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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Melanie J. Lawrence 1149 South Hill Street Los Angeles, California 90015-2211 Telephone: (213) 765-1066 Bar # 230102	Case Number (s) 05-O-03547 05-O-04162 05-O-04736 05-O-05178	(for Court's use) <div style="text-align: center;"> FILED JAN 05 2007  STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Ken Sejima Horio 19051 Goldenwest St #238 Huntington Beach, CA 92648 Telephone: (714) 444-1620 Bar # 182409	PUBLIC MATTER	
In the Matter Of: Ken Sejima Horio Bar # 182409 A Member of the State Bar of California (Respondent)	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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, 1996**.
- (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 consists of **23** pages, not including the order.
- (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."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension



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- (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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: **three (3) billing cycles following the effective date of the Supreme Court Order.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - 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
 - (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.
- (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:

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension

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) **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) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **four (4) years**.
- 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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **four (4) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Calif. Rules of Ct.)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **two (2) years**.
- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) 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.
- (4) Within thirty (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.

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- (5) 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 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.

- (6) 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.
- (7) 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.
- (8) 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 the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason:
- (9) 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.
- (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 checked="" type="checkbox"/> Financial Conditions |

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 during the period of actual suspension or within one year, whichever period is longer. **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) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and

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Actual Suspension

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perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

70287

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: KEN SEJIMA HORIO

CASE NUMBER(S): 05-O-03547 ET AL.

A. 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.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY:

The parties waive any variance between the Notice of Disciplinary Charges filed on August 31, 2006, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

05-O-03547

Facts:

1. On April 29, 2003, Sakiko Inoue ("Inoue") retained Respondent to represent her in a personal injury matter entitled *Inoue v Pareja, et. al.*, case no. 04HL01771, Superior Court Of California, County Of Orange, Harbor Justice Center ("the Inoue matter").
2. April 29, 2003 was the only time Inoue communicated with Respondent. Inoue made many attempts to contact Respondent and left telephone messages for Respondent to contact her. But Respondent failed to communicate with Inoue and did not return her telephone calls.
3. On April 23, 2004, Respondent filed the Inoue matter.
4. On December 3, 2004, the court dismissed the Inoue matter due to lack of prosecution.
5. Finola Hayes ("Hayes"), host mother to Inoue, sent Respondent a letter dated December 4, 2004, enclosing documents for the Inoue matter. The letter also stated Respondent had not been in communication or provided the status of the Inoue matter. In the letter Hayes requested that Respondent provide the status of her case to Inoue. In the letter,

Hayes provided address and telephone information. Respondent did not respond to the December 4, 2004, letter and did not contact Inoue.

6. On December 6, 2004, the court prepared a Notice Of Dismissal ("Notice") for the Inoue matter.
7. On or about December 7, 2004, the court mailed the Notice to Respondent. Respondent received the Notice.
8. Respondent did not thereafter inform Inoue or Hayes on behalf of Inoue, that the Inoue matter had been dismissed.
9. Respondent received a letter dated January 14, 2005, from Allstate Indemnity Company ("Allstate"), containing an offer to settle the Inoue matter for \$7,500.00.
10. Respondent did not inform Inoue of the written settlement offer from Allstate.
11. On March 21, 2005, new counsel for Inoue, Joseph S. Farzam ("Farzam"), had his secretary write a letter to Respondent on Farzam's behalf requesting the complete original files for the Inoue matter. The letter contained a document entitled Substitution Of Attorney, dated March 21, 2005, signed by Inoue, stating that Inoue had retained Farzam to now handle the Inoue matter. Respondent received the letter.
12. Respondent did not respond to the March 21, 2005, letter.
13. On March 28, 2005, Farzam's secretary sent a second letter on his behalf to Respondent, once again requesting the complete original files for the Inoue matter. The letter requested that Respondent immediately contact Farzam's office to acknowledge receipt of the March 28, 2005, letter.
14. Respondent did not respond to the March 28, 2005, letter.
15. Despite the two letters requesting the delivery of Inoue's client file, at no time did Respondent release the client file to Inoue or Farzam or communicate with Inoue or Farzam regarding how the file could be obtained.

