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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

ORIGINAL

<p>Counsel For The State Bar</p> <p>Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182</p> <p>Bar # 281574</p>	<p>Case Number(s): 13-O-16105, 14-C-03996, 15-O-10613-DFM</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED JUN 28 2016 <i>R</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Donald William McVay Rancho Santa Fe Law Group, APC P.O. Box 103 Rancho Santa Fe, CA 92067 (858) 945-4556</p> <p>Bar # 103882</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: DONALD WILLIAM MCVAY</p> <p>Bar # 103882</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>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 **July 21, 1982**.
- (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 **16** 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."

(Effective July 1, 2015)



Actual Suspension

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- (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: **three billing cycles following the effective date of the Supreme Court order in this matter.** (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(h) & 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) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See attachment, page 12-13.**
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 12.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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

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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.

Additional mitigating circumstances:

No Prior Discipline, see attachment, page 13.
Pretrial Stipulation, see attachment, page 13.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 **one year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

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- 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 present 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 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: .

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- (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: **March 25, 2015.**
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DONALD WILLIAM MCVAY
CASE NUMBERS: 13-O-16105, 14-C-03996, 15-O-10613-DFM

FACTS AND CONCLUSIONS OF LAW.

Case No. 14-C-03996 (Conviction Proceedings)

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved moral turpitude.

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On July 10, 2014, the San Diego County District Attorney filed a criminal complaint in the San Diego County Superior Court, case number CD257123, charging respondent with one count of a violating Business and Professions Code section 6126(b) [unauthorized practice of law], a felony.

3. On December 17, 2014, respondent pled guilty to one count of violating Business and Professions Code section 6126(b).

4. On April 17, 2015, respondent's payment of restitution resulted in the felony charge being reduced to a misdemeanor prior to sentencing and finality of conviction. The court then entered respondent's guilty plea. Imposition of sentence was suspended for three years pending successful completion of summary probation. Among other conditions of probation, respondent was ordered to commit to the Sheriff's custody for four days, pay court fines, participate in a cognitive behavioral therapy counseling program, and stay away from the victim

5. On August 25, 2015, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the misdemeanor offense for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

6. In June of 2011, Fath employed respondent, pursuant to an oral agreement, to summarize a civil matter entitled *Thomas M. Fath, et al. v. Chief Denney, et al.*, case no. 37-2011-00084520-CU-FR-CTL, already pending in the San Diego County Superior Court for \$1,200, and to serve the defendants for an additional \$600.

7. On July 20, 2011, the Supreme Court issued an order in Supreme Court case number S195128, suspending respondent from the practice of law for noncompliance with Child and Family Support, effective August 19, 2011. Respondent remained suspended until June 26, 2012.

8. On August 26, 2011, the court dismissed the civil matter, without prejudice due to the plaintiff's failure to serve the defendants. Respondent had not appeared in the civil matter and was not counsel of record for Fath at the time when the civil matter was dismissed.

9. On October 7, 2011, respondent sent an email to Fath informing Fath "that the court had dismissed your file as no service of process was completed. This occurred late last year." Respondent also advised Fath that he could re-file the civil matter but that respondent would charge an hourly rate to take the case.

10. In November 2011, pursuant to an oral agreement, respondent and Fath agreed that respondent would refile Fath's case for a \$510 filing fee and monthly payments of \$1,750 for attorney fees.

11. On November 28, 2011, Fath sent respondent a check for \$510 for filing fees. Respondent received the check.

12. On December 9, 2011, in regard to the civil matter, respondent sent Fath an email asking him for a timeline regarding the banks that were seeking a deficiency against Fath and identification of the banks that needed to be added as defendants. Fath received the email.

13. On January 6, 2012, in regard to the civil matter, respondent sent Fath an email requesting additional financial information and informing Fath that they needed to join all the parties, and commence discovery as to the defendants. Fath received the email.

14. On January 11, 2012, respondent sent Fath an email requesting that Fath mail respondent the monthly payment of \$1,750 early because he was "anxious to put this in high gear." Fath received the email.

15. In April 2012, respondent hired Villaroman, an independent contract paralegal, to summarize Fath's case and research issues relating to the dismissal of Fath's case. On April 2, 2012, respondent then sent Fath an email explaining that his firm was researching a few issues and would have further information in the following week. Fath received the email. Fath received the email.

