

FILED ⁴⁰⁵

SEP 03 2003

PUBLIC MATTER

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE BAR COURT

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 02-O-10687 JMR
CRAIG PHILIP SUTTON SEIDEN,)	DECISION
No. 100214,)	
a Member of the State Bar.)	

INTRODUCTION

In this default proceeding, Respondent Craig Philip Sutton Seiden is charged in a three-count Notice of Disciplinary Charges with the commingling of personal funds in his client trust account, the issuance of numerous insufficiently funded checks and failing to maintain his current office address on the official membership records of the State Bar.

For the reasons stated below, this Court finds, by clear and convincing evidence, that Respondent is culpable of the charged acts of misconduct and will recommend that he be suspended from the practice of law for a period of ninety days and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California ("Rules of Procedure"). If the period of actual suspension exceeds two years, the Court further recommends that Respondent remain suspended until he provides satisfactory proof to the State Bar Court of his rehabilitation, present fitness to practice law and present learning and ability in the general law pursuant to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROCEDURAL HISTORY

This proceeding was initiated by the filing of a Notice of Disciplinary Charges ("NDC") by the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") on February 27, 2003. The NDC was properly served upon Respondent on the same date, by certified mail, return receipt requested, addressed to Respondent's official membership address ("official address") pursuant to Business and Professions Code section 6002.1, subdivision (c) and rule 60 of the Rules of Procedure.¹

A courtesy copy of the NDC was mailed to Respondent by first-class mail, addressed to him at Edward's Pipe and Tobacco Shop, 4546 El Camino Real, Los Altos, California 94022, a shop owned by Respondent at which representatives of the State Bar had contacted him in the past. This courtesy copy of the NDC was not returned to the State Bar by the U.S. Postal Service.

Respondent did not file answer to the NDC. On May 6, 2003, the State Bar filed a Notice of Motion and Motion for Entry of Default. These documents were served upon Respondent on the same date, by certified mail, return receipt requested, at his official membership address. A courtesy copy of the Notice of Motion and Motion for Entry of Default was served upon Respondent at the Edward's Pipe and Tobacco Shop address in Los Altos.

The Court entered Respondent's default on May 29, 2003, after Respondent failed to file an answer to the NDC within ten days after service of the Motion for Entry of Default. (See Rules Proc. of State Bar, rule 200(c).) Notice of Entry of Default was properly served upon Respondent on the same date by certified mail addressed to him at his official address.

The State Bar was initially represented in this proceeding by Deputy Trial Counsel E. Lisa Vorgias. Since May 13, 2003, the State Bar has been represented by Esther Rogers. Respondent did not participate at any stage of this proceeding, either personally or through counsel.

///

¹At all times since January 2, 1990, Respondent's official address has been P.O. Box 4356, Mountain View, California 94040.

1 On June 12, 2003, the State Bar filed its Brief Regarding Level of Discipline and waived its
2 right to default hearing pursuant to rule 202(c) of the Rules of Procedure.

3 This mater was taken under submission on June 19, 2003.

4 **FINDINGS OF FACT AND CONCLUSION OF LAW**

5 Respondent was admitted to the practice of law in California on December 1, 1981, and has
6 been a member of the State Bar of California since that time.

7 **A. Count One (Commingling of Personal Funds in Client Trust Account)**

8 From August 24, 2000 until May 21, 2002, Respondent was suspended from the practice of
9 law in California as a result of his non-compliance with family and/or child support orders.² At all
10 times relevant to this proceeding, Respondent owned and operated a business known as Edward's
11 Pipe and Tobacco, located at 4546 El Camino Real, Suite A1 in Los Altos, California 94022.

12 Between July and December 2001, Respondent maintained a client trust account at Wells
13 Fargo Bank (acct. no. 025-9333649). During this period, Respondent did not remove from the trust
14 account funds that he had earned as legal fees as soon as his interest in those funds became fixed.
15 Instead, he left those fees in the client trust account to use for payment of his personal expenses.

