


**ORIGINAL**

<p>Counsel for the State Bar                  THE STATE BAR OF CALIFORNIA                  OFFICE OF THE CHIEF TRIAL COUNSEL                  ENFORCEMENT,                  ELI MORGENSTERN, No. 190560                  1149 South Hill Street, 10th Fl.                  Los Angeles, CA 90015-2299                  Telephone: (213) 765-1334</p>	<p>Case number(s)                  00-0-12918-AIN</p> <p><b>PUBLIC MATTER</b></p> <p>kwiktag® 031 974 731</p> 	<p>(for Court's use)</p> <p><b>FILED</b></p> <p><b>DEC 28 2003</b></p> <p>STATE BAR COURT                  CLERK'S OFFICE                  LOS ANGELES</p>
<p>Counsel for Respondent                  Michael L. Adelson, Esq.                  Bar No. 38507                  Adelson &amp; Rubin                  11755 Wilshire Blvd. 15th Fl.                  Los Angeles, CA 90025                  (310) 473-6447</p>	<p>Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION                  AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of                  JAMES LEE PATISON</p> <p>Bar # 57971</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 20, 1973  
 (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 21 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:  
 \_\_\_\_\_  
 (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."

In the Matter of        JAMES LEE PATISON  
A Member of the State Bar

Case Number(s):  
00-0-12918-AIN

**NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

Bus. & Prof. Code §6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.

(c) **Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)**

**RULE 133, Rules of Procedure of the State Bar of California STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

(a) A proposed stipulation as to facts, conclusions of law, and disposition shall set forth each of the following: . . .

(5) a statement that respondent either

(i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or

(ii) **pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include each of the following:**

**(a) an acknowledgment that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and**

**(b) if requested by the Court, a statement by the deputy trial counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter. (emphasis supplied)**

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code §6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea shall be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

12-17-03  
Date

  
Signature

JAMES LEE PATISON  
print name

(Nolo Contendere Plea form approved by SBC Executive Committee 10/22/97)

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 (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: See attached page 16

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of five (5) 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 five (5) 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 three (3) 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: \_\_\_\_\_

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 quarterly 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 checked="" type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions  |
- (10)  Other conditions negotiated by the parties: See attached page 19, Mental Health-Conditions
- 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.

JAMES LEE PATISON

00-0-12918-AIN

A Member of the State Bar

## 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.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:        JAMES LEE PATISON

CASE NUMBER(S):        00-O-12918-AIN

**FACTS AND CONCLUSIONS OF LAW.**

Respondent pleads nolo contendere to the foregoing facts and violations. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified herein.

Facts

1. On or about February 5, 1991, Dixie Farms Market ("Debtor") filed a voluntary petition under Chapter 11 of Title 11 of the United States Code ("the Bankruptcy Code"), Case No. LA 91-O-63573 ("the Dixie Farms Chapter 11 Bankruptcy").

2. On or about May 3, 1991, the Bankruptcy Court ("Court") entered an Employment Order in the Dixie Farms Chapter 11 Bankruptcy approving Respondent as counsel for the Official Committee of Unsecured Creditors ("Committee"). The Employment Order was based on the Court's finding that Respondent represented no interests adverse to the estate and that his employment was in the best interest of the estate.

3. The Debtor maintained two bank accounts ("the debtor in possession accounts"). The Debtor maintained a debtor in possession account at Bank of America, account no. 15814-00956, which account constituted a blocked account pursuant to Court Order ("Blocked Account"); the Debtor also maintained a debtor in possession general account at Sumitomo Bank, account no. 0610-53224 ("General Account").

4. Respondent and his secretary were signatories on the Blocked Account. At all times material herein, Respondent was to maintain control over the funds in the Blocked Account pursuant to the Court Order.

