



(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 Manuel Jimenez State Bar of California 180 Howard Street San Francisco, CA 94105  Bar # 218234	Case number(s) 04-0-15150	(for Court's use)  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>XDS</i>  JAN 26 2006  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per. Respondent  Jerome Fishkin Fishkin & Slatter, LLP 369 Pine Street, Ste. 627 San Francisco, CA 94104  Bar # 47798	Submitted to <input type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND            DISPOSITION AND ORDER APPROVING</b>  <b>REPROVAL</b> <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  JAYNELLE K. BELL  Bar # 154264  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 December 16, 1991.  
(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 12 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:  
2007, 2008, 2009.  
(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.
- (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.

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- (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:**

(Do not write above this line.)

#### 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.

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- (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: Not required in this case for the protection of the public or is it in the interests of the Respondent. See Matter of Respondent G (Review Dept 1992) 2 Cal. State Bar Ct. Rptr. 181.
- (11)  The following conditions are attached hereto and incorporated:
- |   |  |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions                        |

**F. Other Conditions Negotiated by the Parties:**

Respondent must attend the Trust Account Management School offered through the State Bar of California.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        JAYNELLE K. BELL

CASE NUMBER(S):        04-O-15150

**FACTS AND CONCLUSIONS OF LAW.**

Respondent represented Tracy Palmer in a civil suit. On or about April 22, 2004, HealthCare Security Services of California issued check number 010874 made payable to Tracy Palmer and Jaynelle Bell, Jaynelle Bell and Associates, in the sum of \$23,500.00. On or about April 26, 2004, respondent deposited check number 010874 into her smart business checking account held at Mechanics Bank, bank account number 39657329. This account is not a client trust account.

Respondent represented Tanya Kemp in a civil matter. On or about April 7, 2004, Kemp's case settled as a result of a mediation hearing. On or about April 15, 2004, Carl Warren and Company issued check number 10508 in the amount of \$100,000.00 to Tanya Kemp and respondent. On or about April 26, 2004, respondent deposited check number 10508 in to her smart business checking account held at Mechanics Bank, bank account number 39657329. This account is not a client trust account.

By failing to deposit funds received for the benefit of her clients in a bank account labeled "Trust Account," "Client's Trust Account" or words of similar import, respondent wilfully violated rule 4-100(A) of the California Rules of Professional Conduct.

**PENDING PROCEEDINGS.**

As of November 30, 2005, Respondent has no pending investigations/proceedings not resolved by this stipulation necessitating disclosure as required, on page one, paragraph A.(7).

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 30, 2005, the estimated prosecution costs in this matter are approximately \$2,296.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

## AUTHORITIES SUPPORTING DISCIPLINE.

### Standards

In determining the appropriate level of discipline, the court should look to the Standards for Professional Misconduct. In *In re Morse* (1995) 11 Cal.4th 184, 206, the California Supreme Court stated:

“To determine the appropriate level of discipline ... we... must first look to the standards for guidance. ‘These guidelines are not binding on us, but they promote the consistent and uniform application of disciplinary measures. Hence we have said that ‘we will not reject a recommendation arising from application of the standards unless we have grave doubts as to the propriety of the recommended discipline.(Citation Omitted.)”

Standard 2.2, Offenses Involving Entrusted Funds or Property, reads in relevant part: culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in an least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

### Case Law

The Court should look at case authority in determining the appropriate level of discipline to determine whether the discipline is consistent or disproportional to prior decisions on the same set of facts. (*In re Morse*, supra, 11 Cal.4th at pp. 207-208; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) Similar cases can indicate appropriate discipline. *Id.*

*Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, held in part, that attorneys must put all funds received for benefit of clients in a trust account. In the event of dispute over amount owed to medical lienholder, attorney cannot withdraw funds from the trust account and put them in a general account.

*Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, held in part, that an attorney's failure to deposit into his trust account settlement funds received for the benefit of a client is a direct violation of the Rules of Professional Conduct governing client trust funds.

