

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 ~~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 State Bar during disciplinary investigation and proceedings~~ 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:

See Page 10 of Attachment to the Stipulation: "Other Mitigating Factors for Consideration".

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of One (1) Year

- 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 One (1) Year 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, 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.

In the Matter of

Case Number(s):

TIMOTHY TODD THOMPSON

03-0-01354

A Member of the State Bar Bar #150147

Financial Conditions

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

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

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: TIMOTHY T. THOMPSON

CASE NUMBER: 03-O-01354

FACTS AND CONCLUSIONS OF LAW.

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 No. 03-O-01354 ("NDC") and the facts and conclusions of law as set forth in this stipulation. The facts and conclusions of law set forth in this stipulation supersede the facts and conclusions of law set forth in the NDC.

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

CASE NO. 03-O-01354

Facts

1. In or about July 2001, Mike Visueta ("Visueta") retained Respondent to represent him in a personal injury matter resulting from an automobile accident which had occurred in or about December 2000. Prior to retaining Respondent, Visueta already received a \$1,179 settlement check from Allstate, the defendants' insurance company. On or about July 12, 2001, Visueta and Respondent executed an attorney-client agreement.

2. On or about December 7, 2001, Respondent filed a complaint on behalf of Visueta in the matter entitled *Mike Visueta v. Eddie Lee White*, Santa Barbara Superior Court, Case No. 01066374 (the "Visueta matter").

3. On or about March 4, 2002, Cathy Anderson ("Anderson"), the Defendants' counsel in Case No. 01066374, served Visueta at Respondent's membership records address with a Notice of Taking Deposition on May 1, 2002, Form Interrogatories, and a Demand for Production and Inspection of Documents on April 8, 2002.

4. On or about March 11, 2002, Respondent sent Visueta a letter, enclosing the defendants' Form Interrogatories and Demand for Production and Inspection of Documents and requesting Visueta's responses by April 1, 2002. Visueta did not respond to Respondent's March 11, 2002 letter.

5. On or about April 15, 2002, Anderson sent Respondent a letter, advising Respondent that answers to the discovery requests propounded on Visueta were overdue.

6. On or about May 1, 2002, Visueta who was not informed by Respondent of the notice of deposition did not appear at the scheduled deposition. Respondent failed to appear at the noticed deposition on behalf of Visueta.

7. On or about May 2, 2002, Anderson served Visueta at Respondent's membership records address with a Second Notice of Taking Deposition on May 21, 2002.

8. On or about May 20, 2002, Anderson wrote and faxed Respondent a letter, advising Respondent that she still had not received the discovery responses and reminding Respondent of the May 21, 2002 deposition.

9. On or about May 21, 2002, Visueta who was not informed by Respondent of the notice of deposition did not appear at the scheduled deposition. Respondent failed to appear at the noticed deposition on behalf of Visueta.

10. On or about June 18, 2002, Anderson served Visueta at Respondent's membership records address with a Notice of Motion and Motion for Order Compelling Plaintiff to Respond to Answers to Interrogatories and Request for Production of Documents and Request for Sanctions.

11. On or about June 18, 2002, Anderson served Visueta at Respondent's membership records address with a Notice of Motion and Motion for Order Compelling Plaintiff to Attend and Testify at Deposition.

12. On or about July 15, 2002, the Court granted both Defendants' motions and ordered Plaintiff to answer discovery and to appear and be deposed within 30 days. The Court's order also gave notice that the case would be dismissed if Plaintiff failed to follow the order.

13. On or about July 15, 2002, Respondent sent Visueta a letter, enclosing the Form Interrogatories sent by Defendants.

14. Subsequent to on or about July 15, 2002, Respondent called Visueta, advising him of the defendants' defenses and that he did not have a good case. Respondent further extended a \$3,500 offer to Visueta to lay the Visueta matter to rest. Visueta accepted the offer.

15. On or about August 23, 2002, after obtaining Allstate's promise that defendants would not pursue costs against Respondent nor Visueta, Respondent filed a Request for Dismissal with Prejudice of Case No. 01066374.

16. On or about September 18, 2002, Respondent sent a letter to Visueta, enclosing a \$3,500 check, issued against Respondent's Client Trust Account No. 122237159, City Commerce Bank, and stating that Respondent has "obtained no fees out of the \$3,500" and "simply wanted out of this case."

Legal Conclusions

17. By failing to timely notify Visueta of the scheduled depositions and the discovery requests propounded by Defendants and to pursue legal action on behalf of Visueta, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rules of Professional Conduct 3-110(A).