5. On or about September 15, 1994, the Dixie Farms Chapter 11 Bankruptcy was converted to a Chapter 7 bankruptcy, Case No. LA 91-63573-KM ("the Dixie Farms Chapter 7 Bankruptcy"). On or about September 28, 1994, Carolyn A. Dye ("Trustee") was appointed as



the Chapter 7 Trustee of the bankruptcy estate.

6. On or about October 13, 1994, David Gould ("Gould"), the Debtor's counsel, wrote a letter to the Trustee informing her that the Chapter 11 estate had cash funds of over \$100,000.00 and that Respondent was holding the funds in the estate and "took control over the case." The letter also suggested that the Trustee speak to Respondent concerning the whereabouts of the estate funds.

7. On or about October 24, 1994, the Trustee wrote a letter to Respondent requesting the status of all outstanding matters and information about the debtor-in-possession accounts and the location of the estate funds, which the Trustee believed were under Respondent's control. Respondent responded to said letter on October 31, 1994, but did not provide information concerning the Blocked Account.

8. Thereafter, the Trustee wrote follow-up letters repeating her request for information regarding various matters and the debtor-in-possession accounts and location of the estate funds on or about October 31, 1994, December 2, 1994, December 22, 1994, and January 4, 1995. Respondent wrote the Trustee a letter dated January 17, 1995, and faxed copies of documents to the Trustee on December 2, 1994. Neither the letter or the documents referred to the Blocked Account.

9. On or about January 3, 1995, the Trustee filed a motion in the Dixie Farms Chapter 7 Bankruptcy ("the First 2004 Motion") for an order authorizing the examination of Respondent pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure ("Rule 2004 Examination"). The basis set forth in the First 2004 Motion was that Respondent had failed to provide the Trustee with any information concerning his activities as counsel for the Committee in the Dixie Farms Chapter 11 Bankruptcy which the Trustee contended was pertinent to the administration of the estate in the Dixie Farms Chapter 7 Bankruptcy.

10. On or about January 30, 1995, The Court entered an order requiring Respondent to appear for an examination on or about January 30, 1995 ("the First 2004 Order"). Respondent received the First 2004 Order in due course shortly after on or about January 30, 1995, but on advice of counsel did not appear.

11. On or about March 21, 1995, the Trustee filed an Application for Order to Show Cause Why James L. Patison Should Not Be Held in Civil Contempt and for Sanctions ("the Second 2004 Motion").

12. On or about April 25, 1995, the Court entered an order ("the Second 2004 Order") continuing the Rule 2004 examination of Respondent to on or about May 16, 1995, and further ordered that a subpoena be served on Respondent requiring his appearance at the Rule 2004 examination. In the Second 2004 Order, the Court continued the hearing on the Second 2004 Motion to on or about June 13, 1995, contingent upon Respondent's non-appearance at the Rule 2004 examination scheduled for on or about May 16, 1995.

13. The Second 2004 Order was served on Respondent by mail at his then official membership records address in Ventura, California.

14. Respondent received a copy of the Second 2004 Order by mail sometime after April 25, 1995. On advice of counsel, Respondent did not appear at the Rule 2004 examination on or about May 16, 1995.

15. On or about March 21, 1997, the Trustee moved again for a Rule 2004 examination of Respondent and production of documents ("the Third 2004 Motion"). On or about March 31, 1997, the Court entered an order granting the Third 2004 Motion pursuant to which Respondent was ordered to appear for a Rule 2004 examination on or about May 14, 1997 ("the Third 2004 Order").

16. The Third 2004 Order was served by mail addressed to Respondent's residence located at 608 Del Norte, Ojai, California 93024 on March 21, 1997. Respondent received a copy of the Third 2004 Order sometime thereafter.

17. On advice of counsel, Respondent did not appear for the Rule 2004 examination on or about May 14, 1997, as ordered in the Third 2004 Order.

18. On or about April 16, 1998, the Trustee filed a Motion for Order to Show Cause Why James L. Patison and Kathryn Mariano Should Not Be Held in Civil Contempt and for Sanctions ("the Contempt Motion").