16. On May 16, 2012, Villaroman provided a memo regarding *Thomas M. Fath, et al. v. Chief Denney, et al.*, the civil matter to respondent. On the same day, respondent spoke with Villaroman regarding revisions. Later that same day, Villaroman provided a revised memo to respondent.

17. On May 20, 2012, respondent sent an email to Fath, which enclosed Villaroman's revised final memo regarding *Thomas M. Fath, et al. v. Chief Denney, et al.*

18. On June 1, 2012, respondent emailed Fath requesting the June payment and stating that he would begin working on the case on "Monday."

19. On June 26, 2012, the Supreme Court issued an order in Supreme Court case number S195128, terminating respondent's suspension, which had previously been imposed for Child and

Family Support noncompliance ended. Pursuant to the Supreme Court order, respondent became entitled to practice law that same day.

20. Between June 20, 2011 and July 2, 2012, Fath paid respondent \$15,760 in attorney fees.

21. In August 2013, Fath complained to the State Bar, and an investigation took place.

22. By April 17, 2015, respondent made restitution to Fath by refunding all the attorney fees that Fath had paid totaling \$15,760, which included the \$11,010 in attorney fees charged and collected by respondent from Fath when respondent was not entitled to practice law and the \$510 filing fee.

CONCLUSIONS OF LAW:

23. The facts and circumstances surrounding the above-described criminal conviction involved moral turpitude.

Case No. 13-O-16109 (Thomas M. Fath)

FACTS:

24. In June of 2011, Fath employed respondent, pursuant to an oral agreement, to summarize a civil matter entitled *Thomas M. Fath, et al. v. Chief Denney, et al.*, case no. 37-2011-00084520-CU-FR-CTL, already pending in the San Diego County Superior Court for \$1,200, and to serve the defendants for an additional \$600.

25. On July 20, 2011, the Supreme Court issued an order in Supreme Court case number S195128, suspending respondent from the practice of law for noncompliance with Child and Family Support, effective August 19, 2011. Respondent remained suspended until June 26, 2012.

26. On August 26, 2011, the court dismissed the civil matter, without prejudice due to the plaintiff's failure to serve the defendants. Respondent had not appeared in the civil matter and was not counsel of record for Fath at the time when the civil matter was dismissed.

27. On October 7, 2011, respondent sent an email to Fath informing Fath "that the court had dismissed your file as no service of process was completed. This occurred late last year." Respondent also advised Fath that he could re-file the civil matter but that respondent would charge an hourly rate to take the case.

28. In November 2011, pursuant to an oral agreement, respondent and Fath agreed that respondent would refile Fath's case for a \$510 filing fee and monthly payments of \$1,750 for attorney fees.

29. On November 28, 2011, Fath sent respondent a check for \$510 for filing fees. Respondent received the check.

30. On December 9, 2011, in regard to the civil matter, respondent sent Fath an email asking him for a timeline regarding the banks that were seeking a deficiency against Fath and identification of the banks that needed to be added as defendants. Fath received the email.

31. On January 6, 2012, in regard to the civil matter, respondent sent Fath an email requesting additional financial information and informing Fath that they needed to join all the parties, and commence discovery as to the defendants. Fath received the email.

32. On January 11, 2012, respondent sent Fath an email requesting that Fath mail respondent the monthly payment of \$1,750 early because he was "anxious to put this in high gear." Fath received the email.

33. In April 2012, respondent hired Villaroman, an independent contract paralegal, to summarize Fath's case and research issues relating to the dismissal of Fath's case. On April 2, 2012, respondent then sent Fath an email explaining that his firm was researching a few issues and would have further information in the following week. Fath received the email. Fath received the email.

34. On May 16, 2012, Villaroman provided a memo regarding *Thomas M. Fath, et al. v. Chief Denney, et al.*, the civil matter to respondent. On the same day, respondent spoke with Villaroman regarding revisions. Later that same day, Villaroman provided a revised memo to respondent.

35. On May 20, 2012, respondent sent an email to Fath, which enclosed Villaroman's revised final memo regarding *Thomas M. Fath, et al. v. Chief Denney, et al.*

36. On June 1, 2012, respondent emailed Fath requesting the June payment and stating that he would begin working on the case on "Monday."

