

ORIGINAL

<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL, ENFORCEMENT ELI D. MORGENSTERN, No. 190560 1149 S. Hill Street, 10th Fl. Los Angeles, CA 90015-2299 Telephone: (213) 765-1000</p>	<p>Case number(s) 03-0-02651- PEM</p> <p>kwiktag® 035 115 257</p> 	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>OCT 23 2003</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel for Respondent Charlene Dryer, Bar No. 110523 P. O. Box 2783 Newport Beach, CA 92659</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> 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 Lawrence A. Merryman</p> <p>Bar # 28984</p> <p>A Member of the State Bar of California (Respondent)</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 7, 1959 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 10 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - 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:
Costs shall be added to and become a part of the membership fees —
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth under "Partial Waiver of Costs"
 - costs entirely waived
 for the years 2005, 2006, 2007, and 2008.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

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 See attached page 6

(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 or under "Prior Discipline".

(2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) No aggravating circumstances are involved.

Additional aggravating circumstances:

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

- (1) No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) No mitigating circumstances are involved.

Additional mitigating circumstances: See Other Factors in Consideration on page 8

D. Discipline

1. Stayed Suspension.

- A. Respondent shall 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 to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - iii. and until Respondent does the following: _____
- B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of one (1) year, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

- A. Respondent shall be actually suspended from the practice of law in the State of California for a period of ninety (90) 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 to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - 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 shall 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 shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all

conditions of probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report shall be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) Respondent shall be assigned a probation monitor. Respondent shall promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit 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.
- (8) Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (9) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - Financial Conditions
- (10) Other conditions negotiated by the parties: See attached page 9
- Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel 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.
- Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: LAWRENCE A. MERRYMAN

CASE NUMBER(S): 03-O-02651 - PEM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statute.

Facts

1. On or about February 5, 2002, Respondent entered into a Stipulation as to Facts, Conclusions of Law and Disposition (“the Stipulation”) with the Office of the Chief Trial Counsel of the State Bar of California (“the State Bar”) in case no. 01-H-03535.
2. On February 22, 2002, the Hearing Department of the State Bar Court (“the State Bar Court”) filed an order approving the Stipulation. In the Stipulation, Respondent agreed to submit written quarterly reports to the Probation Unit of the Office of the Chief Trial Counsel (“the Probation Unit”) beginning October 10, 2002.
3. On July 18, 2002, the Supreme Court filed an Order (S106726) approving the Stipulation and ordered that Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be placed on probation for two years with conditions, including those conditions recommended by the State Bar Court in its order approving the Stipulation (“the Supreme Court Order”).
4. On July 18, 2002, the Clerk of the Supreme Court properly served the Supreme Court Order by mail upon Respondent at official membership records address. Respondent received the Order.
5. The Supreme Court Order which imposed the Stipulation became effective on August 17, 2002.

6. Pursuant to the Supreme Court Order, Respondent was ordered to comply with the following term and condition of the discipline imposed in the Stipulation, among others:

a. to submit written quarterly reports to the Probation Unit.

7. At no time did Respondent submit any quarterly reports to the Probation Unit.

Legal Conclusions

By failing to comply with the Supreme Court Order to submit quarterly reports to the Probation Unit beginning October 10, 2002, Respondent failed to obey a court order in wilful violation of Business and Professions Code section 6103.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was September 23, 2003.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent in writing that as of September 23, 2003, the estimated prosecution costs in this matter are approximately \$2, 293.00. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

In the Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, the attorney was subject to two disciplinary orders. In *Meyer I* he had been given a private reproof, including a one year probationary period requiring him to (1) file quarterly reports and (2) complete the State Bar's Ethics School. (*Id.* at 701.) In *Meyer II*, the attorney was again given a reproof, placed on probation for two years and required to (1) file quarterly probation reports and (2) provide proof of completion of six hours of continuing legal education within one year. (*Id.* at 700-702.) In *Meyer III*, the attorney was charged with failing to comply with the reproof conditions imposed on him in *Meyer II*. The attorney initially appeared in *Meyer III*, but failed to appear at trial. (*Id.* at 700.) The attorney was placed on two years' stayed suspension and three years' probation, conditioned upon actual suspension for the first ninety (90) days. (*Id.* at 706.)