19. On or about April 24, 1998, the Court entered an order granting the Contempt Motion, and required Respondent to show cause on or about May 20, 1998, as to why he should not be held in civil contempt ("the Patison OSC").

20. On or about May 20, 1998, the Court conducted the hearing on the Patison OSC and informed Respondent that he should submit to a Rule 2004 examination, failing which he would be formally ordered to do so, detained and/or fined. Respondent represented to the Court that he would voluntarily stipulate to appear for a Rule 2004 examination reserving all of his rights. The court continued the Patison OSC to on or about July 21, 1998.

21. On or about July 6, 1998, and on or about August 20, 1998 ("the Discovery Date"), Respondent testified at a Rule 2004 examination, at which time the Trustee discovered the following facts:

a. On or about May 24, 1993, Respondent filed a fee application ("Fee Application") in the Dixie Farms Chapter 11 Bankruptcy in which he sought a total of \$131,005.50 in fees and \$5,079.78 in costs. On or about July 7, 1993, the Court conducted a hearing on the Fee Application, during which the Court verbally allowed the amounts set forth in the Fee Application but only authorized payment of Respondent's costs and 20% of his requested fees to be paid in an interim basis. In other words, Respondent was only authorized to receive a total of \$31,280.88: \$5,079.78 in costs and %20 of \$131,005.50, or \$26,201.10 ("the Fee Award"). At no time did the Court authorize Respondent to receive any funds beyond the Fee Award. A written order was never entered in connection with the Fee Application;

b. Thereafter, between on or about January 12, 1994, and on or about September 22, 1994, Respondent received transfers totaling \$104,804.40 ("Subject Funds") from the estate from both the Blocked Account and the General Account.

c. At least twelve (12) checks were issued from the Blocked Account for a total amount of \$90,079.78; and received at least one (1) check was issued by the Debtor from the General Account in the sum of \$41,005.50; Respondent did not make an effort to prevent the issuance of the aforementioned checks. Of the thirteen (13) checks, four were made payable to Respondent in the aggregate amount of \$30,000.00 and the remaining checks were made payable to "Law Offices of James L. Patison", all of the checks were deposited in Respondent's general account and resulted in a benefit to Respondent; and

d. The Subject Funds had never been authorized by the Court to be paid to Respondent on an interim or any other basis. Respondent's receipt of the Subject Funds was not disclosed to the Court, the Creditors' Committee, or the Trustee prior to the Discovery Date. Respondent did not inform the Trustee of the receipt of the Subject Funds even when the Trustee asked him about the estate assets by letters. Payments made to Respondent were included in reports filed by the Debtor with the United States Trustee.

22. Based on the figures reported in Interim Statement No. 190, the total funds received by Respondent equaled at least \$136,085.23.

23. The checks were issued from the Blocked Account and the General Account while Respondent was away from the office and suffering from physical and mental health issues. Respondent's secretary endorsed the checks written from the Blocked Account. Respondent did not adequately supervise his employees during this period.

24. On or about December 18, 1998, the Trustee filed a motion in the Dixie Farms Chapter 7 Bankruptcy to revoke Respondent's employment as counsel to the Committee and for disgorgement of Respondent's fees and costs ("Revocation Motion").

25. On or about February 3, 1999, the Court granted the Revocation Motion. The Court found that, "Patison put himself in a position adverse to the estate and the committee and breached his fiduciary duty to the unsecured creditors of the bankruptcy estate by stealing money from the estate." The Court limited disgorgement to \$31, 280.88, the amount previously authorized by the Court, but allowed the Trustee to file a separate adversary proceeding in order to recover the balance of the funds received by Respondent. On or about April 21, 1999, the court denied Respondent's motion to reconsider ("Motion to Reconsider") the court's previous ruling on the Revocation Motion. In the court's Findings of Fact and Conclusions of Law in Support of Order Denying the Motion to Reconsider, the Court concluded that when Respondent received the Subject Funds, he put himself in a position adverse to the estate; Respondent was therefore no longer disinterested and therefore could not be employed. Accordingly, Respondent was not entitled to any fees or costs.

