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<p>State Bar Court of California Hearing Department Los Angeles</p> <p>PUBLIC MATTER</p>		
<p>kwiktag® 018 040 108 </p>		
<p>Counsel For The State Bar</p> <p>Eli Morgenstern, DTC The State Bar of California 1149 South Hill Street Los Angeles, CA 90015-2299 Tel: (213) 765-1334</p> <p>Bar # 190560</p>	<p>Case Number (s) 07-O-12720</p>	<p>(for Court's use)</p> <p>FILED NOV 04 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Eduardo A. Rivera, Esq. P.O. Box 1587 Calexico, CA 92231-2815 Tel (760) 357-6801</p> <p>Bar # 62528</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Eduardo A. Rivera</p> <p>Bar # 62528</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 December 18, 1974.
- (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 12 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".

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- (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.
- (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 following three billing cycles following the effective date of the Superior Court Order. See Page 8 for additional information re: Costs.
(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. See Page 9 for explanation re: Harm.
- (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.

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- (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. See Page 9 for explanation re: No Prior Discipline.
- (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. See Page 9 for explanation re Candor/Cooperation.
- (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. See Page 9 for more information re: Remorse.
- (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. See Page 9 for explanation re: Good Character.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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- (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:
- (b) The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent must be placed on probation for a period of One (1) year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of thirty (30) days.
- 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.
- (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 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule **9.20**, 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 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule **9.20**, California Rules of Court, and 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:**

5. On June 27, 2000, the complaint was filed in the Imperial County Superior Court titled, *Robinson Ford Sales, Inc. v. Portico Express, Inc.*, case number L 00345 (the "Portico Express action"). On June 27, 2000, the complaint was served on Robinson as agent for the service of process on Portico Express. At no time did Respondent, Goodman, or Robinson inform Pye of the Portico Express action.

6. On October 11, 2000, the court filed a default judgment against Portico Express in the Portico Express action in the amount of \$74,545.46. At no time did Respondent, Goodman, or Robinson inform Pye of the default judgment entered in the Portico Express action.

7. On October 20, 2000, a writ of execution was issued on the default judgment in the Portico Express action. At no time did Respondent, Goodman, or Robinson inform Pye of the writ of execution.

8. On October 23, 2000, Respondent issued Robinson Ford a check from his client trust in the sum of \$31,137.82 pursuant to the writ of execution. The sum represented the net proceeds from the sale of Portico Express in the sum of \$35,437.22 minus the amount paid to settle a lawsuit brought by the Imperial County Air Pollution Control District against Portico Express. Respondent issued the check to Robinson Ford pursuant to the writ of execution without notice to Pye.

9. On January 30, 2004, Respondent wrote a letter to Pye and informed him for the first time that he had disbursed \$31,137.82 to Robinson Ford pursuant to a writ of execution, a copy of which he enclosed with the letter. Pye received the letter.

10. On December 15, 2004, Pye filed a complaint in the Imperial County Superior Court titled, *Brian Pye v. Daniel O. Robinson, Robinson Ford Sales, Eduardo A. Rivera, Bennett Goodman*, case number ECU 02044 (the "Pye action").

11. On September 11, 2007, following a court trial, a judgment was entered in the Pye action. The court awarded damages against Respondent, Robinson, and Robinson Ford, jointly and severally, in the amount of \$16,437.70. The court also ordered that Pye recover from Respondent, Robinson, and Robinson Ford, jointly and severally, his costs of suit.

12. On May 11, 2009, an Acknowledgment of Satisfaction of Judgment was filed in the Pye action.

Conclusions of Law

By the foregoing conduct, Respondent breached the fiduciary duty that he owed to Pye in violation of Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was September 21, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of September 21, 2010, the prosecution costs in this matter are approximately \$2,046.61. The costs are to

be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the Supreme Court Order.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.)

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.

AGGRAVATING CIRCUMSTANCES.

1. Harm

Respondent's breach of the fiduciary duty that he owed to Pye caused harmed to Pye. (Std. 1.2(b)(iv).)

MITIGATING CIRCUMSTANCES.

1. No Prior Record of Discipline

Respondent has been a member of the State Bar since December 18, 1974, and has no prior record of discipline. This is a significant mitigating circumstance. (Std. 1.2(e)(i).)

2. Candor and Cooperation

Respondent is entitled to significant mitigation for entering into this stipulation. (Std. 1.2(e)(v).) Respondent responded promptly to all State Bar inquiries, willingly provided any and all documentation requested, and from the beginning of the investigation admitted to the misconduct described in this stipulation.

