


Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT ERIN McKEOWN JOYCE, NO. 149946 1149 S. HILL STREET LOS ANGELES, CA 90015-2299 Telephone: (213) 765-1000	Case number(s) 03-0-4599 03-0-5199 04-0-10879 kwiktag® 031 978 337 	(for Court's use) PUBLIC MATTER FILED JUN 29 2004 STATE BAR COURT CLERKS OFFICE LOS ANGELES
Counsel for Respondent Erica Ann Tabachnick No. 94324 900 Wilshire Boulevard, #1000 Los Angeles, CA 90017		
In the Matter of STUART FOLINSKY Bar # 65814 A Member of the State Bar of California (Respondent)	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 18, 1975 (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 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. (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 it:

- (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 96-0-750

(b) ☒ Date prior discipline effective January 7, 1998

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: RPC 3-110 (A) and

Business & Professions Code Section 6068 (m)

(d) ☒ degree of prior discipline public reproof

(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:

In September 2001, Mr. Folinsky's daughter left home to attend college. She suffers from kidney problems, was having a difficult time, and needed to be hospitalized in May and December 2002. Mr. Folinsky was preoccupied with his daughter's care and became depressed making it difficult for him to follow-up on some of his cases.

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 Reproval:

(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 reproof.
- (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 reproof.
- ☒ No MPRE ordered.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (11) ☐ Other conditions negotiated by the parties:

**ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

In the Matter of Stuart Folinsky

Case Nos. 03-O-4599, 03-O-5199 and 04-O-10879

FACTS AND CONCLUSIONS OF LAW

Respondent agrees to be bound by the following statement of facts which support a finding of culpability for violations of Rules of Professional Conduct 3-110(A) and 4-100(B).

Case No. 03-O-4599 – The Al-Ahmad Matter

Facts

On February 7, 2002, Waleed Al-Ahmad hired Respondent to represent him in an immigration matter. Respondent was retained to prepare an I-360 visa petition. Ahmad paid Respondent \$900.00.

At the time Ahmad retained Respondent, he notified Respondent that Ahmad's R-1 visa was due to expire in eleven months.

From May 2002 through May 2003, Ahmad repeatedly called Respondent's office to obtain a status report on his legal matter. Ahmad was only able to reach Respondent two times in this time period, although he left numerous voice mail messages requesting a return call from Respondent to provide a status report.

During this time period, Ahmad also sent several e-mail messages to Respondent requesting a status report. Despite receipt of the voice mail messages and the e-mail messages, Respondent failed to act on Ahmad's I-360 visa petition and failed to provide a status report to Ahmad.

On February 15, 2003, Ahmad sent a certified letter to Respondent at his membership records address regarding Ahmad's inability to contact Respondent by phone and requesting a status report. Despite receipt of this letter, Respondent took no action on the I-360 petition.

Because Respondent did not timely file the I-360 visa petition, Ahmad was subject to deportation proceedings. It was not until after the State Bar investigation was completed that Respondent refunded the unearned fees of \$900.00.

Conclusions of Law

By failing to promptly file Ahmad's I-360 visa petition, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

**Attachment to Stipulation re
Facts, Conclusions of Law and Disposition**

Case No. 03-O-5199 – The Chen Matter

Suobin Chen hired Respondent to represent his wife and daughter in an immigration matter.

In early September 2003, Respondent prepared a new G-28 form, the Notice of Entry of Appearance of Attorney and an I-824 form, the Application for Action on Approved Application or Petition for Chen. Respondent advised Chen that he would require \$640.00 in fees and costs to handle the matter.

On September 22, 2003 Chen sent a fax to Respondent confirming his receipt of the I-824 form and G-28 form prepared by Respondent on behalf of Chen. Chen offered to pay Respondent \$10,000.00 to obtain green cards for his wife and daughter. Chen paid Respondent \$3,000.00.

Respondent prepared all the necessary documents, but after Respondent took a short vacation, Chen fired him.

On October 8, 2003, Chen hired new counsel who sent a Notice of Substitution of Attorney signed by Mr. Chen to Respondent, requesting turnover of the files. Respondent notified her that he would do so as soon as he received signed authorizations from Mrs. Chen and her daughter.

On October 22, 2003, Chen sent a letter to Respondent enclosing substitutions signed by his wife and daughter, again requesting turnover of the files.

On October 23, 2003, Respondent sent a letter to Chen's new attorney, stating he will have the files available for pick up and will calculate the refund of unearned fees.

On November 21, 2003, Chen's office sent an e-mail message to Respondent requesting that he wire-transfer the refund of unearned fees to Chen's office account. Despite receipt of this request, Respondent failed to refund the \$3,000.00 unearned fees until after the State Bar investigation was completed.

Conclusions of Law

By failing to promptly refund to Chen unearned fees, Respondent wilfully failed to refund unearned fees in violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 04-O-10879 – The Mardirossian Matter

On March 9, 2001, Armen Mardirossian hired Respondent to prepare and file immigration papers or permanent residency for Mardirossian and his family. Mardirossian paid Respondent \$1,750.00 in advanced fees on March 9, 2001. Mardirossian paid an additional \$1,205.00 on

**Attachment to Stipulation re
Facts, Conclusions of Law and Disposition**

October 30, 2002 in advanced fees and costs.

In January 2003, Respondent prepared and provided Mardirossian with an undated and unsigned copy of an Immigrant Petition for Alien Worker (Form I-140), and told Mardirossian that he would hear something in nine to twelve months after the filing of the petition.

From December 2003 through February 2004, Mardirossian contacted Respondent multiple times to obtain copies of the INS receipt notices of the petition. Mardirossian left detailed messages requesting the copies and a status report on his legal matter.

In a telephone call with Mardirossian in February 2004, Respondent stated he would look for the receipt notices.

In fact, when Respondent looked for the receipt notices, he discovered the original signed petition still in his file. It had never been forwarded to CIS.

Respondent refunded to Mardirossian the entire legal fees he collected after the State Bar investigation was completed.

Conclusions of Law

By failing to promptly file Mardirossian's petition, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

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.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was June 22, 2004.

V:\CTC\Staff\Investigation\Erin Joyce\Folinsky -- stip attachment.wpd

Date 6-18-04

[Signature]
Respondent's signature

STUART FOLINSKY
print name

Date 6/21/04

[Signature]
Respondent's Counsel's signature

ERICA ANN TABACHNICK
print name

Date 6-22-04

[Signature]
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 6/28/04

[Signature]
Judge of the State Bar Court
ROBERT M. TALCOTT

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 June 29, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed June 29, 2004**

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

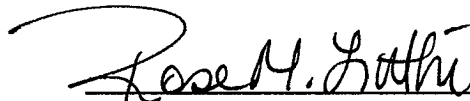
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ERICA TABACHNICK, A/L
900 WILSHIRE BLVD #1000
LOS ANGELES CA 90017**

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

ERIN JOYCE, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 29, 2004**.



Rose M. Luthi
Case Administrator
State Bar Court