the public given respondent's 28 years of practice with no priors, that his psychological issues contributed to the misconduct, that he will be on probation for three years, that he will be required to continue his therapy for those three years, and that the Superior Court has allowed him to resume being appointed to represent juveniles in dependency cases.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 29, 2007.

(Do not write above this line.)

In the Matter of RICHARD PHILLIPS KOCH	Case number(s): 04-O-14991
--	--------------------------------------

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 Fact, Conclusions of Law and Disposition.

<u>9/5/07</u> Date	<u><i>Richard Phillips Koch</i></u> Respondent's Signature	<u>RICHARD PHILLIPS KOCH</u> Print Name
<u>9/5/07</u> Date	<u><i>[Signature]</i></u> Respondent's Counsel Signature	<u>DORON WEINBERG</u> Print Name
<u>9/7/07</u> Date	<u><i>Allen Blumenthal</i></u> Deputy Trial Counsel's Signature	<u>ALLEN BLUMENTHAL</u> Print Name

(Do not write above this line.)

In the Matter Of RICHARD PHILLIPS KOCH	Case Number(s): 04-O-14991
--	--------------------------------------

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.
- All Hearing dates are vacated.

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 9.18(a), California Rules of Court.)**

9-19-07
Date

[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 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 September 19, 2007, 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:

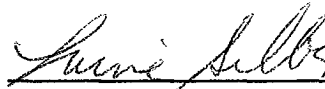
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DORON WEINBERG
523 OCTAVIA ST
SAN FRANCISCO, CA 94102

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

ERICA DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 19, 2007**.



Laine Silber
Case Administrator
State Bar Court