



**ORIGINAL**

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| <b>State Bar Court of California<br/>Hearing Department<br/>San Francisco<br/>ACTUAL SUSPENSION</b>  |  |  |
| Counsel For The State Bar<br><br><b>Robert A. Henderson</b><br>Senior Trial Counsel<br>180 Howard St.<br>San Francisco, CA 94105<br>(415) 538-2385<br><br>Bar # 173205 | Case Number(s):<br><b>13-O-13156-LMA</b>   | For Court use only<br><br><div style="text-align: center;"><b>PUBLIC MATTER<br/>FILED</b></div> <div style="text-align: center;"><b>JUN 12 2014</b></div> <div style="text-align: center;"><b>STATE BAR COURT CLERK'S OFFICE<br/>SAN FRANCISCO</b></div> |
| In Pro Per Respondent<br><br><b>Hugh Walter Berry</b><br>P.O. Box 13085<br>Mill Creek, WA 98082<br>(323) 285-6459<br><br>Bar # 149416                                  | Submitted to: <b>Settlement Judge</b><br><br>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br>DISPOSITION AND ORDER APPROVING<br><br><b>ACTUAL SUSPENSION</b><br><br><input type="checkbox"/> PREVIOUS STIPULATION REJECTED |  |
| In the Matter of:<br><b>HUGH WALTER BERRY</b><br><br>Bar # 149416<br><br>A Member of the State Bar of California<br>(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 **December 4, 1990**.
- (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 **12** 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)



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- (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 [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
  - (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 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.

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- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment to Stipulation at p. 9.**
- (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 convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

(Effective January 1, 2014)

Actual Suspension

**Additional mitigating circumstances:**

**No Prior Discipline: See Attachment to Stipulation at p. 9.**

**Pretrial Stipulation: See Attachment to Stipulation at p. 9.**

**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:
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

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

(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **30 days**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(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:

**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 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of

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information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

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

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

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

**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.**

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- 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: Fee Arbitration Conditions of Probation: See Attachment to Stipulation at p. 11. MCLE Courses: See Attachment to Stipulation at p. 11.**

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

IN THE MATTER OF:                    HUGH WALTER BERRY  
CASE NUMBER:                        13-O-13156-LMA

**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-13156 (Complainant: Robert Chernochan)

FACTS:

1. At all times relevant herein, respondent was a member of the State Bar of California, and the State Bar of Washington. Respondent resides and practices law predominantly in Washington state.
2. From January 27, 2011, through October 8, 2012, respondent was on voluntary inactive status in California.
3. On October 9, 2012, respondent re-activated his membership in the State Bar of California.
4. On October 11, 2012, Robert Chernochan ("Chernochan") hired respondent for representation in Tehama County Superior Court, case no. NCR85064, *People v. Chernochan* ("*Chernochan matter*").
5. On October 15, 2012, Chernochan and respondent entered into a written retainer agreement. The agreement specified that respondent would represent Chernochan as follows: "Arraignment, Bail Hearing and all pretrial matters up to but NOT including Trial."
6. In total, respondent received approximately \$38,000 in advanced fees in the *Chernochan matter*.
7. On December 3, 2012, at a hearing in the *Chernochan matter*, respondent requested that the matter be continued into late February 2013. The court continued the *Chernochan matter* to February 25, 2013. Respondent was aware of the February 25, 2013, court date.
8. On January 22, 2013, Chernochan sent a letter to respondent terminating respondent's legal services. Respondent received the letter, but did not send Chernochan a substitution of counsel or make any attempt to withdraw as counsel of record in the *Chernochan matter*.
9. On February 1, 2013, respondent inactivated his California license. As of that date, respondent was not entitled to practice law in California, nor was he permitted to hold himself out as entitled to practice law in California. From February 1, 2013, to March 11, 2013, respondent remained counsel of

record in the *Chernochnan* matter. At no time did respondent inform Chernochnan, opposing counsel or the court that he had inactivated his California license and was not entitled to practice law in California.

10. On February 8, 2013, the assigned deputy district attorney e-mailed respondent regarding discovery issues in the *Chernochnan* matter. Respondent received the e-mail. On February 20, 2013, respondent replied to the February 8, 2013, e-mail and addressed substantive issues in the *Chernochnan* matter, including: forfeiture issues, calendar issues and the possibility of respondent being substituted out of the case. Respondent did not inform the deputy district attorney that he was not entitled to practice law in California.