16 Between July and December 2001, Respondent repeatedly issued checks drawn on his client
17 trust account for the payment of his personal debt and expenses, including the following:

<u>Check No.</u>	<u>Payee</u>	<u>Check Amount</u>	<u>Date Paid</u>
19 6930	Ashton, Inc.	\$ 593.97	12/16/01
6932	Dept. of Motor Vehicles	\$ 53.00	11/28/01
20 7579	Pacific Gas & Electric Company	\$ 146.88	09/27/01
7580	Pacific Gas & Electric Company	\$ 400.00	09/24/01
21 7581	Holly Seiden	\$ 475.00	10/01/01
7583	Village Court Partners	\$ 2,085.00	10/12/01
22 7586	Philips & King	\$ 1,304.01	12/17/01
7707	Philips & King	\$ 665.76	11/16/01
23 7708	Village Court Partners	\$ 2,510.00	11/04/01
7709	FGT, Inc.	\$ 1,377.01	12/03/01
24 7875	Dept. of Motor Vehicles	\$ 15.00	08/01/01

25
26 ²Although not reflected in the allegations of the NDC, Respondent has also been suspended from
27 the practice of law at all times since September 1, 2001, for failure to pay his annual membership fees.
(Bus. & Prof. Code, § 6143.)

<u>Check No.</u>	<u>Payee</u>	<u>Check Amount</u>	<u>Date Paid</u>
7876	Vintage Enterprises	\$ 260.00	08/01/01
7879	Board of Equalization	\$ 1,276.00	08/08/01
7881	FGT, Inc.	\$ 111.84	08/09/01
7882	Griffo, Inc.	\$ 228.95	08/09/01
7885	Village Court Partners	\$ 2,084.54	08/16/01
7886	Dept. of Motor Vehicles	\$ 60.00	08/16/01
7887	Pacific Bell	\$ 87.14	08/17/01
7888	Pacific Bell	\$ 92.37	08/17/01
7889	MBNA Platinum	\$ 944.34	08/20/01
7890	Pacific Gas & Electric Company	\$ 393.68	08/20/01
7892	Board of Equalization	\$ 800.00	08/20/01
7895	Thorton Jr. High School	\$ 30.00	10/01/01
7896	Thorton Jr. High School	\$ 30.00	10/15/01
7898	Holly Seiden	\$ 475.00	09/07/01
7952	Philips & King	\$ 308.24	11/09/01
7954	Kaiser	\$ 15.00	09/10/01
7955	Treasurer of Alameda County	\$ 4,100.00	10/12/01
7958	Brookvale School	\$ 50.00	11/14/01
8047	Village Court Partners	\$ 2,085.00	09/13/01
8049	Thorton Jr. High School	\$ 20.00	09/13/01

From August 2001 to December 2001, Respondent deposited checks obtained through Edward's Pipe and Tobacco Company and from other personal accounts into his client trust account at Wells Fargo Bank, including the following:

<u>Date of Deposit</u>	<u>Deposit Amount</u>	<u>Source of Funds</u>
08/06/01	\$ 3,226.91	Receivables from clients of Edwards Pipe and Tobacco Co.
09/17/01	\$ 3,321.07	Receivables from clients of Edwards Pipe and Tobacco Co.
10/11/01	\$ 1,425.68	Receivables from clients of Edwards Pipe and Tobacco Co.
12/11/01	\$ 5,000.00	Deposit of funds from Respondent's MBNA credit account.

Respondent is charged in Count One with a wilful violation of rule 4-100(A) of the Rules of Professional Conduct, which provides, as relevant here, that no funds belonging to a member of the State Bar of the law firm shall be deposited in a client trust account except for funds reasonably necessary to pay bank charges.

1 The Court finds Respondent culpable, by clear and convincing evidence, of the charged
 2 violation of rule 4-100(A). Pursuant to rule 202(d)(1) of the Rules of Procedure, upon entry of
 3 Respondent's default in this proceeding, the well-pleaded factual allegations set forth in the NDC
 4 were deemed admitted. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301,
 5 318.) The admitted allegations of the NDC establish that, between at least July and December 2001,
 6 Respondent commingled personal funds in his client trust account at Wells Fargo Bank and issued
 7 at least 31 checks from his client trust account for the payment of personal debts and expenses. This
 8 conduct is a clear violation of rule 4-100(A). (*Arm v. State Bar* (1990) 50 Cal.3d 763, 766-777; *In*
 9 *the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 625.)

10 **B. Count Two (NSF Checks)**

11 Between November and December 2001, Respondent issued, or caused to be issued, at least
 12 four checks drawn on his client trust account at Wells Fargo Bank for which there were insufficient
 13 funds in the account to cover the checks. The NSF checks issued by Respondent were as follows:

14 <u>Check No.</u>	<u>Check Date</u>	<u>Date(s) Presented</u>	<u>Amount</u>	<u>Payee</u>
15 7707	11/08/01	11/16/01, 11/19/01	\$ 655.76	Philips & King
6930	11/21/01	12/05/01, 12/06/01	\$ 593.97	Ashton, Inc.
16 7709	11/27/01	12/03/01, 12/04/01	\$1,377.01	FGT, Inc.
7586	12/05/01	12/17/01	\$1,304.01	Philips & King

17
 18 At the time Respondent issued these checks, he knew or should have known that there were
 19 insufficient funds in his client trust account to cover the checks.