37. On June 26, 2012, the Supreme Court issued an order in Supreme Court case number S195128, terminating respondent's suspension, which had previously been imposed for Child and Family Support noncompliance ended. Pursuant to the Supreme Court order, respondent became entitled to practice law that same day.

38. Between June 20, 2011 and July 2, 2012, Fath paid respondent \$15,760 in attorney fees.

39. In August 2013, Fath complained to the State Bar, and an investigation took place.

40. By April 17, 2015, respondent made restitution to Fath by refunding all the attorney fees that Fath had paid totaling \$15,760, which included the \$11,010 in attorney fees charged and collected by respondent from Fath when respondent was not entitled to practice law and the \$510 filing fee.

CONCLUSIONS OF LAW:

41. By entering into an agreement for, charging and collecting fees from Fath, a client, from November 15, 2011 through June 26, 2012, totaling \$11,010 to perform legal services while respondent was suspended and not entitled to practice law, respondent received illegal fees in willful violation of Rules of Professional Conduct, rule 4-200(A).

Case No. 15-O-10613 (State Bar Investigation)

FACTS:

42. On June 25, 2014, the Supreme Court issued an order in Supreme Court case number S195128, suspending respondent from the practice of law for noncompliance with Child and Family Support, effective July 29, 2014. Respondent remained suspended until February 6, 2015.

43. On July 29, 2014, the Member Service Center of the State Bar sent respondent a copy of the suspension order and detailed what respondent must do to effect reinstatement. Respondent was informed that the State Bar must receive his signed declaration stating whether he practiced law during the period of suspension and a release from the appropriate local Child Support agency, which would be forwarded to the California Supreme Court. Respondent was further informed that he would only be reinstated if the State Bar received respondent's signed declaration and a Supreme Court order terminating respondent's suspension. Respondent received the letter.

44. Nevertheless, and in spite of these instructions, respondent sought relief from his license suspension in the superior court hearing his child support issue. Actions by superior courts, however, would have no effect on actually lifting respondent's license suspension, other than informing the Supreme Court that the reasons for respondent's suspension no longer existed.

45. On January 28, 2015, the Department of Child Support Services release its hold on respondent's law license. Respondent remained not entitled to practice until an order was issued by the California Supreme Court terminating the suspension.

46. On January 28, 2015, Mark Feinberg ("Feinberg"), attorney for Golden Property Management and Gay Davidson ("Davidson"), owner of 1380 Garnet Street, emailed Derek Hopkins, owner of Reef Dreams, also known as SD Jet Ski, with a 60-day notice of termination of tenancy.

47. On February 2, 2015, on behalf of Reef Dreams, a letter signed by respondent and addressed to Davidson, dated February 2, 2015, was emailed to Feinberg. The letter contained a statement of facts, laws, and issues, and made a demand. Respondent signed the letter as the attorney for SD Jet Ski, parent company to Reef Dreams. Feinberg received the email.

48. On February 6, 2015, the California Supreme Court issued an order in case number S195128, terminating the suspension of respondent's law license.

49. On February 9, 2015, respondent spoke with Omar Easley ("Easley") at Membership Services by telephone, who informed respondent that Easley needed a signed declaration from respondent stating whether or not he had practiced law during the period of suspension for non-payment of child support.

50. On February 9, 2015, respondent submitted a declaration under the penalty of perjury to Membership Services stating that he had not practice law during the period of suspension from July 29, 2014 to February 6, 2015.

51. On February 13, 2015, and March 4, 2015, Feinberg sent letters to respondent informing respondent that his office was representing Davidson and the manager of the property, and that all communication that related to the property should be directed to Feinberg. Respondent received the letters.

52. On March 10, 2015, respondent sent an email from donaldfmcvay@gmail.com, to Erica Crossland ("Crossland"), office manager of Golden Property Management, giving notice that respondent was filing a restraining order. The email from respondent was forwarded to Feinberg by Crossland. That same day, Feinberg emailed respondent stating that Feinberg had twice written to respondent regarding his representation of Golden Property Management and Davidson. Respondent received the

email. That same day, respondent responded and communicated with Feinberg via email, during which respondent did not deny sending an email to Crossland. At no time prior to March 10, 2015 did Feinberg give respondent consent to communicate with his client, Reef Dreams.