Legal Conclusion:

By not informing Inoue that the Inoue matter was dismissed by the court on December 3, 2004 and by not responding to Inoue's repeated requests for information, Respondent failed to inform a client of significant developments in a matter in which Respondent had agreed to provide legal services and failed to respond to reasonable status inquiries all in wilful violation of Business and Professions Code section 6068(m). By not

informing Inoue of Allstate's written offer to settle the Inoue matter for \$7,500.00, Respondent failed to promptly communicate to the client all amounts, terms and conditions of any written offer of settlement made to the client in all matters, in wilful violation of rule 3-510(A)(2) of the Rules of Professional Conduct. By failing to release the client file in the Inoue matter to Inoue or Farzam in spite of Farzam's March 21 and 28, 2005 letters, Respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers and property, in wilful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

05-O-04162

Facts:

16. On February 6, 2001, Tracie L. Bradley ("Bradley") guardian ad litem for Shaun Bradley retained Respondent to represent her son Shaun F. Bradley ("Shaun"), a minor, in a personal injury matter entitled *Bradley v. Ralphs Grocery Company*, case no. 02CC01980, Superior Court Of California, County Of Orange, ("Bradley matter").
17. The Bradley matter was filed on or about January 24, 2002.
18. Bradley signed a settlement agreement and general release on behalf of Shaun on March 6, 2003 to settle the Bradley matter and the Bradley matter was transferred to the probate division. The case was now entitled *Tracie Bradley re minor Shaun Bradley*, case no. A220774, Superior Court Of California, County Of Orange, ("Bradley probate matter").
19. On June 4, 2004, the court ordered settlement funds in the amount of \$1,629.00 for Shaun from the Bradley probate matter be deposited into a blocked account at Washington Mutual Bank.
20. On June 17, 2004, Bradley opened a blocked trust account at Washington Mutual Bank, account no. 0319-0000647270-3, in Bradley's name and Shaun's name for the settlement funds from the Bradley probate matter. The account was not funded and was eventually closed by the bank because the settlement funds were never deposited into the account.
21. Bradley telephoned Respondent on June 17, 2004, to inform him the account was set up to receive the settlement funds from the Bradley probate matter.
22. From June 2004 through August 2004, Bradley telephoned Respondent on many occasions regarding the issuing of the settlement funds but Bradley was not successful in communicating with Respondent. Finally, Bradley spoke to Respondent sometime in August 2004. At that time Respondent advised her he had not heard back from counsel for Ralph's Grocery Company ("Ralph's").

23. Bradley made many more attempts after August 2004 to contact Respondent regarding the status of the Bradley probate matter but she was not successful in her attempts to contact Respondent.
24. On September 30, 2004, Ralph's issued check no. 392780 in the amount of \$2,500.00, payable to Respondent and Shaun. Settlement funds in the amount of \$1,629.00 for Shaun were to be disbursed from this check. The funds for this check were only valid for sixty (60) days from the date issuance of the check.
25. Check no. 392780 was not negotiated, went stale, and the funds for the check were no longer available as of November 29, 2004.
26. In December 2004 Bradley sent Respondent a letter, once again inquiring about the status of the Bradley probate matter. Respondent did not respond to Bradley's letter.
27. In March 2005, after many attempts to contact Respondent, Bradley finally spoke to someone in Respondent's office. Bradley left a message requesting that Respondent contact her regarding the Bradley probate matter. Bradley stated in her message that if she did not hear from Respondent by March 14, 2005, Shaun's birthday, she would file a complaint against Respondent. Respondent did not contact Bradley.
28. On March 1, 2005, Ralph's placed a stop payment on check no. 392780 at the request of Respondent. Respondent informed Ralph's that he could not find check no. 392780 and requested another check be issued for the settlement funds in the Bradley probate matter.
29. On March 21, 2005, Ralph's re-issued another settlement check for the Bradley probate matter - check no. 0000541461, in the amount of \$2,500.00, payable to Respondent and Shaun. The settlement funds in the amount of \$1,629.00 for Shaun were to be disbursed from this check. The funds for this check were only valid for sixty (60) days from the date issuance of the check.
30. On March 30, 2005, Bradley placed two telephone calls to Respondent inquiring about the Bradley probate matter. Both times she reached his answering machine and cell phone voice mail and left messages. Respondent did not return Bradley's telephone calls.
31. On March 31, 2005, Bradley filed a complaint against Respondent with the Orange County Bar Association regarding the Bradley probate matter.
32. Check no. 0000541461 was not negotiated, went stale, and the funds for the check were no longer available as of May 20, 2005.
33. On June 17, 2005, Respondent wrote a letter to the Orange County Bar Association in

