

State Bar Court of California
Hearing Department
Los Angeles

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

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~~STATE BAR COURT
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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

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Bar # 169034

In the Matter Of:
BENJAMIN TAE WOUN LEE

Bar # 169034

A Member of the State Bar of California
(Respondent)

Case Number (s)
05-O-04748

(for Court's use)

Submitted to: Program Judge

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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 **December 13, 1993**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 8 pages, excluding 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".



(Do not write above this line.)

- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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. **Respondent is culpable of four counts of misconduct in this case.**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

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

(Do not write above this line.)

- (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:

Respondent has no prior record of discipline since his admission to practice in California on December 13, 1993.

Respondent has cooperated with the State Bar during this disciplinary proceeding, after the filing of formal charges in this case.

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: BENJAMIN TAE WOUN LEE

CASE NUMBER: 05-O-04748

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violating the specified statutes and the California Rules of Professional Conduct, which constitute cause for discipline in these matters.

I. Facts.

1. Respondent Benjamin Tae Woun Lee (Respondent) was admitted to the practice of law in the State of California on December 13, 1993, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. In July 2003 Larry Eischen and three co-workers employed Respondent to represent them in an employment action against the State of California, Department of Corrections. Respondent was hired on a contingency basis.
3. Eischen received a Right to Sue notice and in March 2004 Respondent filed a civil action against the state on his clients' behalf in Los Angeles County Superior Court. The summons and complaint were not timely served on the State of California.
4. On August 6, 2004, Respondent served the defendants.
5. On September 22, 2004, Respondent filed a First Amended Complaint in the employment action. Defendant, the State of California, filed a Demurrer to the First Amended Complaint and a Motion to Strike. The hearing regarding the demurrer and the motion to strike was set for December 9, 2004. Respondent was properly served with the demurrer and the motion to strike.
6. On December 1, 2004, the State of California filed a Notice of No/Late Opposition to Defendant's Demurrer and Motion to Strike stating that Respondent had failed to timely file opposition. Respondent belatedly filed an Opposition and Non Opposition to Demurrer and Motion to Strike on December 3, 2004. In his response, Respondent stated that the plaintiffs
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would be filing a second amended complaint, which would cure alleged defects in its First Amended Complaint.

7. On December 9, 2004, Respondent appeared at the hearing on Defendant's motion to strike. The court sustained the defendant's demurrer but gave the plaintiffs thirty days to amend their complaint. Pursuant to the court's December 9, 2004 ruling, Respondent was required to file the second amended complaint on or before January 10, 2005. The motion to strike was placed off calendar, and the court scheduled the next hearing in the employment action for March 3, 2005.

8. Respondent failed to file a second amended complaint within the thirty days granted by the court in the employment action.

9. Because Respondent failed to file the second amended complaint as the court ordered, the State of California filed a Motion to Dismiss. The court set a hearing regarding the motion to dismiss for March 3, 2005. The State of California's motion to dismiss was properly served on Respondent.

10. On February 23, 2005, the State of California filed a Notice of Untimely Opposition to its Motion to Dismiss based on Respondent's failure to timely file opposition to the motion. Respondent was properly served with the Notice of Untimely Opposition.

11. Respondent did not file a Second Amended Complaint in the employment action until February 23, 2005, more than a month late. Respondent also filed opposition to the State of California's motion to dismiss on the same day. In his supporting declaration, Respondent said the failure to file and serve the Second Amended Complaint was solely due to a calendaring error on his part.

12. On March 3, 2005, Respondent appeared at the Motion to Dismiss hearing, where the court granted the motion to dismiss without prejudice. Respondent failed to inform Eischen that the employment action had been dismissed. Respondent also failed to inform Eischen's three co-workers, whom he also represented, that their case had been dismissed.

13. On May 9, 2005, Eischen wrote Respondent inquiring about the status of the employment action, specifically asking Respondent to contact him and provide him the status of his case. Respondent received the May 9, 2005 letter but failed to respond.

14. On May 15, 2005, Eischen called Respondent. At this time, Respondent finally informed Eischen that the employment action had been dismissed.

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15. On June 2, 2005, approximately ninety days after dismissal of the employment action, Respondent filed a motion to set aside the dismissal. In the motion, Respondent stated that the dismissal of the complaint was caused by his own illness and neglect. Respondent also noted that the court's dismissal without prejudice would have the effect of dismissing the case with prejudice because the statute of limitations had run on the case. The court scheduled the hearing regarding Respondent's motion to dismiss for July 5, 2005.

