

State Bar Court of California
Hearing Department
San Francisco

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Counsel For The State Bar Mark Hartman Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2558 Bar # 114925	Case Number (s) 08-O-13173 08-O-13265	(for Court's use) PUBLIC MATTER FILED JUN 29 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Sean Hickey 38871 Viento Court Fremont, California 94536 Official Telephone: (650) 218-8838 Telephone: (510) 795-7380 Bar # 159116	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: SEAN HICKEY Bar # 159116 A Member of the State Bar of California (Respondent)		

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 8, 1992.
- (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 **22** 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."
- (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: 2011, 2012, and 2013
(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. Respondent has not repaid unearned fees of \$1,500 with interest from April 2007. See page 16.
- (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's ethical violations in the current cases constitute multiple acts of wrongdoing. See page 16.
- (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. Respondent had no prior record of discipline for 15 years before the start of his misconduct in the current cases. See page 16.
- (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. Since the filing of the Notice of Disciplinary Charges, respondent has displayed candor to, and cooperation with, the State Bar in resolving the current cases. See page 16.
- (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 two 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 three years, 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 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 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 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:**

**ATTACHMENT TO STIPULATION RE FACTS,
CONCLUSIONS OF LAW, AND DISCIPLINE**

In the Matter of: **Sean Hickey**
Membership No.: **159116**
State Bar Case Nos.: **08-O-13173; 08-O-13265**

WAIVERS

The parties waive all variances between (1) the facts and conclusions of law asserted in the Notice of Disciplinary Charges ("NDC") for State Bar case numbers 08-O-13173 and 08-O-13265 ("the current cases") and (2) the facts and conclusions of law contained in this Stipulation.

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following are true.

COUNT ONE

Case No. 08-O-13265
Rule 3-110(A) of the Rules of Professional Conduct
[Failure to Perform with Competence]

1. Respondent wilfully violated rule 3-110(A) of the Rules of Professional Conduct, by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:
2. In April 2007, Joni Hixson ("Hixson") hired respondent to represent her in her family law matter, *Hixson v. Hixson*, case no. F-080496, filed in Superior Court, County of San Mateo. Hixson wanted a modification of the custody order of her minor child, and to enforce her rights to her ex-husband's pension.

3. In April 2007, Hixson paid respondent the sum of \$3,000 for legal fees. Hixson understood that she was to pay a flat fee for the representation.

4. On May 2, 2007, respondent filed an Order to Show Cause on Hixson's behalf, for a change in visitation and a share of the pension. Respondent represented her at a court hearing on July 20, 2007, and filed an Order After Hearing ("OAH") for this hearing in December 2007.

5. Commencing in October 2007, Hixson's ex-husband failed to pay ongoing child support according to the parties' order of child support. In October 2007, Hixson asked respondent to represent her regarding enforcement of the child support arrears. Respondent agreed to represent Hixson for the enforcement of the child support arrears, and he drafted pleadings for an Order to Show Cause ("OSC") for enforcement of arrearages.

6. Thereafter, respondent failed to take any further action to enforce the child support order. He failed to file the OSC for enforcement of arrearages. He further failed to address additional problems with the pension and collection of monies pursuant to the December 2007 OAH, and Hixson's concerns about the ongoing visitation orders.

7. On February 5, 2008, Hixson terminated respondent's services.

8. By failing, between October 2007 and April 2008, to take action to enforce Hixson's child support order; to establish an order for the arrears and to collect the arrears; by failing to further address problems with the pension and collection of monies pursuant to the December 2007 OAH; and by failing to address ongoing problems with visitation, respondent failed to perform, in willful violation of rule 3-110(A) of the Rules of Professional.

COUNT TWO

Case No. 08-O-13265
Business and Professions Code section 6068(m)
[Failure to Respond to Client Inquiries]

9. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, in a matter in which Respondent had agreed to provide legal services, as follows:

10. The allegations of Count One are hereby incorporated by reference.

11. Commencing in November 2007, Hixson made repeated efforts to communicate with respondent regarding the status of her family law matters. She left him numerous telephone messages and emails.

12. Respondent received the phone calls and emails from Hixson and failed to respond or otherwise apprise Hixson of the status of her legal matter.

13. On February 15, 2008, respondent appeared in court on behalf of Hixson. Respondent failed to advise Hixson of the result of the hearing.

14. By failing to advise Hixson of the results of the hearing on February 15, 2008, respondent failed to keep his client reasonably informed of significant developments in her case, in willful violation of Business and Professions Code section 6068(m).

