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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Christopher J. Vergara Deputy Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2346 Bar # 246297	Case Number(s): 11-C-18593-LMA	For Court use only PUBLIC MATTER FILED <i>MS</i> MAR 19 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Edward O. Lear Century Law Group, LLP 5200 West Century Blvd., Suite 345 Los Angeles, CA 90045 (310) 642-6900 Bar # 132699	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: Sheila Marie Hathaway Bar # 229806 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <input type="checkbox"/> 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 January 9, 2004.
- (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 14 pages, not including the order.



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- (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: (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
 - (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.

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- (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.
- (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. See "Facts Supporting Mitigating Circumstances", page 12.
- (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.

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- (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. See "Facts Supporting Mitigating Circumstances", page 12.
- (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 "Facts Supporting Mitigating Circumstances", page 11.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one 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 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 two 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 ninety 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: Respondent lives out of state. In lieu of Ethics School, Respondent shall, within one (1) year of the effective date of the discipline herein, provide to the Office of Probation satisfactory proof of 6 hours of continuing legal education in North Carolina in the area of ethics.
- (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:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - Financial Conditions

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- (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: October 5, 2012.
- (5) **Other Conditions:**

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In the Matter of: Sheila Marie Hathaway	Case Number(s): 11-C-18593-LMA
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Medical Conditions

- a. Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of _____ times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for _____ days or _____ months or _____ years or, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist or psychologist at Respondent's own expense a minimum of one time per month and must furnish evidence to the Office of Probation that Respondent is so complying with each quarterly report. Treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist or psychologist determines that there has been a substantial change in Respondent's condition, Respondent or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar of California. The motion must be supported by a written statement under penalty of perjury, in support of the proposed modification.

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Respondent shall provide a full, true and correct copy of this Stipulation and Order and the order of the Supreme Court imposing the discipline stipulated to and ordered, to her psychiatrist or psychologist not later than 30 days after the effective date of the Supreme Court Order.

Respondent shall have her treating psychiatrist or psychologist acknowledge in writing that he or she has read this full Stipulation and Order and the Order of the Supreme Court, and Respondent shall cause the treating psychiatrist or psychologist to provide written acknowledgement to the Office of Probation no later than 40 days after the effective date of the Supreme Court order herein.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Sheila Marie Hathaway

CASE NUMBER(S): 11-C-18593-LMA

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-C-18593-LMA (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On October 17, 2011, Respondent was convicted of violating Penal Code section 537, subdivision (a)(1)(defrauding innkeepers, etc.).
3. On September 6, 2012, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed for the offense for which Respondent was convicted which the Review Department determined involved moral turpitude as a matter of law, and for which Respondent was interimly suspended from the practice of law, effective October 5, 2012. Respondent was ordered to comply with rule 9.20, California Rules of Court.

FACTS:

Santa Clara County Superior Court Case No. C1075812

4. On March 20, 2010, Respondent was cited for violation of Penal Code 537(a)(1), defrauding an innkeeper, at Pearl Avenue and Auto Mall Avenue, San Jose, California.
5. The charges were dismissed at an October 17, 2011 Pre-Trial Conference in conjunction with Santa Clara County Superior Court case number C1077019.

Santa Clara County Superior Court Case No. C1075453

6. On April 8, 2010, a National Cab Company cab driver picked up Respondent at a bus stop at Naglee Avenue and Moorpark Avenue in San Jose, California.
7. The cab driver drove Respondent to various locations for about an hour before Respondent exited the cab at Santana Row located in San Jose, California, and told the cab driver that she would not pay him.

8. Respondent owed the cab driver \$68.

9. The cab driver located Respondent an hour later sitting in the patio dining area of Yankee Pier Restaurant and reported the incident to Santana Row security.

10. Police arrived at Yankee Pier Restaurant to assist Santana Row security with Respondent, who had no cash or other ability to pay for a \$7.75 tab at the restaurant or the \$68 cab fare.

11. Respondent had in her possession several credit cards and a check book, but none were able to be processed for payment by either the restaurant or the cab driver.

12. Respondent was cited for violation of Penal Code 537(a)(1) for failure to pay for the \$7.75 restaurant tab and the \$68 cab fare.

13. Both charges were dismissed at an October 17, 2011 Pre-Trial Conference in conjunction with Santa Clara County Superior Court case number C1077019.