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE.

Pursuant to Standard 1.2(b)(i) of the Standards For Attorney Sanctions For Professional Misconduct, Title IV of the Rules of Procedure (“Standards”), the existence of a prior record of discipline is an aggravating circumstance.

Respondent has been disciplined on two prior occasions.

In case no. 97-O-11601, Respondent was privately reproved for violations of rules 3-110(A), 3-700(D)(2), and 4-100(B)(3) of the Rules of Professional Conduct. The effective date of the discipline was August 16, 2000.

On July 18, 2002, the Supreme Court filed an order (S106726) that Respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be placed on probation for two years subject to certain conditions, including thirty (30) days actual suspension. The discipline became effective on August 17, 2002. The discipline resulted from Respondent’s stipulation in State Bar Court in one client matter:

In case no. 01-H-03535, Respondent violated Business and Professions Code section 6103 and rule 1-110 of the Rules of Professional Conduct.

OTHER FACTORS IN CONSIDERATION.

In or about the spring or summer of 2002, subsequent to stipulating to the terms of the discipline recommended by the State Bar Court in State Bar Case No. 01-H-03535 and ordered by the Supreme Court in Order S106726, Respondent ceased practicing law in California and moved to Arizona. Respondent did not update his membership records address.

Consequently, Respondent did not receive letters sent to him by the State Bar in or about September 2002 and December 2002, which were mailed to Respondent’s official membership records address in Bakersfield, California. The letters reminded Respondent of the terms and conditions of the probation imposed pursuant to Supreme Court S106726.

In addition, in or about 2002, Respondent was suffering from memory severe memory loss for which he sought treatment at the VA Clinic. The memory condition was determined to be due to stress and heart medication. After adjustment of Respondent’s medication, the memory

problems subsided.

STATE BAR ETHICS SCHOOL EXCLUSION.

It is not recommended that respondent attend State Bar Ethics School since respondent attended Ethics School within the last two years on August 19, 2002 in connection with case no. 01-H-03535.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Respondent is currently on probation pursuant to the terms and conditions ordered by the Supreme Court in Order S106726 (State Bar case no. 01-H-03535). The effective date of the Order was August 17, 2002; and Respondent will remain on probation pursuant to the terms of the Order until August 17, 2004.

The one year period of probation imposed pursuant to the discipline herein is to run consecutive, and not concurrent, to the probation imposed pursuant to Supreme Court Order S106726.

9/29/03
Date

Lawrence A. Merryman
Respondent's signature

LAWRENCE A. MERRYMAN
print name

9/29/03
Date

Charlene Dryer
Respondent's Counsel's signature

CHARLENE DRYER
print name

9/30/03
Date

Eli D. Morgenstern
Deputy Trial Counsel's signature

ELI D. MORGENSTERN
print name

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.

See attached.

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.)

October 20, 2003
Date

Pat McElroy
Judge of the State Bar Court

IN THE MATTER OF LAWRENCE A. MERRYMAN
Case Number 03-O-02651

COURT'S MODIFICATION TO STIPULATED FACTS,
CONCLUSIONS OF LAW AND DISPOSITION

1. At page 6, under Facts, paragraph three (3) the facts shall read that Respondent was actually suspended for 30 days and until he makes restitution in the amount of \$2,500 plus 10% interest per annum from August 15, 2001, and until he attends State Bar Ethics School and takes and passes the test given at the end of the such sessions and furnishes satisfactory proof thereof to the Probation Unit, State Bar Office of the Chief Trial Counsel. Ethics school.

October 20, 2003
Dated


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. 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 San Francisco, on October 23, 2003, 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 San Francisco, California, addressed as follows:

**CHARLENE DRYER
P O BOX 2783
NEWPORT BEACH CA 92659**

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

ELI MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 23, 2003**.


George Hue
Case Administrator
State Bar Court