18. By paying Visueta from his client trust account, Respondent improperly treated his client trust account as a personal or general office account in wilful violation of Rules of Professional Conduct, rule 4-100(A).

PENDING PROCEEDINGS.

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

DISMISSALS.

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

<u>Count</u>	<u>Alleged Violation</u>
Two	Business and Professions Code, section 6068(m)
Three	Business and Professions Code, section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 3, 2003, the estimated prosecution costs in this matter are approximately \$2,342.35. 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.*

OTHER MITIGATING FACTORS FOR CONSIDERATION

In the Visueta matter, Respondent contends that his representation of Visueta was hampered by the following:

Visueta failed to cooperate in the discovery process, a fact that Respondent could not divulge to defendants' counsel as that would have harmed his client's position. In addition, Visueta's physical ailments did not originate from the automobile accident but a pre-existing rheumatoid arthritic condition. Respondent explained to Visueta that he did not have a good case but Visueta insisted on pursuing the matter.

Respondent acknowledged that during his representation of Visueta, Respondent was extremely busy pursuing a large insurance bad faith action against multiple insurance companies. To assuage Visueta's insistence on pursuing a case without merit, Respondent decided to pay Visueta \$3,500 out of his own pocket.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 9, 2002, the estimated prosecution costs in this matter are approximately \$3,114.00. 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 of Attorney Sanctions for Professional Misconduct, Title IV, of the Rules of Procedure of the State Bar of California (hereinafter "Standard(s)".)

Standard 2.2(b) states that an attorney who is culpable of commingling or the commission of another violation of rule 4-100, which did not result in misappropriation, shall result in at least a three month actual suspension.

Standard 2.2(b): commingling of entrusted funds with personal property, not resulting in wilful misappropriation of entrusted funds, shall result in at least a three month actual suspension.

Case Law

In The Matter of Respondent E (1991) 1 Cal. State Bar Ct. Rptr. 716 - The attorney received a private reproof, where there was negligence in handling one check. A check which should have been placed in his trust account was erroneously placed in his general account. The attorney had forty years of blemish-free career. Also, there was no intention whatsoever to depart from the accepted Rules of Professional Conduct, nor any motive for personal gain.

In Donald J. Gold v. State Bar (1989), 49 Cal.3d 908, the respondent, who had no prior, received three years stayed suspension and three years probation with conditions, including 30 days actual suspension. Respondent had failed to keep in contact with two clients and had misrepresented to one client that he had settled her case, then manufactured a distribution authorization and paid the client the amount of the alleged settlement from his own pocket.

Application

Although Standard 2.2(b) sets forth a minimum discipline for trust account violations, numerous Supreme Court and Review Department opinions establish that the Standards are guidelines only, and that the correct discipline in each case must be determined on its individual merits.

In the instant matter, as in *Respondent E*, Respondent was negligent in his handling of one client trust account check. In addition, Respondent paid his client from his own pocket because he "wanted out of the case". However, Respondent's misconduct is not as serious as the misconduct in *Gold* which involved two client matters and fabrication of documents.

Respondent is not likely to commit such misconduct in the future since he has generally exhibited good moral character for the last 13 years and his failings here can be viewed as aberrational. In addition, Respondent's conduct was motivated by a desire to make the client whole and not for personal enrichment.

Date 12-18-03


Respondent's signature

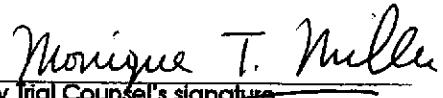
TIMOTHY TODD THOMPSON
print name

Date _____

Respondent's Counsel's signature _____

print name _____

Date December 22, 2003


Deputy Trial Counsel's signature

MONIQUE T. MILLER
print name

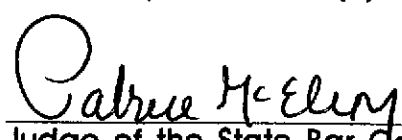
ORDER

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.)

Date Jan 13, 2004


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 January 14, 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:

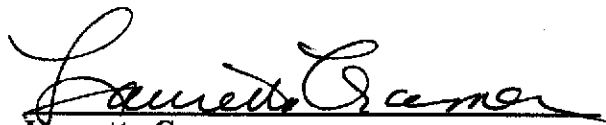
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**TIMOTHY T. THOMPSON
15 W CARRILLO ST #101F
SANTA BARBARA CA 93101**

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

MONIQUE MILLER, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 14, 2004**.



Laretta Cramer
Case Administrator
State Bar Court