

ORIGINAL

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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar Fumiko D. Kimura Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 Tel: (213)765-1380 Bar # 208763	Case number(s) 05-H-03835-RMT	(for Court's use) <div style="text-align: center;"> FILED SEP 15 2006 <i>YKC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent John Yaheng Tu 119 S Atlantic Blvd., #305 Monterey Park, CA 91754 Tel: (626)458-9700 Bar # 146945	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge	
In the Matter of John Yaheng Tu Bar # 146945 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

PUBLIC MATTER

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 11, 1990
(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 13 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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) 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.



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- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- (a) costs added to membership fee for calendar year following effective date of discipline
 - (b) costs to be paid in equal amounts prior to February 1 for the following membership years:
for two (2) billing cycles following the effective date of the Supreme Court Order
(hardship, special circumstances or other good cause per rule 282, Rules of Procedure)
 - (c) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - (d) costs entirely waived

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 03-O-1980
 - (b) Date prior discipline effective May 4, 2004
 - (c) Rules of Professional Conduct/ State Bar Act violations: _____
Rules 3-110(A) and 3-510(A)(2) of the Rules of Professional Conduct
 - (d) Degree of prior discipline Private Reprimand
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "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.

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- (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 with 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) **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.

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- (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:

D. Discipline

1. Stayed Suspension.

(a) Respondent must 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 as set forth in the Financial Conditions form attached to this Stipulation.
- iii. and until Respondent does the following: _____

The above-referenced suspension is stayed.

2. Probation.

Respondent is placed on probation for a period of Two (2) years, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

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E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), 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) Within 30 days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must 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. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must 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.

- (5) Respondent must be assigned a probation monitor. Respondent must 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 must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation 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.
- (7) Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: Respondent attended Ethics School on 1/13/05, and passed the test given at the end of the session.
- (8) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

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In the Matter of JOHN YAHENG TU Bar #: 146945	Case Number(s): 05-H-03835-RMT
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Law Office Management Conditions

- a. Within ___ days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within ___ days/ 6 months ___ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ___ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

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F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation 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. Reason: _____

- (2) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOHN YAHENG TU

CASE NUMBER: 05-H-03835-RMT

FACTS AND CONCLUSIONS OF LAW

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

Facts

1. Respondent John Yaheng Tu ("Respondent") was admitted to the practice of law in the State of California on June 11, 1990, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. On March 22, 2004, Respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California in case number 03-O-01980.
3. On April 12, 2004, the Hearing Department of the State Bar Court filed an order approving the Stipulation and imposing the reproof with conditions set forth in the Stipulation ("Reproof Order").
4. Pursuant to the April 12, 2004 Reproof Order, Respondent was ordered to comply with the following terms and conditions, among others:
 - (1) to comply with the conditions attached to the reproof for a period of one year; and
 - (2) to comply with the State Bar Act and the Rules of Professional Conduct during the condition period attached to the reproof.
5. Respondent was also ordered to take and pass the Multistate Professional Responsibility

Examination ("MPRE") as follows:

Respondent shall provide proof of passage of the MPRE, administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel [now known as the Office of Probation] within one year of the effective date of the reproof.

6. The Reproof Order became effective on May 4, 2004 and the reproof period ended on May 4, 2005.
7. On April 22, 2004, the Office of Probation of the State Bar of California ("Office of Probation") wrote a letter to Respondent in which it reminded Respondent of the terms and conditions of his reproof imposed, pursuant to the April 12, 2004 Reproof Order. In the April 22, 2004 letter, the Office of Probation specifically advised Respondent regarding his obligations to file quarterly reports, with the first due on July 10, 2004, to attend State Bar Ethics School, and to provide proof of his passage of the MPRE by May 4, 2005. Enclosed with the April 22, 2004 letter to Respondent were, among other things, copies of the relevant portion of the Stipulation setting forth the conditions of Respondent's reproof; a Quarterly Report Instructions sheet; a Quarterly Report form specially tailored for Respondent to use in submitting his quarterly reports; and an MPRE Examination Schedule.
8. Respondent received the April 22, 2004 letter from the Office of Probation.
9. Respondent was required to provide proof of his passage of the MPRE no later than May 4, 2005.
10. To date, Respondent has failed to provide proof of his passage of the MPRE.
11. Respondent failed to take the MPRE before the expiration of his reproof period.
12. Respondent finally took the MPRE in November 2005, approximately six months after the expiration of his reproof period. Respondent, however, failed to pass the November 2005 MPRE.
13. By failing to timely provide proof of his passage of the MPRE, Respondent failed to comply with the terms and conditions of the April 12, 2004 Reproof Order.