15. By failing to respond to Hixson's phone calls and emails, respondent failed to respond to the reasonable status inquiries in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code section 6068(m).

COUNT THREE

Case No. 08-0-152-5

Rule 3-700(A)(2) of the Rules of Professional Conduct [Improper Withdrawal From Employment]

16. Respondent wilfully violated rule 3-700(A)(2) of the Rules of Professional Conduct, by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, as follows:

17. The allegations of Count Two are hereby incorporated by reference.

18. On February 5, 2008, at about the same time that she terminated his services, Hixson wrote and mailed respondent a letter. In her letter, Hixson requested the return of all her client papers and property and a refund of the \$3,000 advanced fee that she paid respondent.

19. Respondent received Hixson's letter of February 5, 2008, and failed to respond or otherwise return her client file or refund her money.

20. On April 9, 2008, Hixson retained the services of attorney Nancy Lara-Moscardini ("Moscardini") to complete her family law matters.

21. On April 9, 2008, Moscardini faxed respondent a letter advising respondent that Hixson had retained her for the family law matter. Moscardini requested that respondent sign and return a Substitution of Attorney, which she also faxed to him. A representative of Moscardini's office also telephoned respondent on April 10, 2008 regarding the substitution of attorney.

22. Respondent failed to return the substitution of attorney to Moscardini.

23. Moscardini appeared with Hixson in Court on April 11, 2008.

24. By failing to return Hixson's file to her, and by failing to provide Moscardini with a substitution of attorney, respondent failed, upon termination of his employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

COUNT FOUR

Case No. 08-O-13265

Rule 3-700(D)(1) of the Rules of Professional Conduct
[Failure to Release File]

25. Respondent wilfully violated rule 3-700(D)(1) of the Professional Conduct, by failing to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, as follows:

26. The allegations of Counts One and Two are hereby incorporated by reference.

27. As of the date of this Notice of Disciplinary Charges, respondent has failed to return Hixson's file to her.

28. By failing to return to Hixson all her client papers and property, after she had terminated his services and requested the return of her file, respondent wilfully violated rule 3-700(D)(1) of the Professional Conduct.

COUNT FIVE

Case No. 08-O-13265
Rule 3-700()(2) of the Rules of Professional Conduct
[Failure to Refund Unearned Fees]

29. Respondent wilfully violated rule 3-700(D)(2) of the Rules of Professional Conduct, by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

Respondent failed to complete the services that Hixson retained him to do:

30. He failed to collect the pension funds and he failed to obtain an order for child support arrearages and collection of the arrearages. He further failed to complete the court orders regarding changes in visitation.

31. Respondent failed to earn his fee of \$3,000 because he did not complete the services for which he was hired.

32. Respondent failed, upon termination of his services, to refund any portion of his fee to Hixson. At least one-half of the fee was not earned, because the services were not completed.

33. By failing to refund promptly at least one-half of the fee paid in advance, respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

COUNT SIX

Case No. 08-O-13265
Business and Professions Code section 6090.5(a)(2)
[Seeking an Agreement to Withdraw a State Bar Complaint]

34. Respondent, while acting as a party or as an attorney for a party, wilfully violated Business and Professions Code section 6090.5(a)(2), by agreeing or seeking agreement that a plaintiff would withdraw a disciplinary complaint or would not cooperate with the investigation or prosecution conducted by the disciplinary agency, as follows:

35. The allegations of Counts One through Five are hereby incorporated by reference.

36. On April 24, 2008, Hixson made a complaint to the State Bar regarding respondent.

43. On April 6, 2007, Kay Rabb ("Rabb") hired respondent to represent her in an ongoing criminal matter, *People v. Rabb*, case no. 0354460, ("*Rabb*") filed in the Superior Court of the County of San Mateo. Rabb paid respondent the sum of \$1,500 for legal representation in her matter.

44. On September 10, 2007, respondent sent a substitute counsel, who appeared for respondent. The court set *Rabb* to December 3, 2007, for an additional hearing regarding the issue of restitution.

45. Respondent was aware of the Court's orders of September 10, 2007. Respondent told Rabb that she did not have to appear on December 3, 2007.

46. The court held the continued court hearing on December 3, 2007. Neither respondent nor Rabb appeared. The court issued a bench warrant against Rabb for her failure to appear, with bail set at \$45,000.

47. On December 13, 2007, Rabb appeared in court; and the court recalled the bench warrant. The court set the matter over to January 30, 2008, regarding the issue of restitution.