16. Respondent appeared at the hearing on July 5, 2005. Following the hearing the court denied the motion to set aside the dismissal. Thus, Eischen and his co-plaintiffs were precluded from seeking redress.

17. On October 17, 2005, Eischen submitted a complaint against Respondent with the State Bar of California. On October 28, 2005, Eischen also wrote Respondent asking him to turn over his entire client file so that Eischen could seek further assistance regarding his lawsuit against the State of California. Respondent received the letter but failed to respond and failed to turn over the client file.

18. Receiving no response to the request for the file, in February 2006 the State Bar of California contacted Respondent regarding the client file. Finally in March 2006 Respondent returned Eischen's client file.

19. In November 2005 the State Bar opened an investigation pursuant to a complaint filed by Eischen. On November 16, 2005, a State Bar Investigator wrote to Respondent regarding the matter. There was no response, even though Respondent received this letter.

20. On December 5, 2005, the Investigator sent a follow-up letter to Respondent asking for a response to the allegations in the Eischen matter. Again, Respondent received the letter but failed to respond.

21. Both of the Investigator's letters requested that Respondent respond to specified allegations of misconduct being investigated by the State Bar in the Eischen matter. At no time has Respondent provided a written reply or any substantive response to the issues presented in the Investigator's letters.

II. Conclusions of Law.

Count One

By failing to timely serve the defendant State of California, by failing to file a second amended complaint within thirty days, by failing to timely file opposition to motions filed by the State of California and by failing to promptly file a motion to set aside the dismissal, Respondent

repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the California Rules of Professional Conduct.

Count Two

By not promptly releasing the client file to Eischen despite his request, Respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers, in willful violation of rule 3-700(D)(1) of the California Rules of Professional Conduct.

Count Three

By failing to timely inform Eischen that the employment action had been dismissed, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of California Business and Professions Code section 6068, subdivision (m).

Count Four

By not providing a written response to the allegations in the Eischen matter or otherwise cooperating in the State Bar's investigation of the Eischen matter, Respondent failed to cooperate in a disciplinary investigation, in willful violation of California Business and Professions Code section 6068, subdivision (i).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A(6), was May 7, 2007.

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

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on September 21, 2006, and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to cases which are the subject matters of this stipulation.

(Do not write above this line.)

In the Matter of BENJAMIN TAE WOUN LEE	Case number(s): 05-O-04748
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SIGNATURE OF THE PARTIES

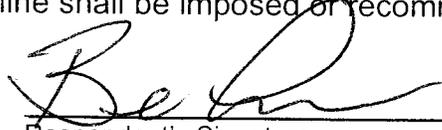
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

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

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

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

5/7/07
Date


Respondent's Signature

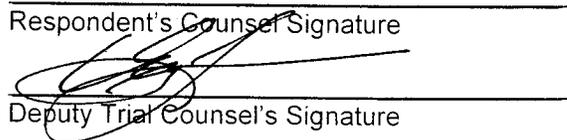
Benjamin Tae Woun Lee
Print Name

Date

Respondent's Counsel Signature

Print Name

May 7, 2007
Date


Deputy Trial Counsel's Signature

Eric H. Hsu
Print Name

(Do not write above this line.)

In the Matter Of BENJAMIN TAE WOUN LEE	Case Number(s): 05-O-04748
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

December 15, 2007
Date


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 December 21, 2007, I deposited a true copy of the following document(s):

Confidential Statement of Alternative Dispositions and Orders; Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; Stipulation re Facts and Conclusions of Law

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

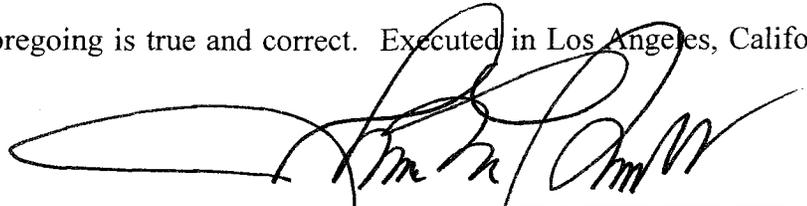
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**BENJAMIN T. LEE
LAW OFC BENJAMIN T LEE
21250 HAWTHORNE BLVD STE 500
TORRANCE, CA 90503**

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

DAVID SAUBER , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 21, 2007**.



Johnnie Lee Smith
Case Administrator
State Bar Court