Conclusions of Law

By failing to provide proof of his passage of the MPRE, Respondent failed to comply with the conditions of the reproof, in wilful violation of rule 1-110 of the Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A(7), was September 5, 2006.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 5, 2006, the estimated prosecution costs in this matter are approximately \$4,569.00. Respondent acknowledges that this figure is an estimate only. 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 for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California ("Standard")

Standard 1.3 states that 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 preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Standard 1.7(a) states that the degree of discipline shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Standard 2.9 provides that culpability of a member of a wilful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

Case Law

In the Matter of Posthuma (1998) 3 Cal. State Bar Ct. Rptr. 813. The attorney failed to comply with a condition attached to a private reproof by failing to timely take and pass the California Professional Responsibility Examination ("CPRE"). The attorney, however, took and passed the CPRE before the trial. The attorney received a public reproof for this violation.

Conroy v. State Bar (1990) 51 Cal.3d 799. *Conroy* failed to comply with a condition of prior discipline, a private reproof, requiring him to take and pass the Professional Responsibility Examination ("PRE") within a prescribed period. The sole mitigating circumstance was his late passage of the PRE. The aggravating circumstances were 1) prior record of discipline 2) his failure to participate in the State Bar Court proceedings, and 3) lack of remorse and failure to acknowledge the wrongfulness of his action. The attorney was actually suspended for sixty (60) days.

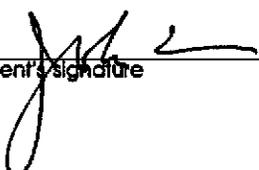
As in *Posthuma* and *Conroy*, Respondent Tu failed to take and pass the MPRE, a condition of his prior discipline in which he had received a private reproof, during the one-year reproof period. Approximately six months after the reproof period ended, Respondent took the MPRE for the first time and failed the test. To date, Respondent has not passed the MPRE. While there is no reason or compelling mitigation to deviate from the Standard which calls for suspension, Respondent did participate in the disciplinary proceeding and acknowledged the wrongfulness of his conduct, unlike *Conroy*. As a result, the level of discipline agreed in this stipulation is warranted.

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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

Date <u>9-5-06</u>	Respondent's signature 	JOHN YAHENG TU Print name
Date _____	Respondent's Counsel's signature _____	Print name _____
Date <u>9-5-06</u>	Deputy Trial Counsel's signature 	FUMIKO D. KIMURA Print name

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ORDER

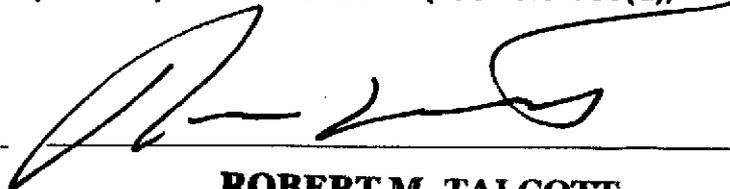
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.
- All Hearing dates are vacated.

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

9/8/06



ROBERT M. TALCOTT
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 of California. 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 September 15, 2006, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL
SUSPENSION**

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 Los Angeles, California, addressed as follows:

**JOHN Y. TU
119 S ATLANTIC BLVD #305
MONTEREY PARK, CA 91754**

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

FUMIKO KIMURA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 15, 2006.**



Tammy R. Cleaver
Case Administrator
State Bar Court