48. Rabb had an insurance policy and believed the insurance policy would cover the costs claimed by the victim in *Rabb*. As part of respondent's representation of Rabb, respondent was obligated to communicate with Rabb's insurance company and to provide necessary information to the insurance company or otherwise address the issue of restitution with the insurance company.

49. Between December 13, 2007, and January 30, 2008, respondent took no action regarding the issue of restitution.

50. On January 30, 2008, the court continued *Rabb* to March 10, 2008, again to address the issue of restitution.

51. Between January 30, 2008, and March 10, 2008, respondent took no action to address the issue of restitution.

52. Between March 10, 2008, and June 5, 2008, respondent took no action to address the issue of restitution.

53. On June 6, 2008, respondent contacted the insurance company on Rabb's behalf.

54. By advising Rabb that she did not have to appear in court on December 3, 2007, and by failing to address the issue of restitution with Rabb's insurance company between December 13, 2007,

37. On July 8, 2008, State Bar Complaint Analyst Sylvia Curling wrote and mailed respondent a letter, advising respondent of Hixson's complaint and requesting a written response to the allegations.

38. Respondent received the July 8, 2008 letter from the State Bar and was aware of its contents.

39. On or about July, 2008, Hixson sent respondent an e-mail, again requesting the refund of the \$3,000 that she paid to respondent. Respondent received Hixson's email and was aware of its contents.

40. On July 24, 2008, respondent sent Hixson an e-mail, in response to her e-mail requesting a refund of the \$3,000. Respondent's email included, but is not limited to the following statement: "I am aware of the State Bar complaint. I have to respond to them by the 29th of this month." Respondent further stated,

I'm not saying you don't have a valid case. I won't be able to pay you if they take my license, that's what I'm trying to get at. The complaint can be withdrawn (without prejudice, meaning you could re-submit it) and we could work something out. If the complaint goes forward, money notwithstanding, the ability to pay you becomes impossible.

41. By suggesting to Hixson that she withdraw her bar complaint in order to work out a resolution to her request for a return of the \$3,000 fee, respondent, while acting as a party, sought an agreement that Hixson would withdraw a disciplinary complaint or would not cooperate with the investigation or prosecution conducted by the disciplinary agency, in willful violation of Business and Professions Code section 6090.5(a)(2).

COUNT SEVEN

Case No. 08-O-13173

Rule 3-110(A) of the Rules of Professional Conduct
[Failure to Perform with Competence]

42. Respondent wilfully violated rule 3-110(A) of the Rules of Professional Conduct, by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

and June 5, 2008, respondent intentionally, recklessly, and repeatedly failed to provide competent legal services, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

COUNT EIGHT

Case No. 08-O-13173
Business and Professions Code section 6068(m)
[1] [Failure to Respond to Client Inquiries]

55. Respondent wilfully violated Business and Professions Code section 6068(m), by failing to respond promptly to reasonable status inquiries from a client in a matter in which he had agreed to provide legal services, as follows:

56. The allegations of Count Seven are hereby incorporated by reference.

57. On December 13, 2007, when the court recalled the bench warrant, the court also set the matter over for a court appearance to January 30, 2008, regarding the issue of restitution.

58. On January 8, 2008, Rabb's associate, Mahaffey, e-mailed respondent regarding the issue of restitution. Respondent received Mahaffey's e-mail and failed to respond or otherwise inform Rabb about the status of the issue of restitution.

59. On January 10, 2008, Rabb e-mailed respondent and asked for an update regarding the issue of restitution. Respondent received Rabb's e-mail of January 10, 2008, and failed to respond or otherwise inform Rabb about the status of the issue of restitution.

60. On January 15, 2008, Rabb again e-mailed respondent and again requested an update regarding the issue of restitution. She stated that the next court date was soon and that she was worried about the issue of restitution. Respondent received Rabb's e-mail of January 15, 2008.

61. On January 29, 2008, respondent answered Rabb's inquiries.

62. On February 25, 2008, Rabb e-mailed respondent to ask again about the progress of the issue of restitution. Respondent received Rabb's e-mail of February 25, 2008 and failed to respond or otherwise apprise her of the status of the issue of restitution.

63. On April 3, 10, 16, and 29, 2008, Rabb e-mailed respondent asking for information about the progress of the issue of restitution.

64. Respondent received Rabb's e-mails of April 3, 10, 16, and 29, 2008, and failed to respond or otherwise apprise Rabb of the status of the issue of restitution.