response to the complaint filed against him by Bradley. Respondent stated in the letter that check no. 0000541461 was presumed lost until recently and had been sent directly to Bradley on June 17, 2005, by Federal Express.

34. On July 29, 2005, the court held a hearing in the Bradley probate matter. During the hearing Bradley returned check no. 0000541461, which had by then expired, to Respondent. The court ordered two separate checks be issued to Respondent and Shaun - one check in the amount of \$1,629.00 made payable to Shaun and another check in the amount of \$871.00.
35. On September 30, 2005, Ralph's placed a stop payment on check no. 0000541461 at the request of Respondent. Respondent informed Ralph's that the court had ordered two separate checks made payable to Respondent and Shaun and requested, for a third time, that the settlement funds be re-issued in the Bradley probate matter.
36. On October 26, 2005, Ralph's re-issued for the third time, settlement funds for the Bradley probate matter. Ralph's issued check no. 686653, in the amount of \$1,629.00, payable to Shaun. Ralph's also issued a second check no. 686655, in the amount of \$871.00, payable to Respondent.
37. On September 8, 2005, the State Bar opened an investigation, Case No. 05-O-04162, pursuant to a complaint filed by the Orange County Bar Association on behalf of Tracie L. Bradley ("the Bradley probate matter").
38. On September 23, 2005, a State Bar investigator wrote to Respondent regarding the Bradley probate matter. The investigator's letter advised Respondent that his written response and documents requested by the investigator must be received by October 10, 2005, or the State Bar would consider this a failure to cooperate with a State Bar investigation and Respondent would be in violation of Business and Professions Code, section 6068(i). Respondent received the letter.
39. Respondent did not provide a written response to the investigator's September 23, 2005 letter by the required date of October 10, 2005.
40. On October 28, 2005, the investigator wrote to Respondent again regarding the Bradley probate matter. The investigator's letter advised Respondent that his written response and documents requested by the investigator must be received by November 14, 2005, or the State Bar would consider this a failure to cooperate with a State Bar investigation and Respondent would be in violation of Business and Professions Code, section 6068(i). Respondent received the letter.
41. Respondent did not provide a written response to the investigator's October 28, 2005 letter by November 14, 2005.

42. Respondent did not provide a written response to the investigator's letter until December 22, 2005.

Legal Conclusions:

By failing to negotiate the first and second settlement checks which resulted in the funds expiring, by requiring Ralph's to issue settlement funds on a total of three occasions for the Bradley probate matter, and by not communicating with Bradley, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct. By failing to provide a written response to the allegations to the State Bar investigator as requested in the September 23 and October 28, 2005 letters, in the Bradley probate matter, by the required due dates, or otherwise cooperating in the investigation of the Bradley matter, Respondent failed to cooperate in a disciplinary investigation, in wilful violation of Business and Professions Code section 6068(i).

