


<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>02-H-11395</p> <p>kwiktag® 035 115 163</p> 	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>SEP 30 2002 <i>HC</i></p> <p>STATE BAR COURT CLERKS OFFICE LOS ANGELES</p>
<p>Counsel for Respondent</p> <p>Gregory Dean Esau In Propria Persona 10900 NE 4th Street, #2230 Bellevue, WA 98004</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>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of</p> <p>GREGORY D. ESAU</p> <p>Bar # No. 111487</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 12, 1983
 (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):
 - costs added to membership fee for calendar year following effective date of discipline
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
2004, 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 00-J-10513
- (b) date prior discipline effective June 9, 2000
- (c) Rules of Professional Conduct/ State Bar Act violations: The proceeding was brought under Section 6049.1 of the Business and Professions Code after Respondent stipulated to a reprimand in the State of Washington, in which he admitted to violations of Washington Rules of Professional Conduct 1.14(a) (failing to place client funds in trust), 1.14(b)(3) (failing to maintain records of client funds and failure to render appropriate accounting), 1.14(b)(4) (failing to promptly pay requested funds to client), and 1.15 (failing to properly terminate representation).
- (d) degree of prior discipline Private Reproval
- (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) 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.
 - (10) 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.
 - (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 Six (6) Months
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____, and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - iii. and until Respondent does the following: _____

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of Two (2) Years, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report shall be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (4) 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.
- (5) 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.

- (6) 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.
- (7) 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.
- (8) The following conditions are attached hereto and incorporated:
- Substance Abuse Conditions Law Office Management Conditions
- Medical Conditions Financial Conditions
- (9) Other conditions negotiated by the parties:

Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year. 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.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: GREGORY DEAN ESAU

CASE NUMBER(S): 02-H-11395

FACTS AND CONCLUSIONS OF LAW.

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.

COUNT ONE

Violation of Rule of Professional Conduct, rule 1-110
[Failure to Comply With Conditions Attached to Private Reapproval - Quarterly Reports]

1. On or about May 8, 2000, Respondent entered into a stipulation regarding facts, conclusions of law and disposition with the Office of Chief Trial Counsel regarding State Bar Case No. 00-J-10513. During the proceeding, Respondent had requested that all further pleadings and correspondence be sent to an address other than his official membership address, 10900 NE 4th Street, Suite #2230, Bellevue, WA 98004-8314. Respondent then failed to notify the State Bar's Membership Records Department of this address.
2. On or about May 15, 2000, Case No. 00-J-10513 was submitted to the Hearing Department of the State Bar Court on a stipulated factual record.
3. On or about May 19, 2000, the Hearing Department filed an order in Case No. 00-J-10513 imposing upon Respondent a private reapproval with the conditions that he submit quarterly reports to the probation unit for a period of twelve months; take and pass the Multistate Professional Responsibility Examination ("MPRE") administered by the National Conference of Bar Examiners and provide satisfactory evidence of same to the Probation Unit within one (1) year of the effective date of the reapproval; and in lieu of State Bar Ethics School, enroll in and successfully complete three hours of MCLE courses in ethics in either Washington or California, and provide satisfactory proof to the Probation Unit within one year of the effective date of the reapproval.

4. On or about May 19, 2000, the order was properly served by mail upon Respondent at his official membership address of 15446 NE Bel Red Road, #340, Redmond, Washington 98052-5507.

5. On June 13, 2000, the private reproof became effective.

6. On or about July 14, 2000, Probation Deputy Yolanda Acosta of the Probation Unit of the Office of the Chief Trial Counsel of the State Bar of California ("Probation Unit") wrote a letter to Respondent in which she reminded Respondent of the terms and conditions of the private reproof imposed upon Respondent. The letter was mailed on or about July 14, 2000 via the United States Postal Services, first class postage prepaid, in a sealed envelope addressed to Respondent at his official State Bar membership records address, 15446 NE Bel Red Road #340, Redmond, WA 98052, but was returned by the United State Postal authorities as undeliverable.