65. On May 5, 2008, Rabb e-mailed respondent and asked, "Where are you? I do not know why you are not responding to my emails or messages." Rabb also asked, "Please contact me."

66. On May 10, 2008, respondent e-mailed Rabb and informed her that he would call the court.

67. By failing to respond promptly to Rabb's inquiries of January 8, 10, and 15, 2008; April 3, 10, 16, and 29, 2008; and May 5, 2008, respondent failed to respond to reasonable status inquiries in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code section 6068(m).

COUNT NINE

Case No. 08-O-13173

Business and Professions Code section 6068(i)
[Failure to Cooperate in State Bar Investigation]

68. Respondent wilfully violated Business and Professions Code section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against him, as follows:

69. The allegations of Counts Seven and Eight are hereby incorporated by reference.

70. On July 28, 2008, Rabb complained to the State Bar about respondent's handling of her matter.

71. On September 15, 2008, State Bar Investigator Syed Majid ("Majid") mailed a letter to respondent at his official membership records address, maintained by the State Bar pursuant to Business and Professions Code, section 6002.1. Investigator Majid sent the letter by United States mail, postage pre-paid. Respondent received the letter.

72. In his letter, Investigator Majid asked that respondent respond in writing to the allegations of Rabb's complaint.

73. Respondent failed to respond in writing to Investigator Majid's letter or otherwise to respond to the State Bar's investigation of Rabb's complaint.

74. By failing to respond in writing to Investigator Majid's letter of September 15, 2008, and by failing otherwise to respond to the State Bar's investigation of Rabb's matter, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of Business and Professions Code section 6068(i).

AGGRAVATION

Multiple Acts of Wrongdoing: Respondent's ethical violations in the current cases constitute multiple acts of wrongdoing.

Significant Harm to a Client: Respondent significantly harmed Hixson by failing to repay to her the unearned portion (i.e., \$1,500.00) of her advance fee with interest from April 2007.

MITIGATION

Absence of Any Prior Record of Discipline: Respondent has no prior record of discipline between the date when he was admitted to the State Bar (June 8, 1992) and the time when his misconduct began (October 2007).

Candor/Cooperation: Since the filing of the NDC, respondent has displayed candor to, and cooperation with, the State Bar in resolving the current cases, especially by entering into this Stipulation.

SUPPORTING AUTHORITY

The determination of discipline begins "by looking to the purpose of sanctions for attorney misconduct." (*In re Morse* (1995) 11 Cal.4th 184, 205.) Standard 1.3 provides: "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."

The standards provide guidance and deserve "great weight." (*In re Naney* (1990) 51 Cal.3d 186, 190; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 933, fn. 5.) "[A]dherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency,

that is, the imposition of similar attorney discipline for instances of similar misconduct.” (*In re Naney*, *supra*, 51 Cal.3d at p. 190; see also *In re Brown* (1995) 12 Cal.4th 205, 220.) The California Supreme Court accepts a disciplinary recommendation resulting from application of the standards unless it has “grave doubts” about the recommendation’s propriety. (*In re Morse*, *supra*, 11 Cal.4th at p. 206; *In re Lamb* (1989) 49 Cal.3d 239, 245.)

Standard 2.4(b) provides that an attorney’s willful failure to perform services in an individual matter or matters or willful failure to communicate with a client shall result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client. Pursuant to standard 2.4, respondent’s two violations of rule 3-110(A) and two violations of section 6068(m) warrant suspension.

Standard 2.6 provides that an attorney’s violation of section 6068 of the Business and Professions Code shall result in disbarment or suspension, depending on the gravity of the offense or the harm, if any, to the victim. Because respondent willfully violated section 6068(i), suspension complies with standard 2.6.

Standard 2.10 provides that willfully violating any provision of the Business and Professions Code or any Rule of Professional Conduct not otherwise specified in the standards shall result in reproof or suspension, according to 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. In the current cases, respondent willfully violated section 6090.5(a)(2) of the Business and Professions Code and rules 3-700(A)(2), 3-700(D)(1), and 3-700(D)(2) of the Rules of Professional Conduct. Pursuant to standard 2.10, these violations require suspension.

In deciding the proper discipline, the State Bar Court also considers decisional law. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr 267 (“*Kennon*”) is relevant to the current cases.

