


<p>Counsel for the State Bar</p> <p>The State Bar of California Office of the Chief Trial Counsel Enforcement Lee Ann Kern, No. 156623 1149 South Hill Street, 10th Floor Los Angeles, California 90015-2299 Telephone: (213) 765-1000</p>	<p>Case number(s)</p> <p>01-O-2666</p> <p>kwiktag® 031 975 205</p> 	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>OCT 08 2003</p> <p>STATE BAR COURT CLERKS OFFICE LOS ANGELES</p>
<p>Counsel for Respondent</p> <p>James R. DiFrank 12227 Philadelphia Street Whittier, CA 90601-3931 (562) 789-7734</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>Siamak E. Nehoray</p> <p>Bar # No. 147168</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 June 11, 1990
(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 11 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 and 2006
(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".

(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 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:

D. Discipline

1. Stayed Suspension.

A. Respondent shall 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 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 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 30 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. 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 of the Office of the Chief Trial Counsel 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 checked="" type="checkbox"/> Financial Conditions |
- (10) ☒ Other conditions negotiated by the parties:
- 329* ☒ 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 of the Office of the Chief Trial Counsel 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.

In the Matter of

Case Number(s):

Siamak E. Nehoray
A Member of the State Bar

01-O-02666

Financial Conditions

- a. ☐ Respondent shall pay restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount(s) of _____, plus 10% interest per annum accruing from _____, and provide proof thereof to the Probation Unit, Office of the Chief Trial Counsel,
- ☐ no later than _____
- or
- ☐ on the payment schedule set forth on the attachment under "Financial Conditions, Restitution."
- b. ☒ 1. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent shall file with each required report a certificate from respondent and/or a certified public accountant or other financial professional approved by the Probation Unit, certifying that:
- a. respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";
 - b. respondent has kept and maintained the following:
 - i. a written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
 - c. respondent has maintained a written journal of securities or other properties held for clients that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Probation Unit for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.
- c. ☒ Within one (1) year of the effective date of the discipline herein, respondent shall supply to the Probation Unit satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Financial Conditions form approved by SBC Executive Committee 10/16/00)

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: SIAMAK NEHORAY

CASE NUMBER(S): 01-O-02666

FACTS AND CONCLUSIONS OF LAW.

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

COUNT ONE: Rules of Professional Conduct, rule 4-100(A)
[Failure to Deposit Client Funds in Trust Account]

1. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows:
2. On or about April 30, 1996, Sister Antoinette Pierre ("Pierre"), a Catholic nun and a resident of Massachusetts, retained the Law Office of Joseph D. Ryan ("Ryan") to represent her in connection with an August 8, 1992, automobile accident in which she had been involved.
3. On or about June 19, 1996, a substitution of attorney was filed in the matter entitled *Sister Antoinette Pierre vs. Warren James Williams, et al*, Los Angeles Superior Court Case No. SC 023740. Respondent, an attorney who worked in the same office suite as Ryan, signed the Substitution of Attorney. There was no written fee agreement between Pierre, Respondent, or Ryan.
5. By on or about March 13, 1997, Pierre had settled her claims with Allstate Insurance Company ("Allstate") and Hartford Insurance Company, the insurers for the two defendants in Pierre's lawsuit, and on or about May 1, 1997, Pierre's lawsuit was dismissed. After on or about May 1, 1997, Respondent assumed sole responsibility for the handling of Pierre's case.
6. On or about June 12, 1997, Allstate mailed Pierre's \$1,000 settlement check to Respondent. Respondent did not deposit the check into his client trust account at California Federal Bank, account number 288-409299-6 (the "CTA"), but instead placed the check in Pierre's file.

7. On or about November 2, 1999, Respondent sent Allstate a letter in which he asked Allstate to reissue the \$1,000 settlement check because the check had expired.

8. On or about November 8, 1999, Allstate sent Respondent a new settlement check in the amount of \$1,000 and on or about November 12, 1999, Respondent deposited the check into his CTA.

9. LEGAL CONCLUSION: By placing Pierre's June 12, 1997, settlement check from Allstate in Pierre's file instead of in his client trust account, Respondent failed to deposit funds received for the benefit of a client in a trust account, in wilful violation of rule 4-100(A), Rules of Professional Conduct.