Santa Clara County Superior Court Case No. C1077019

14. On April 11, 2010, Respondent checked into Hotel Los Gatos in Los Gatos, California.

15. Respondent had her foot run over by a car on March 8, 2010, and was still recovering from her injuries.

16. The hotel's computer systems were not functioning, so the hotel staff was unable to check the credit card that Respondent provided in order to see if it was valid.

17. The desk agent told Respondent that the hotel computer system was down but checked the Respondent into the room with the understanding the credit card transaction would be processed the next morning.

18. On the morning of April 12, 2010, the hotel staff discovered that Respondent's credit card was invalid. Respondent provided another card, but it was also invalid. Respondent advised the staff that she would pay cash. The hotel staff allowed Respondent to stay another night.

19. On Tuesday morning, April 13, 2010, Respondent left the hotel to obtain cash to pay for her two day stay leaving her belongings in the hotel room. Prior to leaving, Respondent advised the front desk clerk she planned to return with payment and would check out at that time.

20. Respondent then misplaced her car keys. Respondent contacted her insurance claims office requesting a tow to a Jeep dealership. There were multiple communications issues, specifically in regards to the location of the dealership where Respondent's vehicle was supposed to be towed. Thereafter, Respondent neglected to return to Hotel Los Gatos and tender payment for her two day stay.

21. Thereafter, the hotel manager ordered the staff to clear Respondent's belongings from the room and store them. When the manager entered the room he saw in open view a bounced check written by Respondent to Bank of America and a notice of insufficient funds from the Navy Federal Credit Union.

22. On April 14, 2010, Respondent called the hotel stating that she was on her way back to pay the bill, but she never returned to the hotel.

23. On April 14, 2010, the hotel contacted the Los Gatos/Sereno Police Department, and Respondent was subsequently cited for violation of Penal Code 537(a)(1) for failing to pay a hotel bill of \$416.05 to Hotel Los Gatos.

24. At the time Respondent first learned of the citation, she was living in North Carolina and was the primary caretaker for her elderly mother who was recovering from an accident in which an automobile struck her in a parking lot.

25. On May 17, 2010, a complaint was filed in Santa Clara County Superior Court charging one misdemeanor count of violation of Penal Code 537(a)(1) for failure to pay the \$416.05 hotel bill.

26. Respondent promptly made travel arrangements, retained counsel and presented for booking on the charge in May of 2011.

27. At a pretrial hearing on October 17, 2011, while Respondent was still residing in North Carolina, Respondent pled *nolo contendere* and was convicted of a misdemeanor violation of Penal Code section 537(a)(1)[defrauding innkeepers, etc.]. The plea/sentencing minutes also referenced case number C1075812 and case number C1075453, which were both dismissed.

28. Respondent was sentenced to two years probation and was ordered to stay away from Hotel Los Gatos, Yankee Pier Restaurant and National Cab Co., one (1) day county jail deemed already served, and to pay fines and fees. Respondent paid restitution to Hotel Los Gatos, Yankee Pier Restaurant, and National Cab Company.

CONCLUSION OF LAW:

29. The crime of which Respondent was convicted, Penal Code section 537, subdivision (a)(1) [defrauding innkeepers, etc.] inherently involves moral turpitude.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

No Priors

Respondent's misconduct inherently involved moral turpitude and is therefore serious. However, Respondent is nonetheless entitled to some mitigation for no prior of discipline in more than six years of practice prior to her first citation for a violation of Penal Code section 537, subdivision (a)(1). See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.

Cooperation

Respondent cooperated in this disciplinary proceeding as evidenced by her stipulation to facts, conclusions of law, and discipline. Although the facts in this matter were easily proven, Respondent is entitled to some mitigation for her cooperation. See *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 107.

Emotional Difficulties – standard 1.2(e)(iv)

A psychologist, who evaluated Respondent subsequent to her misconduct, determined that at the time of her misconduct, Respondent was undergoing "severe emotional distress due to a multitude of life stressors including an anticipated and actual sudden job loss following a residential move, chronic sleep

deprivation and a serious foot injury” that contributed to her misconduct. The psychologist has determined that Respondent is no longer suffering from this emotional distress. Nevertheless, Respondent has agreed to continue psychological treatment throughout and as a condition of her probation.