26. On or about January 8, 1999, pursuant to the Court's order allowing the Trustee to file a separate adversary proceeding, the Trustee filed a second amended complaint in the adversary proceeding in the Dixie Farms Chapter 7 bankruptcy, Adv. No. 98-02837-KM ("Trustee's Adversary Case"). The complaint alleged claims for: (1) turnover of property of the estate; (2) conversion of estate property; (3) common count for money had and received; (4) breach of fiduciary duty; (5) declaratory relief regarding alter ego liability; and (6) post petition transfers.

27. On or about March 26, 1999, the Trustee filed a motion for summary judgment in the Trustee's Adversary Case. On or about May 3, 1999, the Court filed its order granting the motion for summary judgment on the first claim for turnover, second claim for conversion, third claim for money had and received, fourth claim for breach of fiduciary duty, and sixth claim for post petition transfers. The Court continued the summary judgment hearing on punitive damages to later date in or about June 1999.

28. On or about July 26, 1999, the Court filed its Findings of Fact and Conclusions of Law in Support of Order Granting Trustee's Motion for Summary Judgment in the Trustee's Adversary Case, awarding \$104, 804.40 in principal damages and \$200, 000.00 in punitive damages. Among the Court's Conclusions of Law in Support of the Order Granting Trustee's Motion for Summary Judgment were the following:

"E. Conversion is the wrongful exercise of dominion over personal property of an other.

F. The Subject Funds were and continued to be property of the estate at all material times and the Court never allowed Patison to be paid that amount as a fee on

on an interim or any other basis and he had no right to take those funds; Patison converted

the Subject Funds when he exercised wrongful dominion over the funds and therefore substantially interfered with right of the estate to those funds.

G. The Subject Funds were estate funds and had not been awarded to Patison and thus having taken the Subject Funds, Patison is indebted to the estate in the amount of the Subject Funds.

H. As counsel for the Creditors' Committee, Patison owed a fiduciary duty to the Creditors' Committee and its constituency. Patison, who was employed in the bankruptcy case, had a duty to refrain from stealing estate funds. By taking the Subject Funds without obtaining authority from the Court to do so, Patison breached his fiduciary duty.

J. The Trustee satisfied the "oppression, fraud and malice" standards under California Civil Code § 3294(a) by clear and convincing evidence that is required for the Court to assess punitive damages. Federal law is also applicable here for purposes of assessing punitive damages;

K. The purpose of punitive damages is to punish the person that committed the wrongful act and to deter the person that did the act and others similarly situated from committing the wrongful act in the future. There is grave necessity to impress upon attorneys employed by orders of the bankruptcy court to represent various parties in the bankruptcy case that they cannot steal from the bankruptcy estate;

L. There is a need to deter Patison and other attorneys similarly situated and other professionals such as accountants from converting estate funds and breaching fiduciary duty. It is necessary here to award punitive damages to punish Patison and deter him and others employed by the estate by court orders from such behavior.

M. Punitive damages should be assessed against Patison and are assessed in the amount of \$200,000.00 on the causes of action for conversion and breach of fiduciary duty. . . This ruling is on the basis of . . . (2) the egregiousness of Patison's behavior."

29. On or about May 24, 1999, Respondent filed an appeal from the Court's order granting the Revocation motion; and on or about September 10, 1999, Respondent filed an appeal from the Court's order granting the Trustee's motion for summary judgment in the Trustee's Adversary Case. On or about July 31, 2000, the United States District Court, Central District of California, Southern Division, in Case No. SA CV 99-710 AHS affirmed the bankruptcy court's order granting the Revocation Motion; and on or about July 31, 2000, the United States District Court, Central District of California, Southern Division, in Case No. SA CV 99-1122 AHS affirmed the bankruptcy court's order granting the Trustee's motion for summary judgment in the Trustee's Adversary Case.

