

The State Bar of California
Hearing Department: Los Angeles San Francisco
PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Counsel for the State Bar Cydney Batchelor, #114637 State Bar of California 180 Howard St., 7th Fl. San Francisco, CA 94105 (415) 528-2204	Case Number(s) 03-0-2715-PEM 03-0-3913 04-0-13946 <div style="text-align: center;">FILED</div> <div style="text-align: center;">JAN 24 2006 <i>cf</i></div> <div style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>	(for Court use) <div style="text-align: center;">CONFIDENTIAL</div> <div style="text-align: center;">LODGED</div> <div style="text-align: center;">JAN 31 2005 <i>cf</i></div> <div style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel for Respondent Thomas C. Jeing, #157795 58 W. Portal Ave. #336 San Francisco, CA 94127	Submitted to Pilot Program Judge <div style="text-align: center;">STIPULATION RE FACTS AND CONCLUSIONS OF LAW</div> <div style="display: flex; justify-content: space-between;"> kwiktag® 022 603 649 </div> <div style="text-align: center;">  </div> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of THOMAS C. JEING Bar # 157795 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted April 1, 1992
(Date)

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.

(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." This stipulation consists of 9 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 and will pay timely any disciplinary costs imposed in this proceeding.

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 (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

B. Aggravating Circumstances (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 Action 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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct. See attachment
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

None

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

- (1) No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. **See attachment**
- (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. **see attachment**
- (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 of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) No mitigating circumstances are involved.

Additional mitigating circumstances:

See attachment

Respondent enters into this stipulation as a condition of his/her participation in the Pilot Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Pilot Program Contract.

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Pilot Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

NOV. 18, 2004
Date


Respondent's Signature

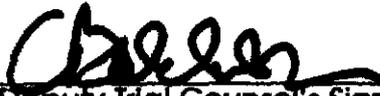
THOMAS C. JEING
Print Name

N/A
Date

N/A
Respondent's Counsel Signature

N/A
Print Name

11/18/04
Date


Deputy Trial Counsel's Signature

CYDNEY BATCHELOR
Print Name

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: THOMAS C. JEING
CASE NUMBER(S): 03-O-2715; 03-O-3913

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the State Bar Act and/or Rules of Professional Conduct:

Case No. 03-O-3913 (Foxlink Peripherals Inc.)

Facts: In 2003, Respondent was employed by defendant Foxlink Peripherals Inc. ("Foxlink") to provide legal services to defend a wrongful termination lawsuit. On April 7, 2003, Respondent filed an answer on behalf of Foxlink. However, he thereafter failed to file a case management order or to attend two case management court conferences. At that point, Foxlink terminated his services. However, Respondent failed to notify the court that he had been terminated, and while he was still counsel of record, Respondent failed to oppose a discovery motion that had been brought by the plaintiff. As a result of Respondent failing to attend the second case management conference and failing to oppose the plaintiff's discovery motion, the Court on its own motion removed Respondent as counsel of record. As a result of Respondent's misconduct, Foxlink was ordered to pay and paid sanctions in the total amount of \$1700.00 in favor of plaintiff Alex Lukashevskiy.

Conclusions of Law: By recklessly failing to file a case management order or to attend two case management conferences, Respondent failed to perform legal services with competence, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to withdraw from the court case formally, Respondent failed upon termination of employment to take reasonable steps to avoid reasonably foreseeable prejudice to his client and caused his client to be sanctioned in the total amount of \$1700.00, in violation of Rule of Professional Conduct 3-700(A)(2).