Good Character – standard 1.2(e)(vi)

Respondent’s good character is attested to by references in the legal and general communities, including a former law school classmate and client, Respondent’s brother, a California Deputy Attorney General, and a friend and employment counselor, all of whom state that they are aware of the full extent of Respondent’s misconduct.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed 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.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence 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 attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

As set forth in the conclusion of law above, Respondent’s conviction for violation of Penal Code section 537, subdivision (a)(1), inherently involves moral turpitude. Therefore, standard 3.2, Conviction of a Crime Involving Moral Turpitude, applies:

Standard 3.2, provides:

Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime’s commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.

In this matter, there exist extraordinary circumstances that make it manifestly unfair to apply standard 3.2 to impose a two-year actual suspension, let alone disbarment, for Respondent’s misconduct. (*In re Silverton, supra*, 36 Cal.4th at p. 92 [the existence of extraordinary circumstances may justify a lesser sanction than set forth in applicable standard]). First, Respondent’s misconduct did not involve the practice of law, nor was it directed at a client. Second, the financial harm Respondent caused her

victims was not significant, and she has made full restitution to them. In addition, Respondent has produced evidence of several mitigating factors that support discipline less than that set forth in standard 3.2. These factors include emotional difficulties at the time of the misconduct that contributed to her misconduct but have now been resolved, a lack of record of prior discipline since her admission in 2004, good character, and her cooperation in these proceedings.

Although good cause exists to deviate from the strictures of standard 3.2 in determining the appropriate level of discipline, a period of actual suspension is necessary given that Respondent's misconduct did inherently involve criminal acts of moral turpitude. Case law provides guidance in determining the amount of actual suspension that is needed here to protect the public, the courts, and the legal profession. There are no published attorney discipline cases involving convictions of Penal Code section 537, subdivision (a)(1). However, because Respondent's misconduct was essentially a form of theft, several Supreme Court cases involving misappropriation of client funds are instructive. In *Brockway v. State Bar* (1974) 53 Cal.3d 51, the respondent, *inter alia*, misappropriated \$500 and was actually suspended for three months. The Supreme Court deviated from standard 2.2(a) finding that it was unduly harsh given Brockway's lack of prior discipline over 13 years of practice and evidence of good character. In *Bates v. State Bar* (1990) 51 Cal. 3d 1056, the respondent misappropriated \$1,229.75, and the Supreme Court ordered a six-month actual suspension as sufficient to protect the public. Bates had practiced 14 years with no prior discipline and provided testimony regarding his integrity. In *Snyder v. State Bar* (1990) 49 Cal.3d 1302, the respondent misappropriated \$3,496 and the Supreme Court suspended him for two years and until rehabilitation taking into account Snyder's emotional breakdown, voluntary termination of practice, full payment of restitution, lack of prior record of discipline, and the isolated nature of the misconduct. Snyder was admitted less than four years prior to his misappropriation.

The misappropriation of client funds with its concomitant breach of fiduciary duty to a client, involved in cases like *Brockway*, *Bates*, and *Snyder*, demands a more severe sanction than Respondent's violation of Penal Code section 537, subdivision (a)(1). On balance, based upon the facts and circumstances of Respondent's misconduct, the aggravating and mitigating factors present, and the guidance of applicable case law, a 90-day actual suspension is appropriate and consistent with the purposes of discipline expressed in standard 1.3.

COSTS OF DISCIPLINARY PROCEEDINGS.

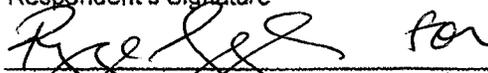
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of March 1, 2013, the prosecution costs in this matter are \$5,026. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: Sheila Marie Hathaway	Case number(s): 11-C-18593-LMA
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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.

Date	Respondent's Signature	Sheila Marie Hathaway
3/6/13		Print Name
Date	Respondent's Counsel Signature	Edward O. Lear
3/7/13		Print Name
Date	Deputy Trial Counsel's Signature	Christopher J. Vergara
		Print Name

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In the Matter of: Shelia Marie Hathaway	Case Number(s): 11-C-18593-LMA
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ACTUAL SUSPENSION ORDER

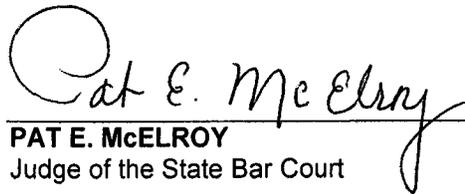
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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

March 19, 2013


PAT E. 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 March 19, 2013, 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:

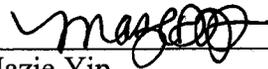
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

CHRISTOPHER J. VERGARA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 19, 2013.



Mazie Yip
Case Administrator
State Bar Court