



<p>Counsel for the State Bar</p> <p>THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL JOSEPH R. CARLUCCI No. 172309 1149 South Hill Street, 10th Floor Los Angeles, California 90015-2299 Telephone: (213) 765-1053</p>	<p>Case number(s)</p> <p>97-O-16606-PEM</p> <p>kwiktag® 035 115 381</p> 	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED </p> <p>FEB 04 2004</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel for Respondent</p> <p>David A. Clare, No. 44971 12791 Western Ave. Suite J Garden Grove, CA 92841</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of</p> <p>Gary Kauffman</p> <p>Bar # 71436</p> <p>A Member of the State Bar of California (Respondent)</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 22, 1976
 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - 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:
2005, 2006, 2007
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth under "Partial Waiver of Costs"
 - costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

B. Aggravating 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 under "Prior Discipline".

SEE "ADDITIONAL FACTS" IN ATTACHMENT HERETO

- (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 "ADDITIONAL FACTS" IN ATTACHMENT HERETO
- (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) 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:

SEE "ADDITIONAL FACTS" IN ATTACHMENT HERETO

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of EIGHTEEN (18) MONTHS

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____, and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- iii. and until Respondent does the following: _____

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of THREE (3) YEARS, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

A. Respondent shall be actually suspended from the practice of law in the State of California for a period of SIXTY (60) 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 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: _____

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she shall 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 shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) 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.
- (4) 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.

- (5) 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.
- (6) Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit _____ 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 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.
- (8) 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.
- (9) 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 |
- (10) 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 _____ 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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended.
- Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: GARY KAUFFMAN (No. 71436)

CASE NUMBER(S): 97-O-16606

FACTS AND CONCLUSIONS OF LAW.

Respondent admits the following facts are true and that he wilfully violated Rules of Professional Conduct, rules 1-300 and 3-110(A), and Business and Professions Code, section 6106.

Respondent began practicing law in 1977 after obtaining his California license in 1976. He started as a solo practitioner, handling mostly minor criminal matters. In or about 1979, a mutual friend introduced Respondent to David Goss, a non-attorney, who Respondent was told had a great deal of experience as a personal injury law office administrator.

Goss told Respondent that he was an expert in how to set up, organize, and run a personal injury law office where the sole goal was to represent clients who had been involved in minor traffic accidents; and to settle those cases for relatively small amounts, without the need to pursue the cases through extensive litigation.

After the two met, Goss began working at Respondent's office as the office administrator. Goss quickly established a personal injury law practice in Respondent's name. Goss also hired a secretary to assist him, and a non-attorney "adjustor" to negotiate settlements. Other than Respondent, there were no attorneys working in the office.

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Attachment Page 1

At this time, Respondent was abusing alcohol and drugs. He used marijuana and alcohol daily, and sometimes other drugs. He was usually intoxicated most of the day. Consequently, he was rarely at his law office to supervise Goss' and the other employees' activities.

From 1979 through 1981, Respondent abdicated the control and management of the personal injury practice to Goss and his other non-attorney staff. Respondent did not exercise any effective control over the day-to-day operations of his law office, including the activities of Goss and the other employees. In fact, Respondent was only present in the office on rare occasions. At most, he handled only a few minor criminal cases which did not involve the workings of Respondent's personal injury office.

During this period, Goss and Respondent's other non-attorney employees engaged in conduct that constituted the unauthorized practice of law. Respondent was not involved in the handling of his office's personal injury cases from the point of intake through settlement. Goss and Respondent's non-attorney staff accepted new clients on their own, opened client files, and negotiated and settled cases in Respondent's name with insurance companies without the clients ever having any communication with Respondent.

After an investigation by the Department of Insurance and the Los Angeles County District Attorney, in 1981 Respondent was arrested and charged by the Los Angeles County District Attorney's Office with several counts of grand theft and insurance fraud, arising from his alleged involvement in a staged accident, insurance fraud conspiracy organized and masterminded by Ronald Revere, a chiropractor.

It was after his arrest that Respondent discovered that, for the two year period that they

had worked in his law office, Goss and the other office employees were part of Revere's insurance fraud enterprise and had been utilizing Respondent's name and office to submit and settle a large number of fraudulent personal injury claims that were concocted by Revere's chiropractic clinics. Respondent also learned that all settlement checks fraudulently obtained by Goss from insurance companies in Respondent's and his purported clients' names had been endorsed by others in the office. The settlement proceeds were then split among Goss and others involved in the Revere phony accident scheme, with Respondent receiving only small amounts of any remaining settlement funds as his fee.

Following his arrest, Respondent closed his law office and ended his relationship with Goss and the others that had worked in his office.

In 1984, Allstate Insurance Company and State Farm Insurance Company filed its own lawsuit in United States District Court, Central District, against the members of the Revere insurance fraud enterprise, including Respondent, for fraud, conspiracy to defraud, and violations of the federal RICO statute (18 U.S.C. section 1964(c)), (hereinafter the "*Revere matter*"). Allstate and State Farm alleged that Revere organized and masterminded the conspiracy to defraud insurance companies through the fabrication and submission of phony personal injury claims. Allstate and State Farm further alleged that Revere carried out this conspiracy to defraud for several years with the participation of several cappers, chiropractors and attorneys, including Respondent.