30. Thereafter, Respondent appealed the District Court's Order affirming the Revocation Motion and the order granting summary judgment in the Trustee's Adversary Case. On or about February 25, 2002, the Ninth Circuit Court of Appeals affirmed the Court's order granting the Revocation Motion; as well as the order granting summary judgment in the Trustee's Adversary Case. The Ninth Circuit remanded the award of punitive damages, so that the Court could allocate the amount of damages that pertained to the state law conversion claim and the amount of damages that pertained to the federal law breach of fiduciary duty claim.

31. On or about August 25, 1998, Dye and her counsel filed a Motion by Trustee and Counsel to Quash Subpoenas and to Establish Procedures for Imposition of Sanctions ("the Motion to Quash") in the Dixie Market Chapter 7 Bankruptcy.

32. On or about September 1, 1998, at a duly noticed hearing, the Court granted the Motion to Quash and quashed subpoenas previously served on Dye and her counsel. On or about September 18, 1998, the court entered its Order Quashing Subpoenas and Scheduling Hearing and Related Filing Deadlines re Sanctions Against James L. Patison ("the Order Quashing Subpoenas").

33. On or about October 13, 1998, pursuant to the Order Quashing Subpoenas, the Court convened a further hearing related to the hearing on the Motion Quash, to determine the amount of sanctions to be imposed against Respondent. Respondent appeared through counsel.

34. On or about October 29, 1998, the Court entered an order imposing sanctions on Respondent for improper issuance and service of subpoenas in the amount of \$1, 500.00. On or about November 24, 1998, Respondent filed an appeal of the Court's order sanctioning him for the improper issuance and service of subpoenas. On or about July 31, 2000, the United States District Court , Central District of California, Southern Division, in Case No. SA CV 98-1032 AHS, affirmed the Court's order imposing sanctions for improper issuance and service of subpoenas. On or about February 25, 2002, the Ninth Circuit Court of Appeals affirmed the sanction for improper service of subpoenas.

35. Respondent failed to report the \$1, 500.00 sanction for improper issuance and service of subpoenas to the State Bar. Respondent did not report the sanction at the advice of counsel.

36. On or about March 3, 1999, Dye served on Respondent and his attorney, John Shellabarger ("Shellabarger"), Trustee's Motion for Sanctions Against Patison and Shellabargar under Fed.R.Bankr.P. 9011 and 11 U.S.C. § 105 for Filing Frivolous Motion and for Improper Purpose ("the Motion for Sanctions"). On or about April 16, 1999, the Motion for Sanctions was filed.

37. The underlying offensive pleading that resulted in the Motion for Sanctions was a motion filed on behalf of Respondent by Shellabarger to reconsider the Court's Revocation Motion. On or about May 11, 1999, the Motion for Sanctions was heard. Respondent through Shellabarger appeared.

38. On or about June 2, 1999, the Court entered its Findings of Fact and Conclusions of Law in Support of Order Granting Trustee's Motions for Sanctions. The Court found that the Motion to Reconsider did not offer any newly discovered evidence that was not presented or reasonably could not have been presented previously warranting reconsideration. The Court found that the Motion to Reconsider was frivolous and filed by Respondent and Shellabarger for an improper purpose of harassing the Trustee and delaying the administration of the estate. The Court ordered Respondent and Shellabarger jointly and severally liable for sanctions in the amount of \$7, 051.72.

39. On or about June 28, 1999, Respondent appealed the Court's Order Granting Trustee's Motions for Sanctions. On or about July 31, 2000, the United States District Court of California, Southern Division, Case No. SA CV 99-850 AHS, affirmed the Court's Order Granting Trustee's Motions for Sanctions. On or about February 25, 2002, the Ninth Circuit Court of Appeals affirmed the sanctions for the filing of the frivolous Motion to Reconsider.