20 Respondent is charged in Count Two with a violation of Business and Professions Code
 21 section 6106, which provides that the member's commission of an act of moral turpitude, dishonesty
 22 or corruption constitutes grounds for suspension or disbarment.

23 ///

24 ///

1 Although concerned by the lack of specific detail relating to Count Two³, the Court
2 nevertheless concludes that there is clear and convincing evidence tat Respondent violated section
3 6106. The NSF checks written by Respondent on his trust account were issued over a period of
4 approximately one month, with the first NSF check issued on November 8, 2001 and the fourth and
5 final NSF check issued on December 5, 2001. Moreover, the checks were presented for payment on
6 at least seven occasions between November 16, 2001 and December 17, 2001. On each occasion,
7 there were insufficient funds to honor even the smallest of the four checks, in the amount of \$593.97.
8 Based upon these admitted factual allegations, the Court concludes that Respondent was grossly
9 negligent in the management and oversight of his trust account. Such gross negligence in the
10 exercise of his non-delegable duty to manage and oversee his trust account constitutes an act of
11 moral turpitude in violation of Business and Professions Code section 6106. (*In the Matter of*
12 *McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 426; *In the Matter of Hagen*
13 (*Review Dept. 1992*) 2 Cal. State Bar Ct. Rptr. 153, 169.)

14 **C. Count Three (Failure to Maintain Current Address)**

15 At all times since January 2, 1990, Respondent's address on the official membership records
16 of the State Bar pursuant to Business and Professions Code section 6002.1, has been P.O. Box 4356,
17 Mountain View, California 94040.

18 On July 3, 2002, State Bar Investigator Lisa Foster wrote a letter to Respondent regarding
19 his issuance of NSF checks and mailed the letter to Respondent by first-class mail, postage prepaid,
20 addressed to him at this official State Bar membership records address. Investigator Foster's July
21 3, 2002, letter was subsequently returned to the State Bar by the U.S. Postal Service with the
22 stamped notation, "Forwarding Order Expired-Return to Sender."

23 ///

25 ³ For instance, the factual allegations of the NDC do not set forth the balance in Respondent's
26 client trust account at the time he issued the NSF checks. The balance in the account , in relation to the
27 amount of the check, is significant in terms of establishing whether Respondent had a reasonable belief
28 that there were sufficient funds in the account at the time the check was written.

1 Respondent is charged in Count Three with a violation of Business and Professions Code
2 section 6068, subdivision (j), which provides that it is the duty of a member of the State Bar to
3 comply with the requirements of Business and Professions Code section 6002.1. In turn, section
4 6002.1, subdivision (a) provides in pertinent part, that a member of the State Bar shall maintain his
5 current office address and telephone number or, if no office is maintained, the address to be used for
6 State Bar purposes, on the official membership records of the State Bar. In addition, section 6002.1,
7 subdivision (a) requires a member of the State Bar to notify the membership records office of the
8 State Bar of any change in the member's current office address and telephone number within thirty
9 days of the change.

10 The Court finds Respondent culpable, by clear and convincing evidence, of the charged
11 violation of section 6068, subdivision (j). The admitted allegations of the NDC are, by themselves,
12 insufficient to establish a violation of section 6068, subdivision (j) because the requirement of
13 section 6002.1, subdivision (a) is that the member notify the State Bar of the address change within
14 thirty days of the change. The only date referred to in the NDC is July 3, 2002. There is no
15 allegation in the NDC that Respondent had changed his address more than thirty days prior to July
16 3, 2002, or that a subsequent letter sent to Respondent at his official membership address more than
17 thirty days after July 3, 2002 was also returned.

18 However, in the Declaration of E. Lisa Vorgias, executed on May 6, 2003, and submitted in
19 support of the State Bar's motion for entry of default, Ms. Vorgias states that a representative of the
20 State Bar spoke with Respondent by telephone on or about January 31, 2003, and that, in the course
21 of that conversation, Respondent stated that he had lost the post office box he had used as his official
22 membership address the previous year. Additionally, the Court notes that as of the date this Decision
23 is filed, Respondent has still not changed his official membership address.

