


NOT FOR PUBLICATION

Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT ERIN McKEOWN JOYCE, BAR NO. 149946 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1356	Case number(s) 02-0-11390-JMR Investigation Matters: 03-0-01404 03-0-01421 03-0-02548 kwiktag® 031 975 111 	(for Court's use) <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED <i>MS</i></p> <p style="text-align: center;">MAR 24 2004</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
Counsel for Respondent EUGENE ROY SALMONSEN, JR. 11845 Olympic Blvd. Los Angeles, CA 90064 Telephone: (310) 473-4040 IN PROPRIA PERSONA	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge <i>MDS/CA</i> STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input checked="" type="checkbox"/> PRIVATE <input type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of EUGENE ROY SALMONSEN, JR. Bar # 81079 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 27, 1978 (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 10 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 (public reproval)
 - case ineligible for costs (private reproval)
 - costs to be paid in equal amounts 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."

(8) The parties understand that

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) Prior record of discipline [see standard 1.2(f)]

(a) State Bar Court case # of prior case _____

(b) Date prior discipline effective _____

(c) Rules of Professional Conduct/ State Bar Act violations: _____

(d) degree of prior discipline _____

(e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

(2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

- (5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) No Prior Discipline: Respondent has no prior record of discipline over many years of practice, ~~coupled with present misconduct which is not deemed serious.~~
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) No mitigating circumstances are involved.

Additional mitigating circumstances:

D. Discipline:

(1) Private reproof (check applicable conditions, if any, below)

(a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).

(b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

(2) Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

(1) Respondent shall comply with the conditions attached to the reproof for a period of one (1) year.

(2) During the condition period attached to the reproof, 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 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following quarter date and cover the extended period.

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

- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the 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 conditions attached to the reproval.
- (7) Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered.
- (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 required to be filed with the Probation Unit.
- (9) 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 of the effective date of the reproval.
- No MPRE ordered.
- (10) The following conditions are attached hereto and incorporated:
- Substance Abuse Conditions Law Office Management Conditions
- Medical Conditions Financial Conditions
- (11) Other conditions negotiated by the parties:
See Attachment to Stipulation re Facts.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSION OF LAW AND DISPOSITION

IN THE MATTER OF: EUGENE ROY SALMONSEN, JR.
CASE NUMBERS: 02-O-11390, 03-O-01404, 03-O-01421 and 03-O-02548

FACTS AND CONCLUSIONS OF LAW

Case No. 02-O-11390 – Rule of Professional Conduct 3-110(A)– Failure to Perform with Competence

Respondent wilfully violated Rule of Professional Conduct 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

On May 13, 1999, Community Dental Services ("CDS"), doing business as SmileCare Dental Group, filed a trademark infringement lawsuit against Stuart Tani, a dentist, in United States District Court case no. CV-99-00989-RHW (the "district court case").

Jeff Stein (an attorney who resigned from the California State Bar with charges pending), who was an investor with Tani in the Pacific Dental Alliance, LLC, referred Tani to Respondent. Respondent had previously represented Tani on other matters.

To handle the trademark infringement action, Tani and Respondent set up an office for Respondent in Tani's suite of offices in San Diego, California. Their agreement was to have Tani's office staff open Respondent's mail and forward the mail to Respondent at his office in Los Angeles. Tani agreed to have Stein assist Respondent in the case. Stein assisted Respondent in the district court case, including obtaining a ten-day extension of time from CDS, until June 28, 1999, to file an answer. CDS forwarded to Respondent a signed stipulation providing for the ten-day extension. Respondent received it, but failed to file it.

Respondent failed to file an answer on Tani's behalf in the district court case until July 13, 1999, more than two weeks beyond the ten-day extension.

On July 14, 1999, having not been served with the answer, CDS filed a request for entry of default in the district court case. Shortly thereafter, in a telephone call, Stein represented to CDS that he had, in fact, served a copy of the answer to CDS, and further represented that he would send an additional copy. However, again, CDS did not receive a copy of the answer.

On July 21, 1999, at a preliminary case management conference, Stein and Respondent appeared on behalf of Tani, at which time Stein represented that he had sent the answer to CDS in overnight mail. CDS asserted that it never received the answer.

On August 9, 1999, the district court ordered Respondent to serve the answer on CDS and to telephone CDS to discuss settlement possibilities. Neither Stein or Tani forwarded mail from CDS attorneys to Respondent for Respondent to timely respond to the order.

On September 20, 1999, CDS filed and properly served a motion to strike the answer and moved for a preliminary injunction and default judgment in the district court case. Once again, the mail from CDS was not timely forwarded by Tani's office to Respondent. On October 18, 1999, Respondent appeared at the hearing on these motions on Tani's behalf, but did not file a written memorandum in opposition to the motions, and also still did not provide CDS with a copy of the answer. After hearing oral arguments from both parties, the court granted CDS's motions.

Respondent took no action to have Tani's default set aside. Tani and Stein were apprized of the results of the October 18, 1999 hearing.

However, it was not until April 2000 that Tani substituted in attorney Daniel S. Levinson in place of Respondent.

