


**State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION**

PUBLIC MATTER

Counsel For The State Bar Mark Hartman Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, California 94105 Telephone: (415) 538-2558 Bar # 114925	Case Number(s): 10-O-04315	For Court use only FILED  JUN 01 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Sean C. Hickey 38871 Viento Court Fremont, California 94536 Telephone: (650) 218-8838 Bar # 159116	Submitted to: STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Sean C. 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 12 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (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 5.130, Rules of Procedure.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2012, 2013 and 2014. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are 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 08-O-13173 and 08-O-13265
 - (b) ☒ Date prior discipline effective December 9, 2010
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Sections 6068(m), 6068(i), and 6090.5(a)(2) of the Business & Professions Code and Rules 3-110(A), 3-700(A)(2), 3-700(D)(1), and 3-700(D)(2) of the Rules of Professional Conduct.
 - (d) ☒ Degree of prior discipline two-year stayed suspension and three-year probation, conditioned on a thirty-day actual suspension.
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See page 10.

(Do not write above this line.)

- (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. See page 10.
- (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 sixty 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 the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), 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 No.: **10-O-04315**

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 number 10-O-04315 (“the current case”) 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. 10-O-04315
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

1. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:
2. On or about February 15, 2006, Sheila Bost (hereinafter, “Bost”) hired respondent to recover the value of her lost jewelry and other property from Britannia, Inc. On or about February 15, 2006, the parties executed a Fee Agreement. The Fee Agreement specified that respondent would either submit the matter to binding arbitration on behalf of Bost, or bring suit in San Mateo County. Respondent charged \$275 per hour. Bost gave respondent a \$4,000 advanced fee.

3. Thereafter, respondent reviewed the written material and met with the client. He also conversed with one "Mr. Dunn" of Safeco, and discussed, with Bost, the possibility of meeting with Mr. Dunn.

4. Thereafter, respondent performed no services of any value to Bost. Respondent did not bring suit in San Mateo County on behalf of Bost. Respondent did not prepare or bring the matter to arbitration on behalf of Bost. Respondent prepared a demand letter on behalf of Bost, but he did not forward the demand letter to Britannia, Inc.

5. On or about December 22, 2006, Bost terminated respondent's services.

6. By failing to take substantive action on Bost's behalf, to bring suit or bring the matter to arbitration between February 2006 and December 2006, a period of approximately ten months, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

COUNT TWO

Case No. 10-O-04315
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

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

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

9. On or about September 8, 2006, respondent sent Bost an accounting of his fee, claiming he had earned all but \$1,016.25 of his \$4,000 fee.

10. Respondent's fee was not earned. His \$2,983.75 in charges consisted of meeting with the client, reviewing the file, having one conversation with a "Mr. Dunn", and drafting a demand letter, which was not sent. These services were preliminary in nature and provided no benefit to Bost. Respondent did not earn any of the \$4,000 fee.

11. On or about January 11, 2007, Bost send respondent a letter via certified mail, terminating the attorney-client relationship and requesting a full accounting of her fee and a refund of any unearned fee. Bost also requested the return of her file. Bost had sent similar letters on December 14, 2006 and also on December 22, 2006.

12. Respondent received Bost's January 11, 2007 letter and was aware of the contents.

13. On or about April 18, 2007, respondent sent Bost a check for \$1,016.25, which represented the remaining funds owed to Bost according to his accounting provided on September 8, 2008. Bost brought this check to the issuing bank, Borel, but was unable to cash it as there were insufficient funds in respondent's account.

14. On or about December 16, 2007, Bost wrote a letter to respondent advising him of the insufficient funds check and asking respondent to either send her a new check or notify her when there would be sufficient funds to cover the check.

15. Respondent received Bost's December 16, 2007 letter and failed to respond or otherwise make good on the check for \$1,016.25.

16. By failing to refund \$4,000 to Bost in unearned fees, and by failing to make good on the insufficient check for \$1,016.25 in funds that respondent sent to Bost, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

COUNT THREE

Case No. 10-O-04315
Rules of Professional Conduct, rule 3-700(D)(1)
[Failure to Release File]

17. Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1), 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:

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

19. Respondent failed to return Bost's file to her.

20. By failing to return Bost's file to her, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

AGGRAVATION

Prior Record of Discipline: Although respondent has a record of discipline in case numbers 08-O-13173 and 08-O-13265 ("the prior cases"), this record warrants diminished weight in the current case because his current ethical violations overlapped his misconduct in the prior cases. (*In the Matter of Hunter* (Review Dept 1994) 3 Cal. State Bar Ct. Rptr 63, 80.)

Multiple Acts of Wrongdoing: Respondent committed multiple acts of wrongdoing in the current case.

Significant Harm to a Client: Respondent significantly harmed Bost by failing to repay her advance fee of \$4,000.00 and to return her file.

MITIGATION

Candor/Cooperation: Respondent has displayed candor to, and cooperation with, the State Bar in resolving the current case by entering into this Stipulation

SUPPORTING AUTHORITY

The supporting authority for the stipulated discipline includes:

(1) standards 1.3, 2.4(b), and 2.10 and

(2) *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267

[actual suspension for 30 days where an attorney who had no prior record of discipline failed to provide competent legal services, to communicate with his client, to return his client's file, and to return an unearned advance fee].

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 case may increase because of the cost of further proceedings.

DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING

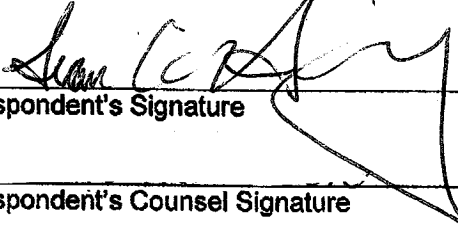
On May 4, 2011, the State Bar sent a disclosure letter by e-mail to respondent. In this letter, the State Bar advised him of any pending investigations or proceedings against him other than the current case.

(Do not write above this line.)

In the Matter of: Sean C. Hickey State Bar Number 159116	Case number(s): 10-O-04315
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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, Conclusions of Law, and Disposition.

<u>5-5-11</u> Date	 Respondent's Signature	<u>Sean C. Hickey</u> Print Name
<u>5-11-11</u> Date	<u>Mark Hartman</u> Deputy Trial Counsel's Signature	<u>Mark Hartman</u> Print Name

(Do not write above this line.)

In the Matter of:
Sean C. Hickey
State Bar Number 159116

Case Number(s):
10-O-04315

ACTUAL SUSPENSION 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 5.58(E) & (F), 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.)**

Date

June 1, 2011

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 1, 2011, 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 1, 2011.


Laurretta Cramer
Case Administrator
State Bar Court