COUNT TWO: Rules of Professional Conduct, rule 4-100(A)
[Commingling Personal Funds in Client Trust Account]

10. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by depositing or commingling funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows:

11. The allegations of paragraph 6 are incorporated by reference.

12. On or about December 30, 1999, Pierre terminated Respondent as her counsel and on or about December 31, 1999, Pierre retained David DeCelles ("DeCelles") as her attorney.

13. In or about March 2000, Respondent withdrew the \$1,000 Allstate settlement funds from his CTA for his attorney's fees and deposited that amount into his general account.

14. In or about early 2001, Pierre disputed the manner in which the Allstate settlement funds were distributed.

15. In or about early July 2001, in order to resolve the dispute regarding the distribution of the Allstate settlement funds, Respondent withdrew \$1,000 of his personal funds from his general account and deposited those funds into his CTA. On or about July 13, 2001, Respondent wrote check number 1462 from his CTA in the amount of \$1,000 payable to Pierre and DeCelles and mailed the check to DeCelles.

16. LEGAL CONCLUSION: By depositing funds from his general account into Respondent's client trust account, Respondent commingled funds belonging to Respondent in a client trust account, in wilful violation of rule 4-100(A), Rules of Professional Conduct.

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PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was September 11, 2003.

AUTHORITIES SUPPORTING DISCIPLINE.

The case law and the standards support 30 days actual suspension for Respondent's misconduct.

Rule 4-100(A), Rules of Professional Conduct provides in relevant part that all funds received or held for the benefit of clients shall be deposited in one or more identifiable bank accounts labeled "trust account" or other such term and that no client funds shall be commingled with funds belonging to the attorney.

Standard 2.2(b) requires a minimum of three months actual suspension, regardless of mitigating circumstances, for an attorney found culpable of commingling or the commission of another violation of rule 4-100, not amounting to wilful misappropriation.

Even though the standards are merely guidelines, they should not be deviated from absent a compelling reason to do so. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

In *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, Sternlieb was actually suspended for 30 days for misappropriating trust funds. The Supreme Court found that Sternlieb's belief in her entitlement to the funds to be unreasonable, but that her misconduct was not dishonest.

In *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, Bleecker commingled personal funds with client funds in his client trust account, misappropriated \$ 270 in costs advanced by a client, and he used his trust account to hold personal funds in order to avoid a tax levy. Bleecker was suspended for two years, stayed, and placed on two years probation, on conditions including sixty days actual suspension. The Review Department found that the misconduct, which occurred over a short period of time, coupled with other mitigating factors, substantiated a sanction less than that called for by standard 2.2. (*Id.* at pp. 126-127.)

In *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, Whitehead commingled personal funds with client funds in one matter, failed to perform services competently one matter, failed to communicate in one matter, and failed to cooperate with the State Bar in its investigation. Whitehead was suspended for one year, stayed, and placed on five years probation with conditions, including forty-five days actual suspension. The Review Department concluded that the Whitehead's misconduct created minimal danger to client funds, that the misconduct occurred under extenuating circumstances, and that there was extensive mitigating circumstances. As such, court declined to apply standard 2.2(b). (*Id.* at p. 371.)

As in the cases of *Bleecker* and *Whitehead*, standard 2.2 should not apply in the case at bar. At the time of the misconduct, Respondent had at approximately 10 years of discipline-free practice, which is a significant factor in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [10 years discipline-free practice].)

Less discipline is warranted in the instant matter than that imposed in *Bleecker* or *Whitehead* in that Respondent's misconduct is limited to a single matter and is less egregious in that Respondent did not misappropriate his client's funds. As such, 30 days actual suspension is justified.

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9-24-03
Date

Respondent's signature

SIAMIK NEHORAY
print name

9/24/03
Date

Respondent's Counsel's signature

JAMES DIFRANK
print name

9/26/03
Date

Deputy Trial Counsel's signature

LEE ANN KERN
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.)

10-7-03
Date

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 Los Angeles, on October 8, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed October 8, 2003**

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

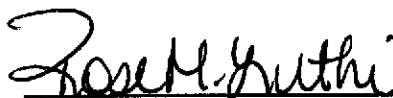
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JAMES R. DIFRANK, ESQ.
12227 PHILADELPHIA ST
WHITTIER CA 90601-3931**

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

LEE KERN, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 8, 2003.**



Rose M. Luthi
Case Administrator
State Bar Court