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

<p>Counsel For The State Bar</p> <p>Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105-1617 (415) 538-2357</p> <p>Bar # 243691</p>	<p>Case Number(s): 13-O-10717</p> <p><b>PUBLIC MATTER</b></p>	<p>For Court use only</p> <p><b>FILED</b> <i>[Signature]</i></p> <p>SEP 17 2013</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Stephen Arthur Harvey Brannon Mt. Road, Box 998 Willow Creek, CA 95573 (530) 629-2700</p> <p>Bar # 47976</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>STEPHEN ARTHUR HARVEY</b></p> <p>Bar # 47976</p> <p>A Member of the State Bar of California (Respondent)</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 January 1, 1971.
- (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 10 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. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 8.

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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. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 8.
- (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.
- (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:**

No Prior Discipline - See "Facts Supporting Mitigating Circumstances" at p. 8.  
Pre-Filing Stipulation - See "Facts Supporting Mitigating Circumstances" at p. 8.

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of two (2) years.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of 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)

(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of six (6) months.
- 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.

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

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

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

#### F. Other Conditions Negotiated by the Parties:

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National

Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

No MPRE recommended. Reason:

- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:**

**ATTACHMENT TO**

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

IN THE MATTER OF:                         STEPHEN ARTHUR HARVEY

CASE NUMBER:                             13-O-10717

**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. 13-O-10717 (Complainant: Christa K. McKimmy)

**FACTS:**

1. As of July 3, 2012, Respondent was enrolled inactive and not entitled to practice law due to his failure to comply with MCLE requirements. Soon after Respondent was enrolled inactive, Respondent was aware that he was enrolled inactive and not entitled to practice law.
2. While Respondent was not entitled to practice law, Respondent held himself out as entitled to practice law and actually practiced law, by appearing in court, in a pro bono capacity, on behalf of and representing Thomas Patrick O'Rourke, Sr. in the matter entitled *People v. O'Rourke*, Humboldt County Superior Court, case no. CR1202455 ("O'Rourke Matter"), as follows: (1) on July 11, 2012, for an arraignment hearing; (2) on September 5, 2012, for an arraignment hearing; (3) on December 5, 2012, for a pretrial conference; (4) on January 16, 2013, for a joinder motion hearing, and; (4) on January 28, 2013, for a trial confirmation, joinder motion and review hearing.
3. While Respondent was not entitled to practice law, Respondent held himself out as entitled to practice law and actually practiced law, when Respondent appeared in court, in a pro bono capacity, on behalf of and representing Edward Dale Pratt in the matter entitled *People v. Pratt*, Humboldt County Superior Court, case no. CR1202858 ("Pratt Matter"), as follows: (1) on August 13, 2012, for a bail hearing; (2) on November 7, 2012, for an arraignment, and; (3) on January 2, 2013, for a pretrial conference.

**CONCLUSIONS OF LAW:**

4. By appearing in court and practicing law in the O'Rourke Matter on July 11, September 5, and December 5, 2012, and again on January 16 and January 28, 2013, and by appearing in court and practicing law in the Pratt Matter on August 13 and November 7, 2012, and again on January 2, 2013, Respondent held himself out as entitled to practice law and actually practiced law when Respondent was not an active member of the State Bar in wilful violation of Business and Professions Code, sections 6125 and 6126, thereby failing to support the laws of the State of California, in wilful violation of Business and Professions Code, section 6068(a).
5. By holding himself out as entitled to practice law and actually practicing law when Respondent knew, or was grossly negligent in not knowing, Respondent was not an active member of

the State Bar, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

#### **FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.**

**Harm (Std. 1.2(b)(iv)):** Respondent's multiple court appearances while he was not entitled to practice law caused significant harm to the administration of justice.

**Multiple Acts of Misconduct (Std. 1.2(b)(ii)):** Respondent's multiple appearances in court while not entitled to practice law constitute multiple acts of misconduct.

#### **FACTS SUPPORTING MITIGATING CIRCUMSTANCES.**

**No Prior Discipline (Std. 1.2(e)(i)):** Although Respondent's misconduct is serious, he is entitled to mitigation for 41 years of discipline-free practice. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

**Prefiling Stipulation:** Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to the filing of a Notice of Disciplinary Charges, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156.)

#### **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 Silvertown* (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.)

Here, Respondent admits to committing two acts of professional misconduct. 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 is Standard 2.3 which applies to Respondent's violation of Business and Professions Code, section 6106, and which provides that an act of moral turpitude "shall result in actual suspension or disbarment depending upon the extent to which



the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

Respondent unlawfully made nine court appearances over a six-month period when he was not entitled to practice law. Respondent's misconduct caused harm to the administration of justice. However, there is no evidence to suggest that either of Respondent's clients were harmed because Respondent appeared on behalf of both clients in a pro bono capacity. Notwithstanding the fact that Respondent's misconduct did not result in client harm, Respondent's misconduct is serious and directly related to the practice of law, and therefore warrants substantial actual suspension.

Respondent's misconduct is aggravated by two factors: multiple acts of misconduct and substantial harm. Based on the severity of Respondent's misconduct, these aggravating factors are only slightly offset by Respondent's lack of a prior record of discipline and entering into a pre-filing stipulation. Although 41 years of discipline-free practice warrants significant mitigation, this mitigating factor is outweighed by the dishonest nature of Respondent's misconduct and the applicable aggravating circumstances. Balancing the facts and the aggravating and mitigating factors, Respondent's misconduct warrants a six-month actual suspension under Standard 2.3.

*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896 also supports a six-month actual suspension. In *Wells*, the Review Department recommended a six-month actual suspension, with additional requirements that Wells remain on actual suspension until restitution is paid and Wells proves to the State Bar her ability and fitness to practice law. Wells engaged in the unauthorized practice of law in another jurisdiction, failed to return unearned fees, charged an illegal and unconscionable fee, failed to maintain funds in trust and committed acts of moral turpitude (unrelated to the unauthorized practice of law). The Review Department found that Wells' misconduct was aggravated by a prior record of discipline for similar misconduct.

Respondent's misconduct is similar to that in *Wells*, but less egregious because Respondent did not fail to return an unearned fee, or charge an illegal or unconscionable fee. Respondent also does not have a prior record of discipline. Based on the serious nature of Respondent's misconduct, a six-month actual suspension is appropriate, but the additional conditions of restitution and proving ability and fitness to practice law are not warranted.

Balancing all of the appropriate factors, a six-month actual suspension is consistent with the Standards and *Wells*, and achieves the purposes of discipline as 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 August 29, 2013, the prosecution costs in this matter are \$2,925.00. 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**


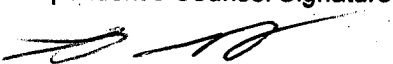
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: STEPHEN ARTHUR HARVEY	Case number(s): 13-O-10717
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**SIGNATURE OF THE PARTIES**

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

<u>Sept. 8, 2013</u> Date	<u></u> Respondent's Signature	<u>Stephen Arthur Harvey</u> Print Name
<u>9-11-13</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Heather E. Abelson</u> Print Name

(Do not write above this line.)

In the Matter of: STEPHEN ARTHUR HARVEY	Case Number(s): 13-O-10717
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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

Sept 16, 2013

  
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 September 17, 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:

STEPHEN ARTHUR HARVEY  
BRANNAN MT RD BOX 998  
WILLOW CREEK, CA 95573

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

Heather E. Abelson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 17, 2013.

  
Mauretta Cramer  
Case Administrator  
State Bar Court