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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar

Katherine Kinsey
Deputy Trial Counsel
State Bar of California
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Los Angeles, CA 90015
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Bar # 183740

Case Number (s)
06-O-14912

(for Court's use)

PUBLIC MATTER

FILED
AUG 27 2008
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

Counsel For Respondent

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Submitted to: **Settlement Judge**

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

ACTUAL SUSPENSION

 PREVIOUS STIPULATION REJECTED

Bar # 72692
In the Matter Of:
Laurence P. Posner
388 E. Valley Blvd., Suite 205
Alhambra, CA 91801
(626) 979-5650

Bar # 170536

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:

- (1) Respondent is a member of the State Bar of California, admitted **June 6, 1994**.
- (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 **10** 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."



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- (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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - 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.
- (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 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 been a member of the State Bar of California since June 6, 1994 and has no prior record of discipline.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **two years**.
 - 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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.
 - 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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 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.

- (4) 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.
- (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 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.

- (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 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.
- (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 probation conditions.
- (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 at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. 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 to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

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 during the period of actual suspension or within one year, whichever period is longer. **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) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

In the Matter of: **Laurence P. Posner**

Case Number: **06-O-14912**

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:

1. On January 27, 2005, Qiong Wu was hit by car while crossing a street.
2. On February 2, 2005, Wu employed the Law Offices of Kenneth Jacobson to represent her in her personal injury matter. The Law Offices of Kenneth Jacobson and Wu executed a written fee agreement whereby they agreed that the law firm's attorney's fees would be 25 percent of the total settlement proceeds. Respondent, an associate with the Law Offices of Kenneth Jacobson, handled Wu's personal injury matter.
3. As of April 14, 2005, Blue Cross of California had contracted with Meridian Resource Company to handle Blue Cross's subrogation claims for reimbursement arising out of Wu's personal injury matter.
4. After receiving Blue Cross's subrogation claim, Posner consulted with Kenneth Jacobson regarding Blue Cross's claim. According to Jacobson, Jacobson informed Posner that the "common fund doctrine" allowed the law firm to retain a third of the funds paid to Blue Cross as attorney's fees. Jacobson also told Posner that the law firm did not have to notify Wu that the firm would be retaining the \$21,109.45 under his mistaken belief that the reimbursement to Blue Cross was independent of the attorney-client retainer agreement. Jacobson also advised Respondent to perform his own legal research regarding the common fund doctrine.
5. On July 20, 2006, the parties in the personal injury matter agreed to settle Wu's matter for \$275,000.
6. By July 25, 2006, Meridian Resource Company had sent letters to the Law Offices of Kenneth Jacobson verifying that Blue Cross's reimbursement claim was for \$63,241.45.
7. On August 1, 2006, Jenelle Boers, a recovery representative for Meridian Resource Company, faxed Respondent confirmation that Meridian had agreed to accept \$42,051, or two-thirds of the \$63,241.45, as full and final settlement of the \$63,241.45 in medical benefits paid on Wu's behalf. Respondent received the facsimile from Boers.
8. On August 1, 2006, the Law Offices of Kenneth H. Jacobson prepared a client trust account check made payable to Meridian Resource Company in the amount of \$42,051. The remaining \$21,190.45 was retained by the law firm as attorney's fees based on a mistaken understanding of the common fund doctrine. Respondent did not tell Wu that \$21,190.45 was being kept by the law firm as attorney's fees.

9. During 2006, Respondent was a salaried employee of the Law Offices of Kenneth H. Jacobson and therefore did not personally receive the \$21,190.45 in funds retained by the law firm in Wu's personal injury matter.
10. On August 1, 2006, Respondent provided a settlement disbursement sheet to Wu, which included her itemized medical bills. In the settlement disbursement sheet, Respondent provided both the original amounts owed to the medical providers as well as the reduced amounts owed after Respondent had negotiated reductions.
11. According to the settlement breakdown provided by Respondent, \$63,241.45 would be paid as "Reimbursement to Blue Cross."
12. According to the settlement breakdown provided by Respondent, \$68,750, or 25% of the settlement per the retainer agreement, would be disbursed to the law office for attorney's fees.
13. Pursuant to the settlement disbursement sheets, after deductions for attorney's fees, medical bills and miscellaneous costs, Wu would receive \$128,873.55. On or about August 3, 2006, Wu signed the settlement disbursement sheet that had been prepared and provided by Respondent.
14. On August 4, 2006, Respondent issued two client trust account checks to Wu totaling \$128,873.55 as her portion of the settlement in the personal injury matter.
15. On August 15, 2006, Respondent wrote Jenelle Boers of Meridian Resource Company regarding the outstanding amounts owed to Blue Cross. In the August 15, 2006 letter, Respondent enclosed a check for \$42,051 and stated that the check "represents full and complete payment in satisfaction of, and reimbursement for, the health insurance benefits issued in the amount of \$63,241.45 . . .".
16. On August 21, 2006, Wu called Meridian Resource Company to verify that her medical bills had been paid.
17. On August 21, 2006, a recovery representative for Meridian Resource Company informed Wu that although \$63,241.45 was the original amount owed, Respondent and Meridian had agreed to reduce the reimbursement amount by one-third to \$42,051.
18. On August 21, 2006, Wu contacted Respondent regarding the discrepancy between the \$63,241.45 listed on the settlement disbursement sheet and the \$42,051 actually paid to Meridian Resource Company.
19. On August 22, 2006, Wu telephoned Respondent three times inquiring about the discrepancy between the original amount owed to Blue Cross and the amount actually paid to satisfy Blue Cross's lien.
20. After receiving Wu's calls, Respondent again consulted with Jacobson about the attorney's fees and based on Jacobson's mistaken understanding of the common fund doctrine, Jacobson told Respondent that the law firm had a right to keep the \$21,190.45.
21. On August 23, 2006, Respondent responded to Wu's inquiry and told her that the \$21,190.45 was being retained as attorney's fees under his understanding of the common fund doctrine. Wu told