7. On or about March 2, 2001, a notice of disciplinary charges was filed due to Respondent's failure to comply with the conditions attached to his private reproof. More specifically, his failure to file two quarterly reports due October 10, 2001 and January 10, 2001; his failure to update his membership address and his failure to submit proof of completion of three hours of MCLE courses in ethics, as required by the terms and conditions of the private reproof imposed by the May 19, 2000 order of the Hearing Department of the State Bar Court. The matter was designated as case number 01-H-0333.

8. In or about March 2001, the notice of disciplinary charges in case number 01-H-0333 was returned to the State Bar as "Return to Sender, Forwarding Order Expired." Deputy Chief Trial Counsel Jeannie J. Park ("Park") attempted to locate Respondent prior to filing for entry of default. Respondent's official membership address with the State Bar of Washington was 10900 NE 4th Street, Suite #2230, Bellevue, WA 98004-8314 and Respondent was served at that address.

9. In or about early April 2001, Park contacted Respondent by telephone and advised him that he needed to immediately update his official membership address with the State Bar of California.

10. By a letter sent on or about April 11, 2001, Park advised Respondent to update his membership address and gave him the address and fax number for the membership records department.

11. On or about April 18, 2001, the State Bar Court issued the Notice of Assignment and Notice of Initial Conference. On or about that same day, Park notified Respondent by telephone of the telephonic status conference and advised him again to contact the court because the notice had been sent to his old address, which was still listed as the official membership address. On or about April 27,

2001, Respondent faxed his change of address to the membership section of the State Bar.

12. On or about June 16, 2001, case number 01-H-0333 was dismissed at the request of Park and Respondent and Park entered into a stipulation to extend the reprobation period in 00-J-10513. The stipulation was filed subject to the same conditions including, but not limited to, to take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners and provide satisfactory evidence of same to the Probation Unit within one (1) year of the effective date of the reprobation; to submit quarterly reports to the probation unit for a period of twelve months on each January 10, April 10, July 10 and October 10 of the period of probation; and, in lieu of State Bar Ethics School, to enroll in and successfully complete three hours of MCLE courses in ethics in either Washington or California, and provide satisfactory proof to the Probation Unit within one year of the effective date of the reprobation, which was on or before July 31, 2002.

13. On or about July 16, 2001, the order approving the stipulation to extend the reprobation period was filed.

14. By letter dated on or about December 11, 2001 (“the December 11, 2001 letter”), Eddie Esqueda, Probation Deputy, Probation Unit, Office of the Chief Trial Counsel, State Bar of California (“Esqueda”), reminded Respondent of the terms and conditions of his reprobation. Esqueda also notified Respondent that the Probation Unit had not received Respondent’s first quarterly report of October 10, 2001 and requested that he submit the past due report without further delay.

15. The December 11, 2001 letter was mailed via the United States Postal Service, first class postage prepaid, in a sealed envelope addressed to Respondent at his official State Bar membership records address, 10900 NE 4th Street, Suite #2230, Bellevue, WA 98004-8314, and was not returned by the United State Postal authorities as undeliverable or for any other reason.

16. To date, Respondent has not submitted the October 10, 2001 quarterly report.

17. By letter dated on or about February 27, 2002 (“the February 27, 2002 letter”), Esqueda reminded Respondent again of the terms and conditions of the reprobation and that the Probation Unit had not received Respondent’s first quarterly report of October 10, 2001. Esqueda also notified Respondent that the Probation Unit had not received the second quarterly report of January 10, 2002 and requested that he submit both past due reports without further delay.

18. The February 27, 2002 letter was mailed via the United States Postal Service, first class postage prepaid, in a sealed envelope addressed to Respondent at his official State Bar membership

records address, 10900 NE 4th Street, Suite #2230, Bellevue, WA 98004-8314, and was not returned by the United State Postal authorities as undeliverable or for any other reason.