40. Respondent failed to report the \$7, 051.72 sanction for filing of the Motion to Reconsider to the State Bar.

#### Conclusions of Law

By being grossly negligent in the supervision of his employee's administration of the Blocked Account, and thereby allowing bankruptcy estate funds to be transferred from the Blocked Account in contravention of court order, and by allowing the check from the General Account to be issued in contravention of the court order, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

By failing to report the sanctions for improper service of subpoenas, and the filing of the Motion to Reconsider, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent, in wilful violation of Business and Professions Code section 6068(o)(3).

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**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was December 12, 2003.

**DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
00-O-12918-AIN	TWO	Business and Professions Code section 6103

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 12, 2003, the estimated prosecution costs in this matter are approximately \$3, 160.00. 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

Standards 1.2(b)(iii), 1.2(b) (iv), 1.2(e)(iv), 2.2, 2.3, and 2.6 of the Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California apply.

Case Law

*In re Mudge* (1982) 33 Cal.3d 152. The attorney was the executor of an estate ("Estate One"). Between October 1974 and May 1977, the attorney misappropriated funds from Estate One through a series of separate withdrawals. When the misappropriation from the estate was in danger of being discovered through court ordered accountings, the attorney misappropriated funds from another estate ("Estate Two") to make restitution to Estate One. The attorney also used the funds misappropriated from Estate Two for his own personal purposes. The attorney eventually made full restitution to both estates with interest.



In mitigation, the attorney made an unblemished record in his 15 years of practice preceding the misconduct. During the time of the misconduct, Respondent suffered from what his psychiatrist described as "psychological maladjustment" caused by a stressful marriage.

The Supreme Court ordered that the attorney be actually suspended for three (3) years.

*Friedman v. State Bar* (1990) 50 Cal.3d 235. The attorney settled a personal injury case and used the client's portion of the funds for his own use. The attorney did not timely notify the client of the receipt of the settlement funds and failed to make a timely distribution of the funds to the client, a predecessor attorney, or to a physician with whom the attorney had agreed to withhold a sum to discharge the medical lien. The Court found that stress caused by the attorney's marital problems, as well as the attorney's long, unblemished record of legal practice, mitigating. The Supreme Court ordered the attorney actually suspended for three (3) years.

## **MITIGATING CIRCUMSTANCES.**

### **FACTS SUPPORTING MITIGATING CIRCUMSTANCES.**

Respondent became counsel for the Official Committee of Unsecured Creditors in the Dixie Farms Market Bankruptcy in May of 1991.

Respondent was born with a medical condition generally referred to as "pectus excavatum", which is a congenital anomaly consisting of a malformation of the chest wall. Respondent's condition has been diagnosed as moderate to severe, and impaired Respondent's breathing and caused him to experience rapid fatigue, heart palpitations and cardiac arrhythmias, which are an alteration in the rhythm of the heartbeat either in time or force.

Beginning in the summer of 1992, and escalating through the next several years, Respondent began to experience a loss of sleep and was frequently awakened by what seemed to be an inability to breathe. Respondent's heart palpitations became more pronounced and the arrhythmia increased. In addition, Respondent began to experience an even greater loss of energy, a loss of ability to concentrate, and some memory impairment. He also began to lose interest in all activities and his practice. Further, Respondent began to experience frequent panic attacks.

It was not until in or about the summer of 1993, that the symptoms were diagnosed by a psychiatrist and psychologist as consistent with depression, in addition to the physical symptoms attributable to the pectus excavatum.

In addition to these physical and mental impairments, Respondent learned in the summer of 1993, that his wife of 30 years wanted a divorce. Respondent was married when he was nineteen and his wife was seventeen; Respondent and his wife had two children in their twenties at the time. The divorce was contentious and continued until August of 1997.