05-O-04736

43. On October 31, 2001, Akiko Ono ("Ono") retained Respondent to represent her in a personal injury matter entitled *Ono v. Fucchi, et. al.*, case no. 02HL05356, Superior Court Of California, County Of Orange, ("Ono matter").
44. The Ono matter was filed on or about October 29, 2002.
45. On May 30, 2003, Allstate Insurance Company ("Allstate") wrote a letter to Respondent offering to settle the Ono matter for \$750.00. Respondent did not immediately inform Ono of this settlement offer.
46. On September 9, 2003, Allstate issued settlement draft #88365939 ("draft"), in the amount of \$750.00, payable to Ono and Respondent, for the Ono matter. Respondent did not immediately inform Ono that settlement funds had been issued for the Ono matter.
47. On May 24, 2004, Ono received the draft along with a Release Of All Claims form for the Ono matter. Respondent instructed Ono to sign the documents and return the documents to him by May 27, 2004. Ono executed the documents per Respondent's instruction and sent the documents to Respondent. Until she received the form and draft, Ono did not know her matter had been settled.
48. On June 22, 2004, Respondent deposited the draft into his client trust account at Union Bank Of California, account no. 1240014501.
49. On June 30, 2004, Respondent wrote to Ono to inform her that \$750.00 was the final settlement offer for the Ono matter. He further represented for the first time that he had accepted this offer. Respondent had, in fact, never discussed the settlement offer with

Ono and Ono had not previously advised him to accept this settlement offer for the Ono matter.

50. Respondent enclosed a Release Of Claims/Completion Of Personal Injury Case document in his June 30, 2004 letter to Ono. The release stated that settlement funds were awarded in the amount of \$750.00 for the Ono matter and that a check had been prepared for Ono in the amount of \$500.00. Ono executed the release on July 10, 2004.
51. On September 29, 2004, Ono received check no. 5567 from Respondent. It was dated June 21, 2004, in the amount of \$333.34, made payable to Ono, representing Ono's share of the settlement funds for the Ono matter. Check no. 5567 was drawn on account no. 1240014501, at Union Bank Of California, located in Irvine, CA. The physical appearance of check no. 5567 does not give a clear indication that the funds being issued are drawn on a client trust account.
52. After receiving check no. 5567 from Respondent, Ono made many attempts to contact Respondent by mail, facsimile and telephone to inquire about whether the amount of \$333.34 for check no. 5567 was correct. Ono was unsuccessful in contacting Respondent.
53. On June 15, 2005, Union Bank Of California placed a stop payment on check no. 5567 at the request of Respondent.
54. On June 17, 2005, Respondent wrote a letter to the Orange County Bar Association in response to a complaint filed against him by Ono. Respondent stated in the letter that the notation on check no. 5567 was an obvious clerical error where the check was issued for 2/3 of \$500.00 instead of 2/3 of \$750.00. Respondent enclosed a copy of a new check, dated June 17, 2005, made payable to Ono, check no. 5585, for the correct amount of \$500.00. Respondent further stated in the letter that a stop payment had been placed on check no. 5567.
55. Respondent stated in his June 17, 2005 letter to the Orange County Bar Association, that he had placed check no. 5585 in the mail to Ono. Ono did not receive check no. 5585 dated June 17, 2005, until sometime in July 2005. Check no. 5585 was drawn on account no. 1240014501, held at Union Bank Of California, located in Irvine, CA. The physical appearance of check no. 5585 does not give a clear indication that the funds being issued are drawn on a client trust account.
56. From the time Ono retained Respondent for the Ono matter in or about October 2001, Ono tried many times unsuccessfully to communicate with Respondent through telephone calls, correspondence and facsimile, requesting the status of the Ono matter.

57. In October 2004, Ono personally went to Respondent's office to try and contact him. However, no one was in the office.
58. From 2002 through 2005, Ono made more than twenty (20) attempts to communicate with Respondent. Ono left messages for Respondent to contact her regarding the Ono matter. But Respondent did not respond to Ono's messages.
59. On October 19, 2005, the State Bar opened an investigation, case no. 05-O-04736, pursuant to a complaint filed by the Orange County Bar Association on behalf of Akiko Ono ("Ono matter").
60. On November 18, 2005, a State Bar investigator wrote to Respondent regarding the Ono matter. The investigator's letter warned Respondent that his written response and documents requested by the investigator must be received by December 5, 2005, or the State Bar would consider this a failure to cooperate with a State Bar investigation and Respondent would be in violation of Business and Professions Code, section 6068(i). Respondent received the letter.
61. Respondent did not provide a written response to the investigator's November 18, 2005, letter by the required date of December 5, 2005.
62. On December 7, 2005, the investigator wrote to Respondent again regarding the Ono matter. The investigator's letter warned Respondent that his written response and documents requested by the investigator must be received by December 21, 2005, or the State Bar would consider this a failure to cooperate with a State Bar investigation and Respondent would be in violation of Business and Professions Code, section 6068(i). Respondent received the letter.
63. Both of the investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Ono matter.
64. Respondent did not provide a written response to the investigator until December 27, 2005. Furthermore, the response supplied by Respondent was a partial response and did not include the documentation and/or information requested in the investigator's November 18 and December 7, 2005, letters.

