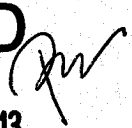


<b>State Bar Court of California Hearing Department San Francisco STAYED SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Sherrie B. McLetchie Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2297  Bar # 85447	<b>Case Number(s):</b> 12-O-11559-LMA 12-O-11998 12-O-16427	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b>  <b>SEP 05 2013</b>  <b>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</b>
<b>Counsel For Respondent</b>  William S. Reustle 609 Jefferson Street, Suite G-1 Fairfield, CA 94533 (707) 427-1662  Bar # 83707	<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> <b>DONALD MAH</b>  Bar # 158045  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 14 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):
  - ☒ Costs are added to membership fee for calendar year following effective date of discipline.
  - ☐ 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 97-C-13952 (See "Additional Facts Re Aggravating Circumstances", page 9).
  - (b) ☒ Date prior discipline effective 2/20/98
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Bus. & Prof. Code sec. 6068(a) by violation of Penal Code sec. 242 (battery).
  - (d) ☒ Degree of prior discipline private reproof (public disclosure) with a one-year period of compliance with conditions including attendance at Ethics School and the terms of his criminal probation.
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See "Facts Supporting Aggravating Circumstances", page 9.
- (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.
- (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.
- (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 one (1) 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:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

## E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ 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.
- (3) ☒ 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.
- (4) ☒ 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.

- (5) ☐ 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.

- (6) ☒ 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.
- (7) ☒ 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 State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☐ 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.
- (9) ☐ 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 within one year. **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) ☒ **Other Conditions:**
- See "Fee Arbitration Conditions of Probation" beginning on page 11.

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

IN THE MATTER OF: DONALD MAH

CASE NUMBERS: 12-O-11559-LMA  
12-O-11998  
12-O-16427

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 12-O-11559 (Complainant: Mauricio Hercules)

**FACTS:**

1. On July 15, 2008, Mauricio Hercules ("Hercules") employed Respondent to create three trusts for Hercules and his family, create a limited liability company ("LLC") for Hercules's sole proprietorship business, New Bosworth Market, prepare a lease agreement for the LLC that was to be formed, update corporate records for a corporation owned by Hercules and his wife, prepare corporate tax returns for 2006 and 2007, and prepare a personal tax return for Hercules for 2007.

2. Hercules provided Respondent with corporate records and other documents Respondent requested to perform the legal services for Hercules.

3. On July 16, 2008, Hercules paid Respondent \$23,500 as advanced fees.

4. Thereafter, Respondent did not create a LLC, update corporate records, prepare corporate returns for 2006 and 2007, or prepare a 2007 personal tax return for Hercules.

5. Respondent prepared a lease agreement for Hercules, but because the LLC was never created by Respondent, the stated parties to the lease were not in compliance with Hercules' instructions.

6. Prior to October 6, 2011, Hercules terminated Respondent's services.

7. On October 6, 2011, Hercules met with Respondent and requested that Respondent return Hercules's corporate records.

8. In late December 2011, Hercules' new attorney first requested that Respondent provide him with Hercules' corporate records. Not until April 4, 2012, did Respondent provided Hercules' entire file to the new attorney.

9. Respondent did not complete the work he had agreed to perform for Hercules, Respondent did not refund any of the \$23,500 advanced fees paid by Hercules.

#### CONCLUSIONS OF LAW:

10. By not creating an LLC, not updating the corporate records, not preparing the corporate tax returns for 2006 and 2007, and not preparing a personal tax return for Hercules, and preparing a lease agreement not in compliance with the instructions of his client, Respondent recklessly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

11. By not returning Hercules's client papers to Hercules for six months after Respondent was terminated and after Hercules requested the return of his corporate records, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all client papers and property in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

12. By not refunding any part the \$23,500 advance fee paid by Hercules, Respondent failed to refund promptly part of a fee paid in advance that had not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 12-O-11998 (Complainant: Rick Medina)

#### FACTS:

13. On January 23, 2012, Rick Medina ("Medina") hired Respondent to represent him in a marital dissolution matter that had been filed in 2006. Respondent had Medina sign a substitution of attorney substituting Respondent in place of Medina's former attorney.

14. Medina paid Respondent \$3,000 as advanced fees for the marital dissolution matter, and provided Respondent with documents relating to the dissolution matter as requested by Respondent.

15. Thereafter, Respondent took no steps to represent Medina in the marital dissolution, including not filing the substitution of attorney which both Respondent and Medina executed. Respondent did not earn any of the \$3,000 paid to him.

16. Between approximately May 1, 2012, and August 2, 2012, Medina called Respondent on numerous occasions to determine the status of his case, leaving messages for Respondent to return his calls. Respondent received the messages, but did not return Medina's calls.

17. By letter dated August 2, 2012, Medina terminated Respondent as his attorney, requested a refund of the \$3,000 paid to Respondent, and requested that Respondent return his file materials. Respondent received the August 2, 2012 letter shortly after it was sent, but did not refund unearned fees or return Medina's file.