Learning of his wife's wishes to end their marriage, coupled with his existing medical and mental health conditions, caused Respondent to become distraught.

Respondent was unable to perform any work at all; Respondent had a great deal of difficulty focusing on legal work and legal issues. Respondent experienced a loss of appetite, couldn't sleep, and felt as if nothing mattered in his life.

On or about August 15, 1993, at the recommendation of a family practitioner who diagnosed Respondent as suffering from severe depression, Respondent consulted with Dr. David Grey, a psychologist.

Respondent sought therapy with Dr. Grey commencing in 1993 and continuing through December 1995, when Dr. Grey closed his practice. Respondent has provided the State Bar with cancelled checks that Respondent wrote to Dr. Grey at the end of each session. Other than Prozac, Respondent's therapy did not include medication.

By early 1994, Respondent decided that he could no longer return to work. Respondent closed an office that he maintained in Ventura. A partner supervised the closing of the office and the partner moved to an office also maintained by Respondent in Santa Barbara.

By the Spring of 1994, Respondent worked exclusively from his home in Ojai, although Respondent did rent office space in Ventura, California so that this partner could handle matters in Ventura County and so that Respondent could receive mail there. Respondent admits that he was grossly negligent in the supervision of his office during the year of 1994, because he was rarely, if ever, at the office due to his physical and mental condition. Respondent does not know why the checks were drawn from the Blocked Account and the one check received from the General Account. However, Respondent does not seek to avoid ultimate responsibility for the improper issuance of the checks and the violation of the court order.

In or about April of 1994, Dr. Grey suggested the Respondent begin taking medication, because Respondent's progress was not what Dr. Grey believed it should be. At Dr. Grey's suggestion, Respondent began treatment with Dr. Richard Deamer, a psychiatrist, in or about June of 1994. Dr. Deamer confirmed that Respondent was experiencing major depression in 1994, and prescribed medication for Respondent's depression. Respondent continues to seek treatment from Dr. Deamer to this day, and continues to follow a medication plan prescribed in part by Dr. Deamer.

Dr. Deamer has indicated that he believes that the medication he has prescribed to Respondent is well tolerated for Respondent in regard to Respondent's severe depression.

On or about January 9, 1997, Respondent had surgery to eliminate, or at least diminish, the physical symptoms caused by pectus excavatum. The procedure had never been performed on a patient of Respondent's age (52 years old.)

The surgery, although radical, alleviated a number of the physical symptoms that Respondent had continued to suffer.

At all times during the litigation commenced in the Dixie Farms Market Bankruptcy, Respondent was represented by counsel. Respondent accepted their advice and counsel. Among this advice and counsel, was that Respondent should not respond to the substance of the litigation filed by the Chapter 7 Trustee, because of potential issues of self-incrimination, waiver of attorney-client privilege, and waiver of work-product doctrine.

In or about November 2003, an Order Approving the Settlement of the litigation with the Chapter 7 Trustee in the Dixie Farms Market Bankruptcy was filed with the Bankruptcy Court. Respondent's counsel of record in the litigation is holding the settlement funds in the attorney's client trust account and is expected to release the funds to the Trustee pursuant to the Order in or about November or December 2003.

In summary, the authorized transfers of the funds from the Dixie Farms Market Bankruptcy Estate occurred at a time when Respondent was suffering from physical, mental, and personal problems caused by his divorce. These problems prevented Respondent from adequately supervising his law practice. However, Respondent does not seek to avoid responsibility for the misconduct in the instant matter.

Subsequent to the surgery in 1997, Respondent resumed practicing law from his home part time. Respondent believes that he is better able to cope with his physical and mental problems.

Other than the instant disciplinary matter, Respondent has never been involved in any other ethical impropriety since becoming a member of the California State Bar in 1973.

Respondent has expressed remorse for his actions, and willingness to engage in rehabilitative activities.