Legal Conclusions:

By not immediately informing Ono of the settlement offer, by not immediately informing Ono that settlement funds had been issued in the Ono matter, by not distributing the correct amount of settlement funds to Ono, and by not communicating with Ono, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence, in violation of rule 3-110(A) of the Rules of Professional Conduct. By failing to inform Ono of Allstate's settlement offer when it was submitted on May 30, 2003 and by not informing Ono that

the Ono matter had been settled until May 2004, Respondent failed to promptly communicate to the client all amounts, terms and conditions of any written offer of settlement made to the client in all matters in wilful violation of rule 3-510(A)(2) of the Rules of Professional Conduct. Because the physical appearance of check nos. 5567 and 5585 did not clearly appear to have been issued from a client trust account, Respondent wilfully failed to maintain client funds in a bank account labeled "Trust Account," "Client Fund Account," or words of a similar import in wilful violation of rule 4-100(A) of the Rules of Professional Conduct. By failing to respond to Ono's many attempts to communicate with Respondent through telephone calls, correspondence and facsimile, Respondent failed to respond to reasonable status inquiries of a client in wilful violation of Business and Professions Code, section 6068(m). By failing to provide a complete written response to the allegations to the State Bar investigator as requested in the November 18 and December 7, 2005 letters by the required dates, or otherwise cooperate in the investigation of the Ono matter, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code, section 6068(i).

05-O-05178

Facts:

65. On March 12, 2003, Hwija K. Burke ("Burke") retained Respondent to represent her in a marital dissolution matter ("Burke matter").
66. On March 17, 2003, Burke sent Respondent a wire transfer in the amount of \$5,250.00, which represented \$5,000.00 for a retainer fee and \$250.00 for a filing fee.
67. In September 2004, Burke located her husband and immediately contacted Respondent in order to have him serve the husband with the documentation for the Burke matter.
68. Burke signed the documentation prepared by Respondent for the Burke matter on September 24, 2004. However, Respondent never filed the signed documentation with the court for the Burke matter.
69. In March 2005, Burke placed seven telephone calls to Respondent's office. Respondent did not return any of her calls.
70. In April 2005, Burke placed six telephone calls to Respondent's office. Respondent did not return any of her calls.
71. In May 2005, Burke placed a total of sixty-two telephone calls to Respondent's office and his cell phone. Respondent did not return Burke's telephone calls.
72. On only one occasion in May 2005 was Burke able to reach Respondent. She located her

husband again and immediately contacted Respondent's office. Burke spoke with Respondent briefly and informed him about the information concerning her husband's location. Respondent stated that locating Burke's husband was good news and he would call her back later. Respondent did not call Burke back at a later date. Burke made many attempts to contact Respondent's office, but was unsuccessful in communicating with Respondent.

73. After the unsuccessful attempts of trying to contact Respondent by telephone, Burke wrote a letter to Respondent which contained the location information for Burke's husband. Burke received a telephone call from Yoshiko Horio (Ms. Horio), Respondent's office secretary and Japanese language translator. Ms. Horio informed Burke that her letter was received and that the dissolution for the Burke matter would be complete in one month.
74. In June 2005, Burke had still not received the dissolution order for the Burke matter. Burke contacted Respondent's office and spoke with Ms. Horio. Ms. Horio informed Burke that she had not spoken with Respondent regarding the Burke matter and for Burke to wait another month to receive the dissolution order for the Burke matter.
75. Burke waited about one month for the completed dissolution order but did not receive anything. Burke contacted Respondent's office again and spoke with Ms. Horio. Ms. Horio stated to Burke that Burke was not Respondent's sole client and for Burke to wait until she was sent the complete dissolution for the Burke matter. Burke made several more telephone calls to Respondent's office but no further progress was reported in the Burke matter.
76. On September 28, 2005, Burke wrote to Respondent and supplied in the letter the information regarding accounts her husband had opened fraudulently using her name and social security number.
77. Burke spoke with Ms. Horio again in September 2005. Ms. Horio told Burke at that time that Burke would receive the documentation for the Burke matter for Burke to sign by October 2005. Respondent did not send the documentation in October 2005. When Burke did not receive the documentation she called Respondent's office and left a message. Respondent did not return Burke's telephone call.
78. In December 2005, Respondent spoke to Burke regarding the Burke matter. At the time Respondent still had not completed the Burke matter.
79. Later in December 2005, Respondent prepared the documentation for the Burke matter and sent the documentation to Burke. Burke received and signed the documentation. Burke sent the documentation back to Respondent.