24 Since more than thirty days have elapsed since Investigator Foster's July 3, 2002, letter to
25 Respondent at his official address was returned as undeliverable by the U.S. Postal Service and since,
26 as of the date of this Decision, Respondent has still not notified the State Bar's membership records
27

1 office of a change in his official address, it is clear that Respondent violated Business and
2 Professions Code section 6068, subdivision (j).

3 **LEVEL OF DISCIPLINE**

4 **Factors in Mitigation**

5 Respondent has no record of prior discipline in more than 20 years of practice prior to the
6 commencement of his misconduct in this proceeding. This lengthy period of practice without prior
7 discipline is entitled to significant weight as a mitigating factor. (*In the Matter of Sullivan* (Review
8 Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, 613 [blemish-free practice for more than 21 years has
9 great significance as mitigating factor]; Standard 1.2(e)(i), Standards for Attorney Sanctions for
10 Professional Misconduct.)

11 No additional mitigating factors are apparent from the record in this proceeding.

12 **Factors in Aggravation**

13 The current misconduct evidences multiple acts of wrongdoing. Respondent commingled
14 personal funds in his client trust account, issued at least 31 checks drawn on his trust account for the
15 payment of person expenses and issued at least 4 NSF checks on his trust account. In addition, he
16 failed to maintain a current address on the State Bar's membership records as required by statute.
17 (Standard 1.2(b)(ii).)

18 Respondent's failure to maintain a current address with the State Bar harms the
19 administration of justice because of the delay and added effort required to locate and contact
20 Respondent. (Standard 1.2(b)(iv).)

21 **Discussion**

22 The Standards applicable to this proceeding are Standards 2.2(b), 2.3 and 2.6.

23 Standard 2.2(b) provides that culpability of a member of commingling of entrusted funds or
24 property with personal property or the commission of another violation of rule 4-100 of the Rules
25 of Professional Conduct shall result in at least a three-month actual suspension from the practice of
26 law, irrespective of mitigating circumstances. In the present case, Respondent has been found
27

1 culpable of commingling his personal funds in his client trust account and of issuing checks drawn
2 on his trust account for the payment of personal debts and expenses.

3 Standard 2.3 provides, in pertinent part, that culpability of a member of an act of moral
4 turpitude shall result in actual suspension or disbarment depending upon the extent to which the
5 victim of the misconduct is harmed or misled and depending upon the magnitude of the act of
6 misconduct and the degree to which it relates to the member's acts within the practice of law. In the
7 present case, Respondent issued at least 4 NSF checks drawn on his client trust account over a period
8 of about one month. The Court has concluded that Respondent's conduct involved moral turpitude.
9 There is insufficient evidence from which the Court can determine whether the victim(s) of
10 Respondent's misconduct were harmed. Although Respondent was suspended from the practice of
11 law at the time of his misconduct, the Court concludes that the misconduct related to the practice of
12 law because he issued the NSF checks on his client trust account.

13 Finally, Standard 2.6 provides that culpability of a member of a violation of, among other
14 things, Business and Professions Code section 6068 shall result in disbarment or suspension
15 depending on the gravity of the offense or the harm, if any, to the victim. Respondent has been
16 found culpable of failing to keep the State Bar informed of his current address, conduct which has
17 been found to harm the administration of justice.

18 The State Bar has recommended that Respondent be actually suspended from the practice of
19 law for a period of six months. In support of its recommendation, the State Bar cites *In the Matter*
20 *of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, *In the Matter of Heiser* (Review
21 Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47 and *In the Matter of McKiernan* (Review Dept. 1995) 3
22 Cal. State Bar Ct. Rptr. 420.

23 In *Koehler*, the Review Department found an attorney culpable of multiple acts of
24 misconduct, including (a) improperly using his client trust account as a personal account by
25 commingling personal funds in the account and issuing checks for the payment of business or
26 personal expenses; (b) failing to promptly refund unused cost advances in two cases; and (c) failing
27

1 to competently perform legal services in one matter. In aggravation, the Review Department found
2 that the respondent had used his trust account as a personal account in order to conceal funds from
3 the Franchise Tax Board. In addition, the attorney had a prior record of discipline in one matter. In
4 light of this misconduct, the Review Department recommended a three-year stayed suspension, two
5 years probation and an actual suspension of six months.

