kwiktag® 022 603 249

(Do not write above this line.)

State Bar Court of California

Hearing Department ☐ Los Angeles ☒ San Francisco

Counsel for the State Bar	Case number(s)	(for Court's use)
MARK HARTMAN Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Telephone: (415) 538-2000 Bar # 114925	05-O-01286-PEM PUBLIC MATTER	FILED OCT 20 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
☐ Counsel for Respondent ☒ In Pro Per, Respondent LOUIS G. BEARY, Jr. 4204 Hermosa Court Rohnert Park, CA 94928 Telephone: (707) 585-0639 Bar # 152341	Submitted to ☒ assigned judge ☐ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of LOUIS G. BEARY, Jr. Bar # 152341 A Member of the State Bar of California (Respondent)	REPROVAL ☐ PRIVATE ☒ PUBLIC ☐ 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 6, 1991. (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) 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.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

(a) ☒ costs added to membership fee for calendar year following effective date of discipline (public reproval)

(b) ☐ case ineligible for costs (private reproval)

(c) ☐ costs to be paid in equal amounts for the following membership years:

_____

(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

(d) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"

(e) ☐ costs entirely waived

(9) The parties understand that:

(a) ☐ A private reproval imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquires and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.

(b) ☐ A private reproval imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

(c) ☒ A public reproval imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 or a separate attachment entitled "Prior Discipline".

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

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

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

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

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

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

(8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

(1) ☒ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.

(2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.

(3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(Do not write above this line.)

(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:

(Do not write above this line.)

D. Discipline:

(1) ☐ Private reproval (check applicable conditions, if any, below)

(a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).

(b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

(2) ☐ Public reproval (check applicable conditions, if any, below)

E. Conditions Attached to Reproval:

(1) ☒ Respondent must comply with the conditions attached to the reproval for a period of one (1) year.

(2) ☒ During the condition period attached to the reproval, 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 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 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 condition period attached to the reproval. 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 the reproval during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

(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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the 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 conditions attached to the reproval.

(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 of the Ethics School and passage of the test given at the end of that session.

☐ No Ethics School ordered. 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 required to be filed with the Office of Probation.

(10) ☐ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproval.

☒ No MPRE ordered. Reason: Not necessary in this case.

(11) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

In the Matter of **LOUIS G. BEARY, JR.,** **No. 152341,** A Member of the State Bar.	**Case No. 05-O-01286-PEM** **STIPULATION RE FACTS, CONCLUSIONS OF LAW, AND DISPOSITION**

DISMISSAL OF CHARGE

The Notice of Disciplinary Charges ("NDC") in case number 05-O-01286-PEM ("the current case") was filed on August 31, 2005. Count two of the NDC is dismissed.

FACTS

In December 2004, Robert Cowart ("Cowart") hired respondent Louis G. Beary, Jr., ("respondent") to represent him in a criminal matter and a DMV matter resulting from Cowart's arrest for driving under the influence.

Cowart's arraignment in the criminal matter was scheduled for December 22, 2004. Respondent told Cowart that Cowart did not have to appear at the arraignment. Respondent failed to appear at the arraignment on Cowart's behalf. Respondent did not inform Cowart that he failed to appear at the arraignment. Because no on appeared for Cowart at the arraignment, the court issued a bench warrant for Cowart's arrest. Respondent knew about the issuance of the bench warrant, but did not inform Cowart about it.

Respondent told Cowart that the next court date for the criminal matter was January 28, 2005. When Cowart appeared in court on January 28, 2005, he found that there was no appearance scheduled for the criminal matter that day. He also found out that the bench warrant had been issued.

Cowart then appeared before the court. After Cowart explained why he had not appeared at the arraignment on December 22, 2004, the court indicated that the bench warrant would be cleared up. The court also ordered Cowart to appear on February 25, 2005, for the criminal matter with another attorney.

On or about January 28, 2005, the bench warrant in the criminal matter was recalled, and respondent's bond for the criminal matter was reinstated. Cowart then hired another attorney, and the criminal matter was resolved by a plea bargain.

A preliminary telephone hearing in the DMV matter was scheduled for January 21, 2005. Before January 21, 2005, respondent informed Cowart that Cowart did not need to appear at this hearing. Although respondent was in his office at the time scheduled for the telephone hearing, the DMV did not call at this time. The DMV telephoned later, when respondent was not in his office. As a result of respondent's failure to appear at the preliminary telephone hearing on January 21, 2005, Cowart's driver's license was suspended for four months. Respondent did not inform Cowart that he had not appeared at the preliminary telephone hearing in the DMV matter and that Cowart's driver's license had been suspended.

CONCLUSION OF LAW

Respondent wilfully violated rule 3-110(A) of the Rules of Professional Conduct by repeatedly failing to perform legal services with competence, as follows: he did not appear at the arraignment in the criminal matter; he did not inform Cowart about his failure to appear at the arraignment and about the issuance of a bench warrant; he did not appear at the preliminary telephone hearing in the DMV matter; and he did not inform Cowart about his failure to appear at this hearing and about the suspension of Cowart's driver's license.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

On September 30, 2005, the State Bar mailed respondent a letter disclosing any pending investigation or proceeding not resolved by this stipulation.

ESTIMATED PROSECUTION COST OF THE CURRENT CASE

The estimated prosecution cost of the current case is $2,317.75. This sum is only an estimate. If this stipulation is rejected or if relief from this stipulation is granted, the prosecution cost of the current case may increase because of the cost of further proceedings.

SUPPORTING AUTHORITY

The Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct, standards 1.3, 1.4, and 2.4(b) support the discipline in this stipulation.

(Do not write above this line.)

In the Matter of	Case number(s):
LOUIS G. BEARY. Jr. Bar no. 152341	05-O-01286-PEM

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.

10/10/05 Date	Respondent's signature	LOUIS G. BEARY, Jr. Print name
Date	Respondent's Counsel's signature	Print name
10/12/05 Date	M. Hartman Deputy Trial Counsel's signature	MARK HARTMAN Print name

(Do not write above this line.)

In the Matter of	Case number(s):
LOUIS G. BEARY, JR. Member No. 152341	05-O-01286

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- ☑ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ All Hearing dates are vacated.

1. On page 5, section D(2), an "x" is inserted the box indicating that the discipline is a public reproval.

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 futher modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

October 17, 2005
Date

Pat McElroy
PAT MCELROY
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 San Francisco, on October 20, 2005, 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 San Francisco, California, addressed as follows:

LOUIS G. BEARY JR
101 GOLF COURSE DR #216
ROHNERT PARK CA 94928

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

MARK HARTMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 20, 2005**.

Lauretta Cramer
Case Administrator
State Bar Court