19. To date, Respondent has not submitted his quarterly reports for October 10, 2001, January 10, 2002, April 10, 2002, or July 10, 2002.

20. Respondent was to have completed three hours of mandatory continuing legal education in general ethics by July 31, 2002, and did not do so.

21. Respondent failed to take and pass the MPRE by July 31, 2002.

22. **LEGAL CONCLUSION:** By failing to timely submit to the Probation Unit quarterly reports due October 10, 2001 and January 10, 2002, and by failing to take and pass the MPRE by July 31, 2002, Respondent failed to comply with the terms and conditions of his private reproof ordered on or about May 19, 2001 and the stipulation order filed on or about July 16, 2001, in wilful violation of rule 1-110, Rules of Professional Conduct.

WAIVER:

Respondent and the State Bar hereby waive any variance in the facts and conclusions of law as set forth in the Notice of Disciplinary Charges in case number 02-H-11395 and the facts and conclusions of law as set forth in this stipulation.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was August 9, 2002.

AUTHORITIES SUPPORTING DISCIPLINE.

In *Conroy v. State Bar* (1990) 51 Cal.3d 799, Respondent has received a private reproof with terms and conditions, one of which was that he was required to take and pass the MPRE within one year of the effective date of his reproof. Conroy tardily took and passed the MPRE. As to the matter involving his reproof violation, Conroy defaulted at the Hearing Department level and the State Bar Court recommended that he receive one year stayed suspension, that he be placed on probation for one year, and that he receive 60-days actual suspension. The Review Department adopted the Hearing Department's decision and Discipline recommendation and the California Supreme Court Approved and imposed the recommended discipline.

In mitigation, the Court found that Conroy had at least tardily taken the MPRE. In aggravation, Conroy had a prior record of discipline and failed to participate in State Bar proceedings.

In *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, Meyer violated two of the conditions attached to his private reproof by failing to file two quarterly reports and failing to submit proof of completion of six hours of MCLE courses. There were no mitigating circumstances. In aggravation, Meyer had two prior private reprovals, the misconduct involved multiple acts of wrongdoing, Meyer demonstrated indifference towards rectification of his misconduct and failed to cooperate in the disciplinary proceedings. The hearing Department found Meyer culpable of rule 1-110, Rules of Professional Conduct and recommended that he receive one year stayed suspension, two years probation with conditions, including 75-days actual suspension. The Review Department increased the discipline to recommendation to two years stayed suspension and three years probation with conditions, including 90-days actual suspension.

The instant matter involves facts less egregious than those in either the *Conroy* or the *Meyer* cases and therefore less discipline is warranted.

More specifically, Respondent violated the terms and conditions of his private reproof, including failing to file quarterly reports. The reproof period was extended and Respondent again failed to file four quarterly reports, failed to take three hours of mandatory continuing legal education courses in general ethics, and failed to take the MPRE. However, Respondent fully participated in the State Bar proceedings and has provided evidence in mitigation of his misconduct. More specifically, Respondent was experiencing family problems relating to his wife leaving their home. Respondent's marital issues caused him periods of stress and depression. Consequently, Respondent did not focus on, nor provide attention to, certain tasks, including compliance with certain terms and conditions of his probation. Respondent and his spouse remain married and are currently undergoing counseling.

Date 8-20-02

Respondent's signature *Gregory D. Esau*

print name GREGORY D. ESAU

Date _____

Respondent's Counsel's signature _____

print name _____

Date 9/24/02

Deputy Trial Counsel's signature *Lee Ann Kern*

print name LEE ANN KERN

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.)

Date 9-26-02

Judge of the State Bar Court *Tom Jones*

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 September 30, 2002, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL
SUSPENSION, filed September 30, 2002**

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

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

**GREGORY DEAN ESAU
10900 NE 4TH ST. #2230
BELLEVUE, WA 98004**

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

LEE ANN KERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 30, 2002**.



Tammy R. Cleaver
Case Administrator
State Bar Court