80. On January 27, 2006, Burke wrote a letter to Respondent informing him she had sent him documentation by certified mail on or about January 11, 2006, for the Burke matter.
81. In January 2006, Burke spoke with Respondent and Respondent confirmed that he had received the documentation Burke had sent. Respondent stated during this conversation that he was too busy to speak with her at that time regarding the Burke matter and would speak with her on another day. Respondent provided Burke with a specific day, that he would call her back. Respondent did not call Burke back on the pre-arranged day.
82. Respondent contacted Burke on or about January 30, 2006, informing her he had all of the documentation he needed to complete the Burke matter.
83. On March 14, 2006, Burke submitted a request to Respondent for a refund of the funds she had paid him.
84. On April 20, 2006, Burke wrote a letter to Respondent again demanding a refund of the funds she had paid him.
85. On or about July 19, 2006, Burke sent a correspondence to Respondent regarding a substitution of attorney she had recently received from him. Burke was confused about the substitution of attorney form from Respondent because it referenced a case number for a former dissolution that was filed on her behalf by attorney Samuel P. Britton. This dissolution matter was dismissed and is in no way connected with the Burke matter.
86. To date Respondent has not completed the dissolution documentation for the Burke matter.
87. Since Respondent did not prepare or file a dissolution for the Burke matter, Respondent provided no reasonably compensable services to Burke nor did he account to Burke for the cost of any services he might have provided. Respondent did not earn any of the advanced fee paid by Burke. At no time did Respondent refund any of the \$5,250.00 Burke paid him.
88. On December 2, 2005, the State Bar opened an investigation, case no. 05-O-05178, pursuant to a complaint against Respondent filed by Burke regarding the Burke matter.
89. On January 9, 2006, a State Bar investigator wrote to Respondent regarding the Burke matter, in which the investigator requested a written response. On January 24, 2006, the investigator wrote to Respondent a second time regarding the Burke matter, requesting a written response.
90. Respondent received the January 9 and 24, 2006 letters from the investigator.

91. Respondent provided no written response to the investigator's January 9 and 24, 2006, letters.

Legal Conclusions:

By failing to serve Burke's husband after Burke found him, by failing to keep Burke informed of his progress in serving Burke's husband, by failing to respond to Burke's attempts to contact him, by failing to supervise his staff to stop misinformation from being given to Burke, by misinforming Burke of the status of her case, and by failing to file Burke's case, Respondent intentionally, recklessly or repeatedly failed to perform services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct. By failing to serve Burke's husband, failing to file Burke's dissolution case, by not returning any portion of the advanced fees paid by Burke, or otherwise accounting for the fees paid but not earned, Respondent failed to promptly refund unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct. By failing to respond to Burke's repeated telephone calls, Respondent failed to respond to reasonable status inquiries of a client in wilful violation of Business and Professions Code section 6068(m). By failing to provide a written response to the allegations to the State Bar investigator as requested in letters of January 9 and 24, 2006, or otherwise cooperating in the investigation of the Burke matter, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code section 6068(i).

B. AUTHORITIES SUPPORTING DISCIPLINE

Standards:

Standard 1.6 (a) provides that where two or more acts of misconduct are found, and different sanctions are prescribed, the sanction imposed shall be the more or most severe of the different applicable sanctions.

