

# PUBLIC MATTER

**FILED**

JUN 20 2012

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 11-O-15981-LMA
	)	
SEAN CURTIS HICKEY	)	ORDER MODIFYING MAY 15, 2012
	)	ORDER APPROVING STIPULATION;
Member No. 159116	)	ORDER DENYING MOTION TO
	)	WITHDRAW STIPULATION
<u>A Member of the State Bar.</u>	)	

On May 29, 2012, the State Bar of California, Office of the Chief Trial Counsel (State Bar) by and through Assistant Chief Trial Counsel Susan I. Kagan (ACTC) filed a motion to withdraw the Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension (stipulation) in the above-captioned matter, which was executed by the parties on May 7, 2012, and filed on May 15, 2012 (Rules Proc. of State Bar, rule 5.58(F).)<sup>1</sup>

Respondent Sean Curtis Hickey did not file a response to the State Bar's motion.

The stipulation executed by the parties includes the following two conditions, among others: (1) respondent must remain suspended<sup>2</sup> until he shows satisfactory proof to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law

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<sup>1</sup> In its motion to withdraw, the State Bar stated that it was bringing its motion pursuant to "rule 5.85(F)" of the Rules of Procedure. The reference to rule 5.85(F) appears to be a clerical error.

<sup>2</sup> The parties stipulated that that respondent would be suspended from the practice of law for three years, execution of that period of suspension would be stayed, and he would be placed on probation for three years, conditioned on an actual suspension from the practice of law for the first nine months of his probation.



pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct; and (2) respondent must pay restitution as a condition of his probation in the instant matter to a client from a prior disciplinary matter, i.e., State Bar Court case No. 10-O-04315, in the amount of \$4,000, plus interest. The Supreme Court issued its order imposing discipline in the prior matter on October 19, 2011, effective November 18, 2011 (Supreme Court case No. S195368; State Bar Court case No. 10-O-04315.)

On May 15, 2012, on page of the stipulation 13, the court modified the stipulation that had been submitted by the parties by, among other things, deleting the two aforementioned conditions. In her declaration, which is attached to the State Bar's motion, the ACTC asserts that she would not have entered into the stipulation without the standard 1.4(c)(ii) requirement and the restitution condition.

**The Actual Suspension Order is Modified, Such That Respondent Must Comply with the Standard 1.4(c)(ii) Requirement**

Normally, a showing under standard 1.4(c)(ii) is required when an attorney is actually suspended for two or more years. (*In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737,742.) But, as noted, *ante*, the facts as set forth in the stipulation support the imposition of a three-year stayed suspension and a three-year period of probation, conditioned on an actual suspension from the practice of law for the first *nine months* of respondent's probation. The stipulation does not articulate or set forth any factual basis or rationale as to why a standard 1.4(c)(ii) requirement should be included as part of the discipline in this matter.

The court, however, *sua sponte*, has reviewed respondent's official membership records, including his disciplinary history, as well as his status history and takes judicial notice thereof. Because respondent's status history reveals that he has been ineligible to practice law for a lengthy period, i.e., since July 1, 2008, the court concludes that to protect the public and to maintain high professional standards, respondent should be required to remain suspended until

he shows satisfactory proof 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).

Accordingly, **GOOD CAUSE** appearing, the court **MODIFIES** the Order Approving Stipulation, which was filed on May 15, 2012, as follows:

On page 13, of the Stipulation under the heading, "ACTUAL SUSPENSION ORDER," **Delete** the sentence, which starts with the words, "On page 4" and ends with the words, "relating to the requirement that respondent comply with std. 1.4(c)(ii)," so that respondent is required to comply with the standard 1.4(c) (ii) requirement that had previously appeared on page 4 of the Stipulation in paragraph (3)(a)(i).

### **There Is No Basis to Withdraw the Stipulation**

The State Bar objects to the court's modification that deletes the condition of probation requiring respondent to pay restitution to Sheila Bost (Bost), a client from a prior matter, i.e., Supreme Court case No. S195368; State Bar Court case No. 10-O-04315.

There is no factual basis or legal authority set forth in the stipulation in the instant matter to support the request for imposition of restitution to Bost. Nor does the State Bar offer any rationale to support its position in its motion. The stipulation merely states that because a "mistake" was made in a prior matter (in which the Supreme Court has imposed discipline) a restitution requirement has been inserted in the stipulation at issue.

It is, however, inappropriate to order restitution to Bost in the instant matter because, among other reasons, no facts are set forth in the stipulation to show that any restitution is owed to her; nor are there any facts alleged that connect Bost in any way case No. 11-O-15981 – the matter before this court. Indeed, other than the request for restitution to Bost, there is absolutely no other mention of her in the stipulation.


Thus, finding the restitution issue and the arguments, relating to that issue, as articulated by the State Bar in its motion to be without merit, the court can discern no rational basis for the

State Bar to withdraw the stipulation. Based on the facts as set forth and the law, the court finds that the stipulation is fair to the parties and adequately protects the public.

Accordingly, **NO GOOD CAUSE HAVING BEEN SHOWN**, the State Bar's motion to withdraw the stipulation is **DENIED**.

**IT IS SO ORDERED.**

Dated: June 20, 2012

  
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LUCY ARMENDARIZ  
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 20, 2012, I deposited a true copy of the following document(s):

ORDER MODIFYING MAY 15, 2012 ORDER APPROVING STIPULATION; ORDER DENYING MOTION TO WITHDRAW STIPULATION

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:

REBECCA THOMPSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 20, 2012.



Lauretta Cramer  
Case Administrator  
State Bar Court