11. On February 25, 2013, at the hearing in the *Chernochnan* matter set on December 3, 2012, respondent sent another attorney to make the appearance. Respondent did not tell the attorney making the appearance that respondent was not entitled to practice law in California. At the hearing, the attorney making the appearance informed the court that respondent would be substituting out of the case. The court continued the matter to March 11, 2013. Respondent was aware of the March 11, 2013, court date.

12. On March 11, 2013, at the hearing in the *Chernochnan* matter, respondent made a general appearance and requested permission to withdraw as counsel of record. Also at the hearing, respondent stated that he had provided discovery to successor counsel. At no time did respondent inform the court, the deputy district attorney, successor counsel or Chernochnan that he was not entitled to practice law in California. At the hearing, the court allowed respondent to withdraw from the case and permitted successor counsel to substitute into the case, without a formal substitution.

13. As of March 11, 2013, respondent no longer represented Chernochnan. As of March 11, 2013, respondent had not completed the services for which he was retained.

14. On April 10, 2013, successor counsel to Chernochnan wrote respondent a letter requesting the client file. Respondent received the letter, but did not provide the file. On April 16, 2013, successor counsel to Chernochnan wrote respondent a letter requesting the client file. Respondent received the letter, but did not provide the file.

15. On April 23, 2013, successor counsel to Chernochnan wrote respondent a letter requesting a refund of \$30,000. Respondent received the request, but did not refund any money.

16. Respondent never provided successor counsel the *Chernochnan* client file.

17. Respondent never provided an accounting to Chernochnan for the \$38,000 in advanced fees received.

#### CONCLUSIONS OF LAW:

18. By responding to the deputy district attorney's e-mail on February 20, 2013, and by appearing at a hearing in the *Chernochnan* matter on March 11, 2013, when respondent was not entitled to practice law in California, respondent held himself out as entitled to practice law and actually practiced law in violation of Business and Professions Code sections 6125 and 6126, and thereby wilfully violated Business and Professions Code, section 6068(a).

19. By responding to the deputy district attorney's e-mail on February 20, 2013, by appearing at a hearing in the *Chernochnan* matter on March 11, 2013, and by concealing his inactive status from



Chernochan, the court, opposing counsel and the appearance attorney, when respondent knew he was not entitled to practice law in California, respondent intentionally misrepresented his ability to practice law in California and thereby committed an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

20. By failing to render an appropriate accounting to Chernochan after respondent's termination from employment on March 11, 2013, respondent wilfully violated the Rules of Professional Conduct, rule 4-100(B)(3).

21. By failing to provide the client file to successor counsel for Chernochan, after respondent's termination from employment on March 11, 2013, respondent failed to promptly release to the client upon termination, the client papers and property, in wilful violation of the Rules of Professional Conduct, rule 3-700(D)(1).

### **AGGRAVATING CIRCUMSTANCES.**

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent committed four acts of misconduct in this matter, which represent multiple acts of misconduct.

### **MITIGATING CIRCUMSTANCES.**

**No Prior Discipline:** At the time of the misconduct, respondent had actively practiced law in California and Washington for 22 years total, without a prior record of discipline. (See *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88.) Although respondent's misconduct is serious, his 22 years of discipline-free practice is a mitigating circumstance. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [where mitigative credit given for discipline-free practice despite serious misconduct].)

**Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving 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].)

### **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 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.) 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).)

In this matter, respondent admits to committing four acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The sanction most directly applicable to respondent’s conduct is Standard 2.6(b), which applies to respondent’s knowing unauthorized practice of law, and provides: “Suspension or reproof is appropriate when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on inactive status or actual suspension for non-disciplinary reasons, such as non-payment of fees or MCLE non-compliance. The degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law.” However, the most severe sanction applicable to respondent’s misconduct is found in Standard 2.7, which applies to respondent’s practice of law at a time when he knew he was not entitled to practice, in violation of Business and Professions Code section 6106. Standard 2.7 provides that: “Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member’s practice of law.” Here, respondent while on voluntary inactive status, knowingly engaged in the unauthorized practice of law, which is a dishonest act directly related to respondent’s practice of law. Therefore, under Standard 2.6(b) a suspension is warranted, but under Standard 2.7, the most severe sanction applicable, an actual suspension is required. Here, utilizing the reasoning found in both Standard 2.7 and Standard 2.6(b), respondent should receive an actual suspension. Respondent knowingly engaged in the unauthorized practice of law, which is a dishonest act, but the misconduct did not harm the client or the administration of justice, and was relatively isolated in time. Also, the single aggravating factor of multiple acts of misconduct, is outweighed by the mitigating factors of many years in practice with no prior discipline and respondent’s willingness to admit his misconduct by entering into this pretrial stipulation. On balance, imposing a 30-day actual suspension, is appropriate.