Respondent, on the advice of counsel, invoked his Fifth Amendment privilege throughout the discovery proceedings of the *Revere matter* because of the pending criminal action.

Respondent was acquitted of all charges against him in the criminal case at the conclusion of a lengthy jury trial in 1991. Following the conclusion of the criminal case, Respondent offered himself for deposition or other discovery in the *Revere* matter, but the court ruled that this was no longer an option for Respondent and precluded him from presenting any defense during the course of the trial.

After many years of protracted litigation, the *Revere* federal civil matter went to trial in 1994 as a bench trial before Judge Robert Takasugi. In 1997, the court rendered its verdict. The court ruled in favor of the plaintiffs on all remaining causes of action, and specifically found by clear and convincing evidence that the defendants, including Respondent, had conspired to and did defraud Allstate and State Farm insurance companies. The court also determined that all of the thousands of personal injury cases that emanated from Ronald Revere's clinics between 1977 and 1981 were fabricated, staged, or otherwise fraudulent, including those processed and settled through Respondent's law office. The district court's judgment was affirmed by the United States Court of Appeals, Ninth Circuit, in December 2000.

LEGAL CONCLUSIONS

By abdicating complete control of his personal injury practice to non-attorneys, failing to supervise those non-attorneys, allowing his non-attorney employees to engage in the unauthorized practice of law in his name for more than two years, which allowed the non-attorneys to commit insurance fraud in his name, Respondent failed to supervise his employees, aided and abetted the unauthorized practice of law, and engaged in a course of conduct that was reckless.

By engaging in the foregoing conduct, Respondent committed acts in violation of Rules of Professional Conduct, rules 1-300 and 3-110(A), and which involved moral turpitude, dishonesty or corruption in violation of Business and Professions Code, section 6106.

ADDITIONAL FACTS

1. Following the initiation of criminal proceedings against him in 1981, Respondent closed his law office and ceased practicing law in Southern California. Respondent moved to Northern California where he enrolled in drug and alcohol abuse counseling. In 1983, Respondent opened a new law office in San Rafael. Since that time, Respondent has engaged solely in the practice of criminal defense.

In 1985 and 1986, Respondent entered two licensed residential treatment programs, "Duffy's" in Calastoga, California, and "Brightside" in Monterey County. Through these programs, Respondent was successful in his attempts to refrain from the use and abuse of alcohol and drugs. Respondent has been sober since October 15, 1986. Respondent continues to regularly attend Alcoholics Anonymous meetings. Respondent is also active in "The Other Bar", where he volunteers his time to provide assistance and help to other attorneys attempting to become sober.

2. The events underlying the misconduct herein took place many years ago, between 1979 and 1981. There has been no similar misconduct at any time in the intervening years. Respondent and Plaintiffs Allstate Insurance Company and State Farm Insurance Company reached a financial settlement in the underlying *Revere* federal civil matter, and Respondent has fully satisfied the civil judgment against him.

3. In 1991, Respondent received discipline of one year stayed suspension and three years probation arising from a trust account violation involving one client matter that dated back to 1981 (case no. 81-O-10346). The misconduct in that matter occurred after the misconduct stipulated to herein. As such, though Respondent's prior discipline is noted here, it is not being considered as an aggravating circumstance.

4. Because Respondent was precluded by the court from offering any defense to the conspiracy and fraud allegations against him in the *Revere* matter, he was unable to present certain witnesses at the trial to provide evidence that Respondent had no knowledge of the fraud being committed in his law office. These witnesses did testify in Respondent's defense at the criminal trial, and he was acquitted of all criminal charges.

Consequently, based upon the "justice and fairness" requirement set forth in *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725 and *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal State Bar Ct. Rptr. 318, it is questionable whether the doctrine of collateral estoppel would apply in this State Bar Court matter to prevent Respondent from re-litigating the determinations found by clear and convincing evidence in the *Revere* civil matter.

5. A wide range of character witnesses including many clients, former clients and attorneys have attested by letter in this proceeding to Respondent's good moral character, honesty and trustworthiness.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was December 10, 2003.

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Subsequent disclosure pursuant to Rule 133 was made in writing to Respondent on January 27, 2004.

WAIVER OF VARIANCE

The parties hereby waive any variance between the misconduct alleged in the Notice of Disciplinary Charges and the misconduct stipulated to by the Respondent in this Stipulation of Facts, Conclusions of Law and Disposition.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards for Attorney Sanctions for Professional Misconduct, Standard 2.3

Date 1/21/04

Gary Kauffman
Respondent's signature

Gary Kauffman
print name

Date 1/16/04

David A. Clare
Respondent's Counsel's signature

David A. Clare
print name

Date 1/27/04

Joseph R. Carlucci
Deputy Trial Counsel's signature

Joseph R. Carlucci
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.)

February 4, 2004
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. 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 February 4, 2004, 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:

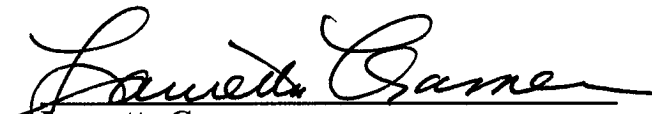
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**DAVID ALAN CLARE
12791 WESTERN AVE #J
GARDEN GROVE CA 92841**

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

JOSEPH R CARLUCCI , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **February 4, 2004.**


Laurretta Cramer
Case Administrator
State Bar Court