53. From February 13, 2015 to March 10, 2015, respondent received three written notifications from Feinberg, both by letter and email, advising respondent that Feinberg represented Davidson and Golden Property Management.

54. Without the consent of Feinberg, on March 11, 2015, respondent faxed Kathy O'Hara Christmas ("Christmas"), owner of Golden Property Management, a letter to cease and desist harassment of Reef Dreams. Christmas received the fax.

CONCLUSIONS OF LAW:

55. By communicating with Golden Property Management via fax and email, specifically Crossland and Christmas, on March 10, 2015 and March 11, 2015, a party whom respondent knew was represented by another lawyer in the same matter in which respondent represented SD Jet Ski, parent company to Reef Dreams, about the subject of respondent's representation without the consent of Golden Property Management's lawyer, respondent communicated with a represented party in willful violation of Rules of Professional Conduct, rule 2-100(A).

56. By holding himself out as entitled to practice law and actually practicing law on February 2, 2015 by drafting and mailing a demand to dismiss a 60-day notice to vacate on behalf of respondent's client, when respondent was not an active member of the State Bar, respondent violated Business and Professions Code sections 6125 and 6126, which prohibited the unauthorized practice of law, and failed to comply with laws in willful violation of Business and Professions Code section 6068(a).

57. By holding himself out as entitled to practice law and actually practicing law on February 2, 2015, by drafting and mailing a demand to dismiss a 60-day notice to vacate on behalf of respondent's client, when respondent knew, or was grossly negligent in not knowing, that 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.

58. By stating to the State Bar Office of Member Services on February 9, 2015, under penalty of perjury, that respondent had not practiced law at any time during the period of suspension beginning July 29, 2014 and ending February 6, 2015, when respondent knew the statement was false and knew that he had held himself out as being entitled to practice law, and did practice law, when he was not entitled to do so, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Between August 2011 and June 2012, respondent held himself out as entitled to practice law and engaged in the unauthorized practice of law when he was not entitled to do so in two client matters, received illegal fees, communicated with a represented party on two occasions and made a misrepresentation to the State Bar.

Indifference (Std. 1.5(k)): On July 10, 2014, respondent was criminally charged with a violation of Business and Professions Code section 6126(b) [unlawful practice, advertising, or holding

out of law]. Despite the criminal charge, respondent, again, engaged in the unauthorized practice of law on February 2, 2015, when he signed and sent a letter to an opposing party, demonstrating indifference.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to the practice of law on July 21, 1982. Prior to the misconduct, respondent had been a member of the State Bar for 29 years without a record of discipline, which is entitled to significant mitigation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; see *Friedman v. State Bar* (1990) 50 Cal.3d 235, 242 [20 years in the practice of law without discipline is afforded significant weight in mitigation].)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into this stipulation prior to trial, thereby saving State Bar 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].) Respondent has also acknowledged his misconduct by entering into this pretrial stipulation.

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).)

Under Standard 1.7(a), “If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” Standards 2.11 and 2.15(c) impose the most severe sanctions. Standard 2.11 states “[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct/the extent to which the misconduct harmed or misled the victim, which

may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law." Likewise, Standard 2.15(c) provides for disbarment or actual suspension "for final conviction of a misdemeanor involving moral turpitude." (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110 [a criminal conviction is conclusive proof that a member committed all acts necessary to constitute the offense for which the member was convicted].)

Standard 2.15(c) states, "Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude." The facts and circumstances surrounding respondent's criminal conviction matter involved moral turpitude. Respondent held himself out as entitled to practice to his clients, Fath, and actually practiced law, misrepresenting his status as an attorney to his client and his paralegal. Respondent continually deceived his client, Fath, from August 2011 to June 2012 and, in doing so, received a total of \$15,760 in illegal fees from his client. Respondent also misrepresented his status as an attorney to Golden Property Management by representing that he was the attorney for Reef Dreams. Respondent's misconduct of knowingly engaging in the unauthorized practice of law and misrepresentation to the State Bar constitute acts of moral turpitude. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [failing to disclose suspension from the practice of law on a job application for attorney positions and a position as an arbitrator constituted an act of moral turpitude]; *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 155 [falsely attesting under penalty of perjury found to constitute a wilful violation of Business and Professions Code section 6106, even where the false attestation was not found to be an act of intentional dishonesty, but rather was an act of gross negligence].)