Respondent’s matter is factually similar to *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585. In *Johnston* the attorney practiced law while on suspension for non-payment of State Bar dues. *Johnston* involved additional acts of moral turpitude, including affirmative misrepresentations to the client regarding the status of her claim, the failure to communicate with the client, actual harm to the client, and a failure to cooperate in the State Bar investigation. The court imposed a 60-day actual suspension.

Respondent's misconduct is not as extensive as that found in *Johnston* and that the harm caused by the misconduct is less. On balance a 30-day actual suspension would serve the purposes of attorney discipline.

**FEE ARBITRATION CONDITIONS OF PROBATION:**

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

Respondent must initiate fee arbitration within thirty (30) days from the effective date of this matter, including making any payment(s) and filing fees required by the organization conducting the fee arbitration to start the process. The fee arbitration will be for the \$38,000 in fees that Robert Chernochan paid Respondent between October 11, 2012, and March 11, 2013. Respondent must not request more fees than have already been paid by, or on behalf of, Robert Chernochan.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 15, 2014, the prosecution costs in this matter are \$3,700. 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.

**MCLE COURSES /EXCLUSION FROM MCLE CREDIT**

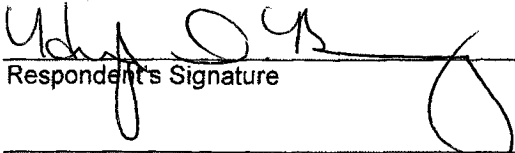
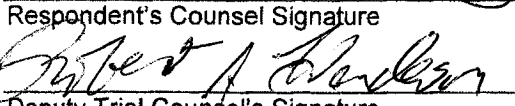
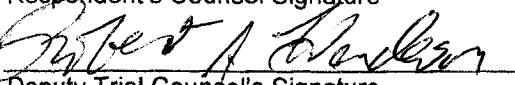
Within one (1) year of the effective date of discipline herein, respondent must provide the Office of Probation satisfactory proof of participation for six (6) hours of MCLE course in legal ethics. Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of the ethics courses required as a condition of probation. (Rules Proc. of State Bar, rule 3201.)

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| In the Matter of:<br>HUGH WALTER BERRY | Case number(s):<br>13-O-13156-LMA |
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**SIGNATURE OF THE PARTIES**

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

|                                   |  |  |
|-----------------------------------|--|--|
| <u>5-20-14</u><br>Date            | <u></u><br>Respondent's Signature           | <u>Hugh Walter Berry</u><br>Print Name   |
| <u><del>5/22/14</del></u><br>Date | <u></u><br>Respondent's Counsel Signature   | <u>Print Name</u>                        |
| <u>5/22/14</u><br>Date            | <u></u><br>Deputy Trial Counsel's Signature | <u>Robert A. Henderson</u><br>Print Name |

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| In the Matter of:<br>HUGH WALTER BERRY | Case Number(s):<br>13-O-13156-LMA |
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### ACTUAL SUSPENSION ORDER

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 11 of the stipulation, under the heading "Fee Arbitration Conditions of Probation," the first line of the paragraph is MODIFIED to read as follows: "Respondent must initiate and participate in fee arbitration in the State of California (see Bus. & Prof. Code, § 5200, et seq.) within 30 days after the effective date of the Supreme Court's order in this matter...."

On page 11 of the stipulation, under the heading "Fee Arbitration Conditions of Probation," the following sentence is ADDED and the end of the paragraph: "In addition, respondent must not request fees for any services performed for Chernochan before October 9, 2012, or after January 31, 2013.

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

June 12, 2014

  
PAT E. McELROY  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on June 12, 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:

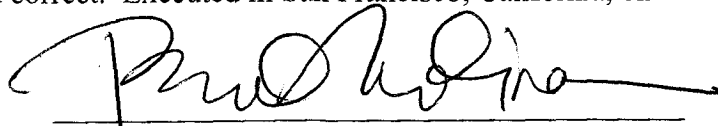
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

HUGH W. BERRY  
HWB - ESQ., PLLC  
PO BOX 13085  
MILL CREEK, WA 98082

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

ROBERT A. HENDERSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 12, 2014.



Bernadette C.O. Molina  
Case Administrator  
State Bar Court