Case No. 03-O-2715 (State Bar Investigation: Hon. Vaughn R. Walker)

Facts: In October 2001, Respondent was counsel of record for defendants Memorex and Pretec Electronics Corporation ("Pretec") in litigation brought by SanDisk regarding patent and trademark infringement in the US District Court for the Northern District of California. In December 12, 2001, Respondent filed an answer on behalf of Memorex and Pretec. Thereafter, he failed to respond to some of the discovery in a timely manner. In a motion proceeding, Respondent prepared two declarations in support of an opposition to a motion initiated by the plaintiff. The declarations were virtually identical to ones that had already been filed in a related case, which the declarants had signed. Both declarants worked in Taiwan, and written communication with them was difficult. Rather than obtain the original signature of Pretec President Gordon Yu ("Yu") to one declaration, Respondent signed the declaration with Yu's name and filed it with the Court. Elliopes Shieu ("Shieu"), the chief engineer of C-One Technology, sent the signature page to his declaration to Respondent by fax; however, facsimile was illegible. Respondent then traced Shieu's signature onto the declaration and filed it with the Court. Thereafter, Respondent's services were terminated by the clients, and they obtained new counsel, who reported to Court that Wu and Shieu had not signed the declarations that Respondent had filed with the Court.

Conclusions of Law: By willfully not responding to some of the discovery in a timely manner, Respondent recklessly failed to perform legal services with competence, in violation of Rule of Professional Conduct 3-110(A). By willfully filing declarations with the federal court that he had signed with Wu's name, and traced with Shiue's name, Respondent committed acts of dishonesty and moral turpitude, in violation of Business and Professions Code section 6106.

04-O-13946 (State Bar Investigation: Hon. Kevin E. McKenney):

Facts: In April 2003, Respondent substituted into a property damage case on behalf of the plaintiffs and appeared at one status conference. Plaintiffs' case had already been dismissed; however, Respondent represented to counsel for the other parties that he would file a motion to set aside the dismissal. He failed to do so, or to make any further appearances in the case or to have any further contact with his clients. In November 2003, the Court sanctioned Respondent's clients \$636.50 in favor of plaintiff Stratton Properties Respondent's failure to respond to discovery.

Conclusions of Law: By willfully not appearing in court and not performing legal services for his clients, Respondent recklessly failed to perform legal services with competence, in violation of Rule of Professional Conduct 3-110(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was November 18, 2004.

AGGRAVATING CIRCUMSTANCES.

Facts Supporting Aggravating Circumstances.

Multiple Acts of Misconduct: The facts and conclusions set forth above involve multiple acts of misconduct to multiple clients.

MITIGATING CIRCUMSTANCES.

Facts supporting mitigating circumstances:

No prior record: Respondent has no prior record of discipline, since being admitted to practice in 1992 (14 years ago).

Candor/Cooperation: Respondent has been completely candid and cooperative with the undersigned deputy trial counsel in resolving these cases.

Additional Mitigating Circumstance.

Participation in Lawyer's Assistance Program: Respondent signed an application agreement to be assessed by the Lawyer's Assistance Program in May 2004, and fully cooperated in that assessment process. Respondent also cooperated in an evaluation by a LAP-selected mental health professional, and then met with the LAP Evaluation Committee to discuss full participation the LAP program. In October 2004, Respondent signed the participation agreement with LAP and memorializes his commitment to the program. He has been in continuous compliance with LAP since his initial contact with the program.

RESTITUTION.

In accordance with the timetable set forth in the in the "Pilot Program Contract" to be executed between the State Bar Court and Respondent on the captioned cases, Respondent must make restitution as follows:

Alex Lukashevskiy, or the Client Security Fund if it has paid, in the principal amount of \$1700.60, plus interest at the rate of 10% per annum from August 1, 2003, until paid in full, and furnish satisfactory evidence of restitution to the State Bar Court.

Stratton Properties, through its attorney Alan J. Jang, or the Client Security Fund, if it has paid, in the principal amount of \$636.50, plus interest at the rate of 10% per annum from December 1, 2003, until paid in full, and furnish satisfactory evidence of restitution to the State Bar Court.

ORDER

Finding this stipulation to be fair to the parties, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.

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; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

Jan. 31, 2005
Date

Cat McElroy
Judge of the State Bar Court