Standard 2.11 provides for consideration of the impact of the administration of justice and extent to which the misconduct involving moral turpitude related to the member's practice of law. The impact on the administration of justice of respondent's unauthorized practice of law and misrepresentation to the State Bar in case 15-O-10613 is great. Harm to the administration of justice is inherent in the unauthorized practice of law. (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 240.) Respondent's misrepresentation to the State Bar involved actual harm to the administration of justice as the State Bar had to incur additional costs to fully investigate respondent's misconduct to verify whether respondent's statements were true. Finally, respondent's misconduct was directly related to the practice of law since he was engaging in the unauthorized practice of law and representing a client.

In aggravation, respondent engaged in multiple acts of misconduct, including the unauthorized practice of law in two matters and indifference. In mitigation, respondent had 29 years of discipline-free practice prior to the misconduct, which is compelling mitigation, and he has entered into a pretrial stipulation. On balance, respondent's misconduct along with the aggravating and mitigating circumstances call for a significant period of actual suspension, which is consistent with Standard 2.11. Accordingly, a two-year stayed suspension and a two-year probation with conditions including a one-year actual suspension is the appropriate level of discipline.

This level of discipline is consistent with case law. *In the Matter of Wells*, Stephine Wells, a California attorney, moved to South Carolina and began practicing law without being admitted to practice in that state. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 899.) Wells was found culpable of two counts of the unauthorized practice of law, two counts of collecting an illegal fee, two counts of failing to refund unearned fees, failing to maintain a client trust account and two offenses of moral turpitude. In mitigation, the Review Department found that Wells informed clients she was a California attorney, associated with local counsel, and provided evidence of good character. In aggravation, the Review Department found multiple acts of wrongdoing, a prior record of discipline (a

private reproof), and interference with the State Bar investigation. Wells received a two-year stayed suspension and two-year probation including a six-month actual suspension.

Respondent's conduct is more severe than the misconduct in *Wells*. Similar to Wells, respondent undertook the representation of a client while being ineligible to practice law, collected illegal fees pursuant to that arrangement, failed to maintain client funds in trust and engaged in acts involving moral turpitude. Respondent later refunded all of the illegal fees. Unlike Wells, respondent is not culpable of failing to refund unearned fees. However, in a second matter, respondent represented a client while ineligible to practice law despite having already been criminally charged with a felony for similar misconduct, which demonstrates severe indifference. Respondent then proceeded to communicate with represented parties and later made a misrepresentation to the State Bar. Although Wells had a prior record of discipline, she informed her clients that she was not authorized to practice law and demonstrated good character. Unlike Wells, respondent has 29 years of discipline-free practice, but also has significant aggravation.

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>
13-O-16105	One	Business and Professions Code section 6068(a)
13-O-16105	Two	Business and Professions Code section 6106
13-O-16105	Four	Rules of Professional Conduct, rule 4-100(A)
13-O-16105	Five	Rules of Professional Conduct, rule 3-700(D)(1)
13-O-16105	Six	Rules of Professional Conduct, rule 3-700(D)(2)
13-O-16105	Seven	Rules of Professional Conduct, rule 4-100(B)(3)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of June 22, 2016, the prosecution costs in this matter are \$10,419.18. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

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

(Do not write above this line.)

In the Matter of: DONALD WILLIAM MCVAY	Case number(s): 13-O-16105, 14-C-03996, 15-O-10613-DFM
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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.

6/26/16  Donald William McVay
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name

6/27/16  Jamie Kim
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: DONALD WILLIAM MCVAY	Case Number(s): 13-O-16105, 14-C-03996, 15-O-10613-DFM
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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.

Page 6, Paragraph F(4): The words "March 25, 2015" is amended to read: "Beginning March 25, 2015 and ending August 25, 2015."

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.)**

6/28/16
Date


DONALD F. MILES
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 Los Angeles, on June 28, 2016, 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:

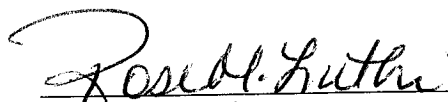
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DONALD WILLIAM MCVAY
RANCHO SANTA FE LAW GROUP, APC
PO BOX 103
RANCHO SANTA FE, CA 92067

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

JAMIE KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 28, 2016.



Rose M. Luthi
Case Administrator
State Bar Court