On April 17, 2000, attorney Levinson filed a memorandum in opposition to CDS's motion for a permanent injunction and entry of default judgment, in which CDS sought damages in excess of six and a half million dollars (\$6.5 million). However, not having received a motion for relief from default from attorney Levinson, the court ordered Tani to pay CDS almost two million dollars (\$2 million) in damages and prejudgment interest, costs, and attorney fees.

Attorney Levinson subsequently filed a motion for relief from the default judgment on behalf of Tani. However, the district court denied attorney Levinson's motion. Levinson then appealed to the Ninth Circuit Court of Appeals, which found that Respondent was grossly negligent in the district court case, that Tani merited relief under Rule 60(b)(6), and that Tani should not be held accountable for his attorney's misconduct. As a result, the matter was then remanded back to the district court for reinstatement of the action.

By not filing the stipulation extending time to file an answer; by not timely filing or properly serving an answer; by failing to comply with the court's August 9, 1999 order requiring him to serve CDS with a copy of the answer and to telephone CDS regarding settlement; by failing to oppose CDS's motions to strike the answer, for an injunction, and for default judgment; and by not moving to set aside the entry of default and vacate the judgment, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

Case No. 03-O-01404 – Rule of Professional Conduct 4-100(B)(3) – Failure to Promptly Account

Respondent wilfully violated Rule of Professional Conduct 4-100(B)(3), by failing to render appropriate accounts to the client, as follows:

Respondent was hired by Betty Stallworth in February 2002 to prepare a Qualified Domestic Relations Order ("QDRO") and was paid \$1,000.00.

Respondent undertook steps to prepare the QDRO, but failed to revise the QDRO so that it was acceptable to the employer. The initial QDRO he prepared was rejected by Continental Airlines, and Respondent did not prepare a revised QDRO.

Respondent failed to provide accounting to Stallworth, despite her demand for a full refund in April 2003, until after the State Bar completed its investigation in this matter.

Respondent has now provided Stallworth with a complete accounting and a notice of right to arbitrate.

By failing to timely provide Stallworth with an accounting and notice of right to arbitrate, upon her demand for a complete refund, Respondent failed to render appropriate accounts to a client in violation of Rule of Professional Conduct 4-100(B)(3).

Case No. 03-O-01421 – Rule of Professional Conduct 3-700(D)(2) – Failure to Promptly Return Unearned Fees

Respondent wilfully violated Rule of Professional conduct 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not be earned, as follows:

Respondent was hired by Judy Wang on May 1, 2001, to pursue a medical malpractice action against Glendale Memorial Hospital.

On May 7, 2001, Wang paid Respondent \$10,000.00 pursuant to the retainer.

Respondent did some investigation and determined the medical malpractice case had no merit. He never filed an action in Court against Glendale Memorial Hospital or any of the medical staff. Respondent failed to memorialize his determination not to proceed with the filing of a medical malpractice lawsuit on behalf of Wang in writing, but did notify her of his decision by telephone.

However, Respondent failed to return the \$10,000.00 until after the State Bar completed its investigation.

Respondent has since refunded all of the unearned fees, less the actual cost of the medical opinion which he obtained, which determined that the case had no merit.

By failing to promptly refund unearned fees, Respondent violated Rule of Professional Conduct 3-700(D)(2).

Case No. 03-O-02548 – Rule of Professional Conduct 4-100(B)(3) – Failure to Promptly Account

Respondent wilfully violated Rule of Professional Conduct 4-100(B)(3), by failing to render appropriate accounts to the client, as follows:

Respondent was hired by Diana Solis in May 2002 for a child custody matter. Respondent received \$2,500.00 in advanced fees from Solis.

Respondent prepared the petition to establish paternity and the judgment. Solis objected to typographical errors in the judgment and demanded a full refund in May 2003. Respondent corrected the judgment.

Respondent failed to provide an accounting to Solis, despite her demand for a full refund, until after the State Bar completed its investigation in this matter in 2004.

Respondent has now provided Solis with a complete accounting and a notice of right to arbitrate.

By failing to timely provide Solis with an accounting and notice of right to arbitrate, upon her demand for a complete refund, Respondent failed to render appropriate accounts to a client in violation of Rule of Professional Conduct 4-100(B)(3).

AUTHORITIES SUPPORTING DISCIPLINE

STANDARDS FOR ATTORNEY SANCTIONS

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the protection of public confidence in the legal profession.

Pursuant to Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct of culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

Pursuant to Standard 2.2 of the Standards of Attorney Sanctions for Professional Misconduct:

Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in a least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A. (6), was March 4, 2004.

Date

3/9/04

Respondent's signature

EUGENE ROY SALMONSEN, JR.
print name

Date

Respondent's Counsel's signature

print name

Date

3-10-04

Deputy Trial Counsel's signature

ERIN McKEOWN JOYCE
print name

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

3/15/04

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 March 24, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING**

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

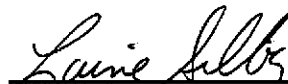
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

EUGENE ROY SALMONSEN JR
11845 OLYMPIC BLVD
LOS ANGELES CA 90064

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

ERIN JOYCE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 24, 2004**.



Laine Silber
Case Administrator
State Bar Court