Standard 2.2(b) provides that discipline for commingling of entrusted funds or the commission of any other violation of rule 4-100 of the Rules of Professional Conduct, none of which offenses result in wilful misappropriation shall result in at least a three month actual suspension, irrespective of mitigating circumstances.

Standard 2.6 provides for disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3, for violations of Business and Professions Code, section 6068.

Standard 2.4(b) provides for reproof or suspension for wilful failure to perform services in an individual matter or matters not demonstrating a pattern of misconduct, or culpability of a member of wilfully failing to communicate with a client, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.10 provides for reproof or suspension for violations of rules 3-510 and 3-700 of the Rules of Professional Conduct, according to the gravity or the harm, if any, to the victim.

Case Law:

In *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, a defaulting respondent with no prior record of discipline, was culpable of neglect in four client cases. Respondent also failed to communicate with his clients, failed to refund unearned fees, and failed to cooperate in a State Bar investigation. *Bledsoe* received five years suspension, stayed, with five years probation including conditions of two years actual suspension.

In *The Matter of Bailey* (2001) 4 Cal. State Bar Ct. Rptr. 220, a defaulting respondent with no prior record of discipline was found culpable of misconduct in four client matters. Specifically, *Bailey* withdrew from client employment without taking reasonable steps to avoid prejudice to the client's rights, collected an illegal fee, failed to return a client's file, failed to perform competently, failed to respond to reasonable status inquiries from a client, failed to maintain a current business address with the State Bar, and failed to cooperate in State Bar investigations. Given *Bailey's* failure to cooperate with the State Bar, the court gave little weight to the fact that she defaulted in determining the level of discipline. The court ordered *Bailey* suspended for five years, stayed, with two years actual suspension.

AGGRAVATING CIRCUMSTANCES.

Respondent's misconduct significantly harmed his client, Hwija Burke, in that she lost the advanced fee she paid Respondent. (Standard 1.2(b)(vi).)

Respondent's current misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

MITIGATING CIRCUMSTANCES.

Respondent has no prior record of discipline. (Standard 1.2(e)(i).)

C. RESTRICTIONS WHILE ON ACTUAL SUSPENSION.

During the period of actual suspension, respondent shall not:

- Render legal consultation or advice to a client;
- Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- Appear as a representative of a client at a deposition or other discovery matter;
- Negotiate or transact any matter for or on behalf of a client with third parties;

- Receive, disburse, or otherwise handle a client's funds; or
- Engage in activities which constitute the practice of law

Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the probation unit, pertaining to periods in which the respondent was actually suspended from the practice of law.

D. COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 1, 2006, the estimated prosecution costs in this matter are approximately \$4,153. 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.

In the Matter of
Ken Sejima Horio

Case number(s):
05-O-03547, 05-O-04162, 05-O-04736, 05-O-05178

A Member of the State Bar

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Hwija K. Burke	\$5,250	March 17, 2003

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **One (1) year from the effective date of the Supreme Court Order.**

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, 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 Office of Probation 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.

d. **Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation 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.

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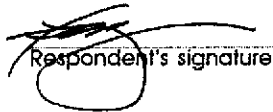
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In the Matter of Ken Sejima Horio	Case number(s): 05-0-03547, 05-0-04162, 05-0-04736, 05-0-05178
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SIGNATURE OF THE PARTIES

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.

12/21/06
Date


Respondent's signature

Ken Sejima Horio
Print name

Date

Respondent's Counsel's signature

Print name

12/21/06
Date


Deputy Trial Counsel's signature

Melanie J. Lawrence
Print name

(Do not write above this line.)

In the Matter Of
Ken Sejima Horio

Case Number(s):
05-O-03547, 05-O-04162, 05-O-04736, 05-O-05178

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.)**

01-04-07

Date


Judge of the State Bar Court

RICHARD A. PLATEL

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 January 5, 2007, 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:

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

**KEN SEJIMA HORIO
19051 GOLDWEST ST #238
HUNTINGTON BEACH CA 92648**

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

MELANIE LAWRENCE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 5, 2007**.



Angela Owens-Carpenter
Case Administrator
State Bar Court