6 In *Heiser*, the Review Department found the respondent attorney culpable of issuing seven
7 NSF checks over an 11-month period for the satisfaction of personal debts and expenses. Four of
8 the checks were drawn on the attorney's law office or personal checking account, while the
9 remaining three checks were written on the respondent attorney's closed client trust account. The
10 Review Department also found the attorney culpable of failing to notify the State Bar of his current
11 address in violation of Business and Professions Code section 6068, subdivision (j). The attorney
12 had no prior record of discipline in 16 years of practice. The Review Department recommended a
13 one-year stayed suspension, two years probation and an actual suspension of six months and until
14 the attorney had made restitution to two of the individuals to whom he had issued NSF checks.

15 Finally, in *McKiernan*, the Review Department found the attorney culpable of misusing and
16 neglecting the proper oversight over his client trust account and issuing two checks at a time when
17 he knew there were insufficient funds in his account to cover them. The attorney had no prior record
18 of discipline in 21 years of practice. The Review Department recommended a two-year stayed
19 suspension, two years probation and an actual suspension of 90 days.

20 This Court also notes that, in *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar
21 Ct. Rptr. 113, the Review Department recommended a 60-day period of actual suspension for an
22 attorney who had commingled personal funds with client funds, misappropriated \$270 in advanced
23 costs and used his trust account as a personal account to avoid a tax levy. The Review Department
24 noted that the misconduct was of a relatively short duration.

25 In determining the degree of discipline to be recommended in this proceeding, the Court
26 concludes that this case is more analogous to *McKiernan* and *Bleecker* than it is to *Koehler* or
27

1 *Heiser*. In the present case, Respondent has no prior record of discipline in more than 20 years of
2 practice and the misconduct found occurred over a relatively short period of time (i.e., July through
3 December 2001). In light of the fact that Respondent will be required to make a motion to this Court
4 for permission to terminate his actual suspension, the Court concludes that an actual suspension of
5 90 days is commensurate with the extent and severity of Respondent's misconduct and will fully
6 protect the public.

7 **RECOMMENDED DISCIPLINE**

8 This Court recommends that Respondent **CRAIG PHILIP SUTTON SEIDEN** be
9 suspended from the practice of law for a period of two years, that execution of such suspension be
10 stayed and that Respondent be actually suspended from the practice of law in the State of California
11 for a period of 90 days and until the State Bar Court grants a motion pursuant to rule 205 of the
12 Rules of Procedure to terminate his actual suspension at the conclusion of the specified period of
13 actual suspension or on such later date ordered by the State Bar Court.

14 If the period of Respondent's actual suspension exceeds two years, the Court recommends
15 that Respondent remain actually suspended from the practice of law until he demonstrates to the
16 satisfaction of the State Bar Court his rehabilitation, present fitness to practice law and present
17 learning and ability in the general law pursuant to Standard 1.4(c)(ii) of the Standards for Attorney
18 Sanctions for Professional Misconduct. (Rule 205(b), Rules Proc. of State Bar.)

19 It is also recommended that Respondent be ordered to comply with any probation conditions
20 that may hereinafter be imposed by the State Bar Court as a condition of terminating Respondent's
21 actual suspension. (Rule 205(g), Rules Proc. of State Bar.)

22 The Court also recommends that Respondent be ordered to take the Multistate Professional
23 Responsibility Examination ("MPRE") administered by the National Conference of Bar Examiners
24 within one year of the effective date of the Supreme Court's final disciplinary order in this
25 proceeding or within the period of Respondent's actual suspension, whichever is longer, and that
26 Respondent provide proof of passage of the MPRE to the Office of Probation within that period.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Finally, the court recommends that the Supreme Court order Respondent to comply with rule 955(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court's final disciplinary order in this matter and to file the compliance affidavit required by rule 955(c) within 40 days of the effective date of the Supreme Court's order.

COSTS

It is further recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and that such costs be made payable in accordance with Business and Professions Code section 6140.7.

Dated: August 29, 2003


JOANN M. REMKE
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 3, 2003, I deposited a true copy of the following document(s):

DECISION

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

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

**CRAIG PHILIP SUTTON SEIDEN
P O BOX 4356
MOUNTAIN VIEW CA 94040**

**COURTESY COPY
CRAIG PHILIP SUTTON SEIDEN
EDWARDS PIPE AND TOBACCO
4546 EL CAMINO REAL, SUITE A1
LOS ALTOS CA 94022**

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

ESTHER ROGERS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 3, 2003.



Laine Silber
Case Administrator
State Bar Court