*Kelley v. State Bar* (1991) 53 Cal.3d 509: Respondent, with no prior discipline, received \$2000 from his client for payment of a settlement of a civil matter. Respondent deposited the funds into a general account instead of a trust account and then mistakenly wrote a check for the

settlement from his trust account, which subsequently bounced. Respondent then payed the settlement from his general account, with another check that bounced. Respondent then paid the settlement a few weeks later. In a second matter, the Respondent failed to put the proceeds from the sale of a client plain in his trust account, and misappropriated \$750, which he subsequently returned. The court suspended the attorney for three years, stayed, three years probation, and 120 actual suspension after finding that the respondent had no prior record of discipline in 13 years, that the NSF checks probably resulted from the fact that the respondent was in the process of changing bank branches, his secretary of six years had recently left, and his gneral account was levied by the IRS. Furthermore, the court concluded that the misappropriation was not accompanied by deceit and was probably the result of negligent banking practices and a misunderstanding of the respondent's duties.

*Matter of K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335*, respondent with no prior discipline was privately reprovred for failing to keep the disputed portion of a legal fee in trust until resolution of the dispute.

**MITIGATING CIRCUMSTANCES.**

**FACTS SUPPORTING MITIGATING CIRCUMSTANCES.**

No Prior Discipline (Standard 1.2(e)(i)). Respondent was admitted to practice on December 16, 1991, and has no prior disciplinary record.

Good Faith (Standard 1.2(e)(ii)). Respondent's conduct, though a technical violation, acted in good faith.

No Harm (Standard 1.2(e)(iii)). Respondent only held Palmer's funds and Kemp's funds in the bank account. She disbursed Palmer's funds forthwith. She disbursed Kemp's funds as soon as a lien claim was resolved. There was no harm to any client, the public, or the administration of justice.

**STATE BAR ETHICS SCHOOL.**

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

**STATE BAR TRUST ACCOUNT MANAGEMENT SCHOOL.**

Because respondent has agreed to attend State Bar Trust Account Management School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion.

**MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION EXCLUSION.**

It is recommended that respondent not be required to take the Multistate Professional Responsibility Examination because it is not required in this case for the protection of the public or is it in the interests of the Respondent. *See Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181*

Respondent admits that the following facts are true and that he/she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

(Do not write above this line.)

In the Matter of JAYNELLE K. BELL Mem. No. 154264	Case number(s): 04-0-15150
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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.

<u>January 4, 2006</u> Date	<u>Jaynelle Bell</u> Respondent's signature	<u>JAYNELLE K. BELL</u> Print name
<u>1/6/06</u> Date	<u>[Signature]</u> Respondent's Counsel's signature	<u>JEROME FISHKIN</u> Print name
<u>1/12/06</u> Date	<u>[Signature]</u> Deputy Trial Counsel's signature	<u>MANUEL JIMENEZ</u> Print name

(Do not write above this line.)

In the Matter of JAYNELLE K. BELL Mem. No. 154264	Case number(s): 04-O-15150
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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.

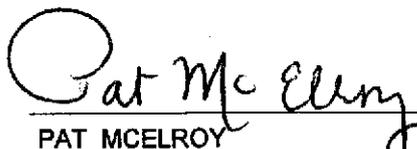
1. On page 6, section E(11)—the x in the box in front of Law Office Management Conditions is deleted.
2. On page 6, section F --Respondent must attend Ethics School Client Trust Accounting School offered through the State Bar instead of Trust Account Management School.
3. On page 10, the first first paragraph-- the words State Bar Trust Account Management School are deleted and in its place are inserted the words Ethics School Client Trust Accounting School.

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

Jan 26, 2006

  
PAT MCELROY  
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 January 26, 2006, 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:

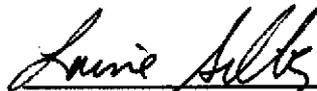
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**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:

**MANUEL JIMENEZ, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 26, 2006.**



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**Laine Silber**  
Case Administrator  
State Bar Court