

(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles
STAYED SUSPENSION

<p>Counsel For The State Bar</p> <p>Sue Hong Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1161</p> <p>Bar # 285852</p>	<p>Case Number(s): 13-H-13094</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>APR 08 2014</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Patricia Ann Rush 620 N. McQueen St. Florence, SC 29501 (843) 779-5392</p> <p>Bar # 126258</p>	<p>Submitted to: Assigned Judge</p>	
<p>In the Matter of: PATRICIA ANN RUSH</p> <p>Bar # 126258</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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 **December 11, 1986**
- (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 **11** 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".

(Effective January 1, 2014)

MD



(Do not write above this line.)

- (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case 11-O-16561
 - (b) Date prior discipline effective **May 4, 2012**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **One violation of RPC, rule 3-110(A)**
 - (d) Degree of prior discipline : **Private Reproval for one year**
 - (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 intentional, 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 attachment at page 8.**

(Do not write above this line.)

- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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 subsequent rehabilitation.

(Do not write above this line.)

(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

See Attachment at page 8.

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 1.2(c)(1), 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 **one year**, 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.

(Do not write above this line.)

- (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: **Respondent has already been ordered to attend the State Bar Ethics School and has provided proof of completion to the Office of Probation on January 10, 2013, pursuant to her underlying matter in Case No. 11-O-16561. Thus, pursuant to the Rules of Procedure of the State Bar of California, Rule 5.135, Respondent is not required to complete the State Bar Ethics School in this matter.**
- (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:**

6. On April 30, 2012, a Probation Deputy mailed a reminder letter to the Respondent. Enclosed in the April 30, 2012, letter, were among other things, deadlines to comply with the probation conditions, MPRE Schedule and Information sheet, Quarterly Report form, and the relevant portion of the Reapproval Order. Respondent received the letter.

7. Respondent timely submitted to the Office of Probation the quarterly report due on October 10, 2012. However, Respondent had mistakenly marked off the "First Report Due July 10, 2012" box as well as the "October 10" box¹. Respondent subsequently submitted the October 2012 quarterly report on November 9, 2012. However, because Respondent backdated the report, the Office of Probation did not accept the report. Respondent immediately submitted another October 2012 quarterly report on November 19, 2012, which the Office of Probation deemed to be late.

8. Respondent took the MPRE on April 6, 2013, however, she did not achieve a passing score.

9. Respondent submitted the quarterly report due on May 4, 2013 late on May 13, 2013.

CONCLUSIONS OF LAW:

10. By failing to provide the Office of Probation with proof of passage of the MPRE, and by failing to timely submit the quarterly reports which were due on October 10, 2012, and May 4, 2013, willfully failed to comply with conditions attached to the private reapproval administered to Respondent by the State Bar in case no. 11-O-16561, in willful violation of Rules of Professional Conduct, Rule 1-110.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): In State Bar case no. 11-O-16561, Respondent received a private reapproval for a period of one year after stipulating to one violation of Rule 3-110(A) [Failure to Perform with Competence] arising from her failure to respond to an Inspection Demand, oppose the Motion to Compel, and appear at the hearing on the Motion to Compel.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's present misconduct involves the failure to provide proof of passage of the MPRE and the failure to timely submit two quarterly reports. Respondent engaged in multiple acts of misconduct by violating three conditions of her reapproval.

MITIGATING CIRCUMSTANCES.

Prefiling Stipulation: Respondent has entered into a Stipulation with the State Bar prior to the commencement of trial, thereby saving the State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

¹ Respondent had previously timely filed the first July 10, 2012 quarterly report.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 1.8(a) states that if a “member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

Respondent received a private reproof for her prior misconduct in case 11-O-16561. The instant misconduct should involve greater discipline, as the prior discipline is not remote in time. Here, Respondent timely submitted the quarterly reports due on January 10, 2013 and April 10, 2013, and timely provided proof of completion of Ethics School. However, although Respondent timely submitted the quarterly report due on October 10, 2012, the Office of Probation did not accept the report because Respondent checked off two reporting periods. Respondent subsequently submitted another report, however it was not accepted by probation as it was backdated. Respondent knew Probation had not accepted these reports. Respondent then submitted another October quarterly report on November 19, 2012, which probation accepted but deemed to be late. Respondent notified probation that she sent her final quarterly report on May 13, 2013 and that she had taken the MPRE, however did not achieve a passing score. She submitted her final quarterly report due by May 4, 2013, on May 16, 2013.

Standard 2.10 provides, “[a]ctual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member’s unwillingness or inability to comply with disciplinary orders.”

However, Standard 1.7(c) also applies, as it states in pertinent part, “[o]n balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.”

Here, although not fully compliant with all the terms and conditions of her probation, Respondent has demonstrated a willingness and ability to conform to ethical responsibilities by immediately filing subsequent remedial quarterly reports. Although Respondent has not achieved a passing score, she timely registered for the MPRE and took the test. Despite Standard 2.10, Standard 1.7(c) provides for a lesser sanction in cases of minor misconduct. Here, Respondent’s reprobation violations are minor and there is no injury to a client, the public, or the legal system. Although Standard 2.10 proscribes for actual suspension, on balance, Standard 1.7(c) calls for a lesser sanction in cases of minor misconduct. Therefore, Respondent should be subject to a one year stayed suspension and one year of probation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of March 6, 2014, the prosecution costs in this matter are \$2,925. 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.

EXCLUSION FROM MCLE CREDIT

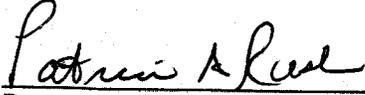
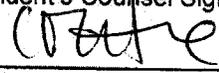
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of any other educational course(s) to be ordered as a condition of reprobation or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of PATRICIA ANN RUSH	Case number(s): 13-H-13094
--	-------------------------------

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>3-18-2014</u> Date	<u></u> Respondent's Signature	<u>Patricia A. Rush</u> Print Name
<u>3/19/14</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>SUE HONG</u> Print Name

(Do not write above this line.)

In the Matter of: PATRICIA ANN RUSH	Case Number(s): 13-O-13094
--	-------------------------------

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.

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

April 8, 2014

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 April 8, 2014, 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:

PATRICIA A. RUSH
620 N MCQUEEN ST
FLORENCE, SC 29501
- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- by overnight mail at , California, addressed as follows:
- by fax transmission, at fax number . No error was reported by the fax machine that I used.
- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Sue Hong, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 8, 2014.


George Hue
Case Administrator
State Bar Court