Respondent that she would file a complaint with the State Bar, and Respondent told Wu that she had the right to file the complaint if she chose to do so.

22. On September 5, 2006, Wu filed a complaint against Respondent with the State Bar of California.

23. On December 21, 2006, the Law Offices of Kenneth Jacobson issued a check made payable to Wu in the amount of \$21,190.45. With the check, Respondent included a personal apology for his misunderstanding of the common fund doctrine and for any inconvenience to Wu. Wu received the check for \$21,190.45.

Conclusions of Law (Count One)

24. By misrepresenting to Wu that he would disbursing \$63,241.45 to Meridian Resource Company when Respondent knew that he would only be disbursing \$42,051 to Meridian, and by misrepresenting to Wu that \$68,750 would be collected as attorney's fees when he knew \$89,940.45 was taken as attorney's fees, Respondent committed acts involving moral turpitude in wilful violation of Business and Professions Code section 6106.

Conclusions of Law (Count Two)

25. By failing to disclose to Wu that \$21,190.45 in settlement funds would be retained in attorney's fees in addition to the 25 percent contingency fee agreed to in the retainer agreement and by keeping the entire \$21,190.45 after negotiating a reduction of Blue Cross's lien, without Wu's consent or knowledge, Respondent wilfully collected an unconscionable fee in violation of rule 4-200(A) of the Rules of Professional Conduct.

Supporting Authority

Standard 2.3 states that a member culpable of an act of moral turpitude and/or intentional dishonesty toward a client or of concealment of a material fact to a client shall result in actual suspension or disbarment depending upon the extent to which the client is harmed or misled, the degree of the harm and the misconduct's relation to the practice of law.

Pending Proceedings

The disclosure date referred to on Page 2, paragraph A.(7), was made on August 1, 2008.

Costs of Disciplinary Proceedings

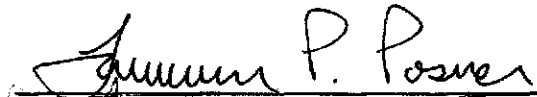
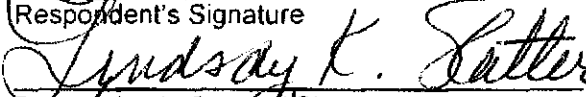
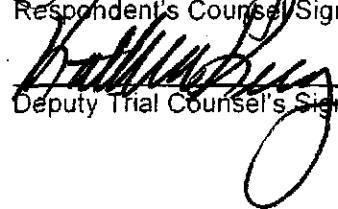
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 1, 2008, the costs in this matter are approximately \$1,983. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the costs of further proceedings.

(Do not write above this line.)

In the Matter of Laurence P. Posner	Case number(s): 06-O-14912
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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 Fact, Conclusions of Law and Disposition.

<u>8-20-08</u> Date	 Respondent's Signature	<u>Laurence P. Posner</u> Print Name
<u>8-19-08</u> Date	 Respondent's Counsel Signature	<u>Lindsay K. Slatter</u> Print Name
<u>8/21/08</u> Date	 Deputy Trial Counsel's Signature	<u>Katherine Kinsey</u> Print Name

(Do not write above this line.)

In the Matter Of Laurence P. Posner	Case Number(s): 06-O-14912
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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.)**

8/27/08

Date



Judge of the State Bar Court

DONALD F. MILES

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 Los Angeles, on August 27, 2008, 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 Los Angeles, California, addressed as follows:

LINDSAY KOHUT SLATTER, ESQ.
FISHKIN & SLATTER LLP
1111 CIVIC DR STE 215
WALNUT CREEK, CA 94596

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

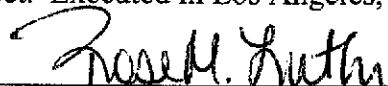
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

KATHERINE KINSEY, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 27, 2008.



Rose M. Luthi
Case Administrator
State Bar Court