3. Good Character

Respondent has furnished evidence of his considerable record of pro bono and community service activities and demonstrated his good moral character and his commitment to the legal profession. (Std. 1.2(e)(vi).)

4. Remorse

Respondent's has expressed genuine remorse for his misconduct. (Std. 1.2(e)(vii). Following the court's decision in the Pye action, Respondent spoke to Pye in-person and apologized to him for having breached the fiduciary duty that he owed to Pye. As stated in paragraph 12 of the Statement of Facts, the judgment in the Pye action has been satisfied.

At all times during the State Bar's investigation and prosecution of this matter, Respondent admitted to his culpability and expressed remorse for having breached the fiduciary duty that he owed to Pye.

AUTHORITIES SUPPORTING DISCIPLINE.

1. Standards

"The primary purposes of disciplinary proceedings . . . 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." (Std 1.3.)

Standard 2.3 of the Standards for Attorney Sanctions for Professional Misconduct ("Standards") provides that an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts within the practice of law.

Here, Respondent breached the fiduciary duty that he owed to Pye to hold the proceeds of the sale of Portico Express in his client trust account. The misconduct related directly to the practice of law and caused harm to Pye.

However, the misconduct described herein was an anomaly. Respondent has been a member of the State Bar for approximately 36 years and has no prior record of discipline. Respondent was candid and cooperative with the State Bar at all times during the investigation and prosecution of this matter, and has expressed genuine remorse for the breach of the fiduciary duty that he owed to Pye. The parties submit that the stipulated disposition contemplates the aggravating and mitigating circumstances that are present, is within the range of discipline mandated by the Standards, and meets the goals of attorney discipline.

2. Case Law

In *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 114, Respondent violated the fiduciary duty that he owed to medical lienholders by failing to either pay the lienholders in full, or take appropriate steps to resolve the dispute promptly. Respondent also committed rule violations in twelve different client matters. The Review Department recommended a one year stayed suspension, and a three year probation with conditions including a 90-day actual suspension.

Although Respondent and the attorney in *Riley* breached their fiduciary duties, the attorney in *Riley* committed additional misconduct in a twelve different client matters. Here, Respondent committed misconduct in a single matter. Moreover, the misconduct in *Riley* began only nine years after the attorney's admission to the practice of law. Here, the misconduct was committed in or about 2000, about 26 years after Respondent's admission to the practice of law. And, Respondent has not committed any misconduct since 2000. As stated above the goals of attorney discipline are accomplished by the stipulated disposition herein.

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, he may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

(Do not write above this line.)

In the Matter of Eduardo A. Rivera	Case number(s): 07-O-12070
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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 Fact, Conclusions of Law and Disposition.

10.14.10

Date

Eduardo A. Rivera

Respondent's Signature

Eduardo A. Rivera

Print Name

Date

10-19-10

Date

Respondent's Counsel Signature

Eli D. Morgenstern

Deputy Trial Counsel's Signature

Print Name

Eli D. Morgenstern

Print Name

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In the Matter Of Eduardo A. Rivera	Case Number(s): 07-O-12070
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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 9.18(a), California Rules of Court.)**

11-02-10
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 November 4, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

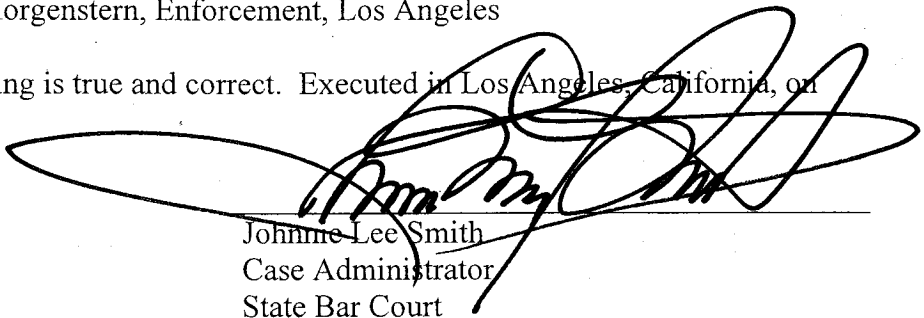
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDUARDO A. RIVERA
430 MARY AVE
P O BOX 1587
CALEXICO, CA 92231 - 2815

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 4, 2010.



Johnnie Lee Smith
Case Administrator
State Bar Court