18. On August 27, 2012, Medina filed a complaint against Respondent with the State Bar.



By letter dated September 28, 2012, a State Bar investigator summarized Medina's complaint and requested that Respondent provide a written response to Medina's allegations. Respondent received the September 28, 2012 letter shortly after it was sent, but never responded in writing to the letter.

19. It was not until August 2, 2013 that Respondent returned the \$3,000 paid by Medina and Medina's file.

#### CONCLUSIONS OF LAW:

20. By not taking any steps to represent Medina in the marital dissolution, Respondent recklessly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

21. By not refunding any portion of the \$3,000 in unearned fees until August 2, 2013, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

22. By not returning Medina's file documents until August 2, 2013, 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 wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

23. By not providing a written response to the investigator's letter regarding Medina's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in violation of Business and Professions code, section 6068(i).

#### ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.2(b)(i)):** Respondent has one prior record of discipline. Effective February 20, 1998, Respondent was privately reprovved (public disclosure) with a one-year period of compliance with conditions including attendance at State Bar Ethics School and compliance with the terms of his criminal probation, for violation of Business and Professions Code section 6068(a) by violation of Penal Code section 242 (battery). Respondent was convicted by plea of nolo contendere to a misdemeanor violation of Penal Code section 242 which occurred in 1996. Respondent did not commit the battery in the course of his practice of law.

**Multiple Acts of Misconduct (Std. 1.2(b)(ii)):** Respondent violated Rules of Professional Conduct 3-110(A), 3-700(D)(1), and 3-700(D)(2) in two unrelated client matters. In addition, Respondent violated Business and Professions Code section 6068(i) in connection with the investigation of one of the client complaints. Respondent's multiple acts of misconduct constitute an aggravating factor pursuant to Standard 1.2(b)(ii).

#### 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.)

Respondent admits to committing seven acts of professional misconduct (two violations each of Rules of Professional Conduct 3-110(A), 3-700(D)(1), and 3-700(D)(2), and one violation of Business and Professions Code section 6068(i)). Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.6(a), which applies to Respondent’s violation of Business and Professions Code section 6068(i).

Standard 2.6(a) for a violation of Business and Professions Code section 6068 provides that culpability “shall result in disbarment or suspension depending on 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 . . . .” Here, Respondent committed multiple violations in two client matters and he failed to cooperate in the State Bar’s investigation. Such misconduct is serious and mandates a higher level of discipline, especially in light of Respondent’s prior private reproof. In mitigation, Respondent has recently refunded Medina’s advanced fees of \$3,000, returned Medina’s papers, and initiated fee arbitration proceedings with Hercules over the disputed \$23,500 advance fee paid for work which was not completely performed. Therefore, the harm to the victims of Respondent’s misconduct has been addressed.

Standard 1.7(a) provides that if a member has a record of one prior imposition of discipline, “[T]he degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.”

Respondent’s prior discipline, a private reproof, was imposed as a result of Respondent being convicted of violating Penal Code section 242 (battery). Although Respondent’s misconduct was remote in time, and unrelated to the practice of law, it was not minimal in severity. Consequently, under standard 1.7(a), it is appropriate to impose in this case to impose the greater discipline of a stayed suspension.

*In the Matter of Brockway* (Review Dept. 2006) 4 State Bar Ct. Rptr. 944, is instructive. In *Brockway*, the attorney failed to perform and refund unearned fees in four client matters. He also committed acts of moral turpitude by overreaching and had a prior record of discipline for misappropriation and acquiring an adverse interest against a client. The attorney received an actual suspension of two years and until he provided proof satisfactory to the State Bar Court of his rehabilitation.

Respondent's misconduct is less egregious than in *Brockway* since it was limited to two clients and did not include moral turpitude. Furthermore, Respondent's prior discipline was a private reproof resulting from misconduct unrelated to the practice of law.

Balancing all of the appropriate factors, a one-year stayed suspension with two years probation is consistent with the Standards and case law, and achieves the purposes of discipline as expressed in standard 1.3.

## **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
12-O-16427	Four	Rule 3-110(A)
12-O-16427	Five	Rule 3-700(D)(2)

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 5, 2013, the prosecution costs in this matter are \$8,010.43. 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.

## **FEE ARBITRATION CONDITIONS OF PROBATION:**

### **A. Respondent's Duty to Participate in Fee Arbitration**

Respondent has initiated fee arbitration. The fee arbitration is for the \$23,500 in fees that Mauricio Hercules paid Respondent on July 16, 2008. Respondent must not request more fees than have already been paid by, or on behalf of, Mauricio Hercules.

Respondent must immediately provide the Office of Probation with any information requested regarding the fee arbitration to verify Respondent's compliance.

Respondent must fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration. Respondent understands and agrees that the Office of Probation may contact the entity conducting the fee arbitration for information.

Respondent must accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, Respondent must abide by the arbitration award and forego the right to file an action seeking a trial de novo in court to vacate the award.