In *Kennon*, the attorney committed misconduct in two matters. In the first matter, he violated section 6068(m) of the Business and Professions Code and the predecessor rules of current rules 3-110(A), 3-700(A)(2), and 3-700(D)(2) of the Rules of Professional Conduct. In the second matter,

Kennon violated section 6068(m) of the Business and Professions Code the predecessor rule of current rules 3-700(A)(2) of the Rules of Professional Conduct. In aggravation, Kennon committed multiple ethical violations, significantly harmed a client by retaining \$2,000.00 in unearned advance fees, and lacked candor at the trial hearing. In mitigation, he practiced law for eleven years without discipline. The review department recommended, and the Supreme Court imposed, a two-year stayed suspension and a two-year probation, conditioned on actual suspension for thirty days and until payment of restitution.

Like Kennon, respondent committed misconduct in two matters. Whereas Kennon committed six violations, respondent committed nine violations. These included two violations of rule 3-110(A), two violations of section 6068(m), and single violations of rule 3-700(A)(2), rule 3-700(D)(1), rule 3-700(D)(2), section 6068(i), and section 6090.5(a)(2). In aggravation, respondent engaged in multiple acts of wrongdoing and significantly hurt Hixson by failing to repay \$1,500.00 to her. In mitigation, respondent had no prior record of discipline for fifteen years before the start of his misconduct and cooperated with State Bar by entering into this Stipulation.

In the current cases, the appropriate discipline consists of (1) stayed suspension for two years and until respondent pays restitution and complies with standard 1.4(c)(ii) and (2) probation for three years, conditioned on the following:

- (1) During the first 30 days after the effective date of the discipline order, respondent shall be actually suspended from the practice of law.
- (2) During the first year after the effective date of the discipline order, respondent shall pay \$1,500.00 in restitution to Hixson with interest at ten percent a year from April 2007.
- (3) Respondent shall comply with the other conditions of probation previously specified in this Stipulation.

ETHICS SCHOOL REQUIREMENT

Within one year of the effective date of the discipline for the current cases, respondent must attend Ethics School, must pass the examination at the end of the Ethics School session which he attends, and must provide proof of such passage to the Office of Probation.

CLIENT TRUST ACCOUNTING SCHOOL REQUIREMENT

Within one year of the effective date of the discipline for the current cases, respondent must attend Client Trust Accounting School, must pass the examination at the end of the Client Trust Accounting School session which he attends, and must provide proof of such passage to the Office of Probation.

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION REQUIREMENT

Within one year of the effective date of the discipline for the current cases, respondent must pass the Multistate Professional Responsibility Examination and provide proof of such passage to the Office of Probation.

ESTIMATED PROSECUTION COST

The estimated prosecution cost of the current cases is \$2,296.00. This sum is only an estimate and the final cost may differ from the estimated cost. If this Stipulation is rejected or if relief from this Stipulation is granted, the prosecution cost of the current cases may increase because of the cost of further proceedings.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

On May 21, 2010, the State Bar sent a disclosure letter by e-mail to respondent. In this letter, the State Bar advised him of any pending investigations or proceedings against him other than the current cases.

In the Matter of

Case number(s):

SEAN HICKEY,
No. 159116,

08-O-13173
08-O-13265

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
Ms. Joni Hixson	\$1,500.00	April 2007

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **one year after the effective date of the discipline in the current case.**

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 reproval), 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";

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

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.

(Do not write above this line.)

In the Matter of SEAN HICKEY, No. 159116, A Member of the State Bar.	Case number: 08-O-13173 08-O-13265
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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.

5/27/10
Date


Respondent's Signature

Sean Hickey
Print Name

Date

Respondent's Counsel Signature

Print Name

6/7/10
Date

Mark Hartman
Deputy Trial Counsel's Signature

Mark Hartman
Print Name

(Do not write above this line.)

In the Matter Of SEAN HICKEY, No. 159116 A Member of the State Bar.	Case Number(s): 08-O-13173; 08-O-13265
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ORDER

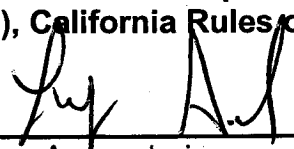
Finding the stipulation to be fair to the parties and that it adequately protects the public,
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without
prejudice, and:

- ☒ 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.)**

June 25, 2010

Date



Lucy Armendariz
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 June 29, 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 San Francisco, California, addressed as follows:

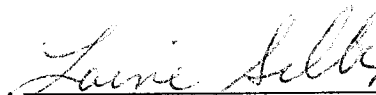
SEAN C. HICKEY
LAW OFC SEAN C HICKEY
38871 VIENTO CT
FREMONT, CA 94536



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 June 29, 2010.



Laine Silber
Case Administrator
State Bar Court