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## **STATE BAR ETHICS AND TRUST ACCOUNT SCHOOL.**

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

### **MENTAL HEALTH CONDITIONS:**

The following conditions are derived from recommendations of a Board Certified Adult Psychiatrist after his evaluation of the Respondent.

#### **Psychiatrist's Diagnosis & Treatment Plan::**

The psychiatrist diagnoses Respondent with "Major depressive disorder, recurrent/severe without psychotic features" with several psycho-social problems including problems with his primary support group, the dissolution of his marital relationship, and vocational issues. The psychiatrist recommends that (a) Respondent continue treatment with a Board Certified Adult Psychiatrist, including continuation of a medication regime as prescribed and monitored by that psychiatrist; and, (b) Respondent consult with the psychiatrist regarding his medication regime and monitoring of his condition no less than every two months.

### **RESPONDENT'S COMPLIANCE AND REPORTING REQUIREMENTS:**

No later than thirty (30) days after the effective date of this order:

1. At his own expense, Respondent shall obtain the services of a Board Certified Adult Psychiatrist ("psychiatrist") who agrees to treat Respondent and provide written reports to the Office of Probation as described below.
2. Respondent shall provide the psychiatrist with a true and correct copy of this stipulation as executed by the parties and approved by the State Bar Court.
3. Respondent shall advise the Office of Probation in writing of the name, address and telephone number of the psychiatrist.
4. Respondent shall provide this psychiatrist with a written release waiving rights of privacy and privilege to the extent it authorizes this psychiatrist to submit written reports to the Office of Probation regarding Respondent's condition, recommendations regarding treatment, and Respondent's compliance with the those recommendations. Respondent shall provide a copy of that release to the Office of Probation.

During the entire probation period:

1. Respondent shall comply with all conditions set forth herein and/or all treatment recommendations made by this psychiatrist, including without limitation, recommendations regarding frequency of consultations and compliance with a medication regime.
2. Respondent shall authorize and instruct this psychiatrist to prepare a written report for each consultation which sets forth the psychiatrist's assessment of Respondent's condition, recommendations regarding treatment, Respondent's compliance with the those recommendations, and the date of the next scheduled consultation.
3. With each written report required during the period of this probation [i.e., on or before each January 10, April 10, July 10, and October 10] Respondent shall provide to the Office of Probation a copy of the psychiatrist's report for each consultation which occurred during the preceding calendar quarter.
4. In addition to the psychiatrist report and any other documentation requested by the Office of Probation, Respondent shall declare in each written report he is required to submit pursuant this probation, a writing statement under oath regarding his compliance and/or non-compliance with these mental health conditions and the dates of all consultations.
5. Respondent shall authorize this psychiatrist to report to the Office of Probation within ten (10) days any changes the therapist recommends regarding Respondent's treatment or changes in scheduled dates for consultation.
6. Respondent shall provide the Office of Probation written notification of any changes in scheduled dates for consultation or modifications of his treatment recommendations by his psychiatrist within ten (10) days of the recommendation or change.

Modification of these probationary conditions shall be done pursuant to the Rules of Procedure of the State Bar of California, rule 550, et seq..

Date 12/17/03

James Lee Patison  
Respondent's signature

JAMES LEE PATISON  
print name

Date 12/17/03

Michael Adelson  
Respondent's Counsel's signature

MICHAEL ADELSON, ESQ.  
print name

Date 12/19/03

Elly D. Morgenstern  
Deputy Trial Counsel's signature

ELI D. MORGENSTERN  
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.)

12/22/03  
Date

Alban I. Niles  
Judge of the State Bar Court

**ALBAN I. NILES**

**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 December 23, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed December 23, 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:

**Michael Lawrence Adelson  
Adelson & Rubin  
11755 Wilshire Blvd 15FL  
Los Angeles CA 90025**

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

**ELI MORGENSTERN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 23, 2003.

  
\_\_\_\_\_  
**Johnnie Lee Smith**  
Case Administrator  
State Bar Court