## **B. Disputed Funds Must be Held in Trust by Respondent**

Respondent must keep the disputed funds in a separate interest-bearing trust account (not an IOLTA). If Respondent has removed the disputed funds from trust, Respondent must open a separate interest-bearing trust account and deposit the disputed funds into such account within fifteen (15) days from the effective date of discipline. Respondent must provide evidence, e.g. a copy of Respondent's bank statement showing that the disputed funds have been placed in trust within thirty (30) days from the effective date of this matter, and a statement under penalty of perjury that the funds have remained in trust with each of Respondent's quarterly and final reports.

## **C. Respondent's Duty to Comply with the Arbitration Award**

Within fifteen (15) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, Respondent must provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent must abide by any award, judgment or stipulated award of any such fee arbitrator and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, Respondent is to make full payment within thirty (30) days of the issuance of any such award, judgment or stipulated award. Respondent must provide proof thereof to the Office of Probation within thirty (30) days after payment.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of this matter, Respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been provided to the Office of Probation.

## **D. Fee Arbitration Conditions can be Satisfied by Respondent's Full Payment to Mauricio Hercules**

The Fee Arbitration Conditions can also be satisfied by Respondent's full payment of \$23,500 in fees that Mauricio Hercules paid Respondent on July 16, 2008, plus interest of 10% per annum from within thirty (30) days from the effective date of this matter. Satisfactory proof of payment must be received by the Office of Probation within forty-five (45) days from the effective date of this matter.

If the Client Security Fund ("CSF") has reimbursed Mauricio Hercules for all or any portion of the principal amount(s), Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs. To the extent the CSF has paid only principal amounts, Respondent will still be liable for interest payments to Mauricio Hercules. Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d). Respondent must pay all restitution to Mauricio Hercules before making payment to CSF. Satisfactory proof of payment(s) to CSF must be received by the Office of Probation within thirty (30) days of any payment.

## **E. Effect of Respondent's Failure to Comply with Fee Arbitration Conditions**

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court imposing additional discipline (with attendant costs) and conditions upon Respondent, including ordering Respondent to pay back the full amount of \$23,500 paid to Respondent by Mauricio Hercules plus 10% interest from July 16, 2008.

## **EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)



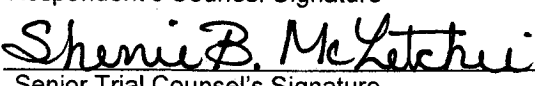
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In the Matter of:  
DONALD MAH

Case number(s):  
12-O-11559-LMA  
12-O-11998  
12-O-16427

### 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>8/6/13</u> Date	<u></u> Respondent's Signature	<u>Donald Mah</u> Print Name
<u>8/4/13</u> Date	<u></u> Respondent's Counsel Signature	<u>William S. Reustle</u> Print Name
<u>8/6/13</u> Date	<u></u> Senior Trial Counsel's Signature	<u>Sherrie B. McLetchie</u> Print Name

In the Matter of: DONALD MAH	Case Number(s): 12-O-11559-LMA 12-O-11998 12-O-16427
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### STAYED 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.

On page 8 of the stipulation, the following paragraph number 9.5 is inserted after paragraph 9:

9.5 Even though respondent did not complete all of the work he agreed to perform for Hercules, respondent did perform significant services. Respondent completed three complicated trusts for Hercules and his family. Thus, at least a significant portion of the charged rule 3 700(D)(2) violation in the Hercules matter is in the nature of a fee dispute. As the review department aptly noted in In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 237, "a disciplinary proceeding is seldom the proper forum for attorney fee disputes." A fee arbitration provision is set forth post.

At the bottom of page 10 and the top of page 11 of the stipulation, the paragraph that begins "In the Matter of Brockway (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, is instructive," is DELETED in its entirety; and the following three paragraphs are INSERTED in its place:

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703 is instructive on the issue of discipline in the present case. Hanson represents a typical case revealing culpability of failure to return promptly unearned fees (Rules Prof. Conduct, rule 3 700(D)(2)) and also in the same client matter of failing to avoid prejudice to his client after discharge (Rules Prof. Conduct, rule 3 700(A)(2)). The attorney in Hanson was publicly reprovved and required to complete the State Bar's ethics school because he did not refund an unearned advanced fee for about 15 months after his employment was terminated and after the State Bar became involved. There were no mitigating circumstances in Hanson. In aggravation, the attorney had a prior private reprovval.

In Hanson, the review department reviewed a number of other cases involving generally similar types of misconduct and found the discipline in those cases ranging between private reprovval and stayed suspension. (In the Matter of Hanson, supra, 2 Cal. State Bar Ct. Rptr. at p. 713.)

Hulland v. State Bar (1972) 8 Cal.3d 440, a case involving discipline solely for an offense involving attorney fees, is also worth noting. In Hulland, the attorney was publicly reprovved because, after the

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attorney failed to perform the legal services for which he was retained, the attorney attempted to collect a fee he did not earn by using a confession of judgment. (Id. at p. 448.)

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

Sept. 5, 2013

Judge of the State Bar Court

Pat McElroy



## 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 September 5, 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:

WILLIAM STEER REUSTLE  
609 JEFFERSON ST STE G-1  
FAIRFIELD, CA 94533

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

SHERRIE B. McLEITCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 5, 2013.



Bernadette C.O. Molina  
Case Administrator  
State Bar Court