



ORIGINAL

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State Bar Court of California Hearing Department San Francisco DISBARMENT		
<p>Counsel For The State Bar</p> <p>Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2357</p> <p>Bar # 243691</p>	<p>Case Number(s): 14-C-00072-PEM</p>	<p>For Court use only</p> <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED</p> <p style="text-align: center;">AUG 08 2014 </p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Robert J. Fry 195 Casazza Drive Reno, NV 89502 (702) 329-8646</p> <p>Bar # 85791</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: ROBERT J. FRY</p> <p>Bar # 85791</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 **May 31, 1979**.
- (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 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.
- (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):
- Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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. **See Attachment to Stipulation at p. 7.**
- (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.
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

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Additional mitigating circumstances:

No Prior Discipline - See Attachment at p. 8.

Pre-filing Stipulation - See Attachment to Stipulation at p. 8.

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D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.
- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ROBERT J. FRY

CASE NUMBER: 14-C-00072-PEM

FACTS AND CONCLUSIONS OF LAW.

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.

Case No. 14-C-00072-PEM (Conviction Proceedings)

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 May 30, 2012, the United States Attorney's Office for Nevada filed an indictment in the United States District Court District of Nevada, case no. 3:12-cr-00053-LRH-WGC, charging respondent with one count of violation of 18 U.S.C. section 371 [Conspiracy], a felony, one count of violation of 8 U.S.C. section 1324(a)(1)(A)(iv) [Harboring an Alien], a felony, one count of violation of 8 U.S.C. 1325(c) [Marriage Fraud], a felony, one count of violation of 18 U.S.C. section 1343 [Wire Fraud], a felony, and one count of violation of 18 U.S.C. section 2 [Aiding and Abetting], a felony.

3. On December 17, 2013, the court entered respondent's plea of guilty to the count of violation of 18 U.S.C. section 1324(a)(1)(A)(iv) [Harboring an Alien], a felony, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining counts in the furtherance of justice.

4. On December 17, 2013, the court sentenced respondent to three years of probation. The court also ordered respondent to, amongst other things, complete 100 hours of community service, and pay fines and fees totaling \$3,100.

5. On April 10, 2014, 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 offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

6. On August 14, 1986, the Department of Veterans Affairs rated Robert Ramirez ("Ramirez") incompetent to handle his own financial affairs.

7. In September 1986, the Department of Veterans Affairs assigned respondent to be Ramirez's fiduciary with respect to Ramirez's benefits as a disabled veteran and other financial affairs.

8. On September 15, 2003, Nelia Espiritu Bayani ("Bayani"), a citizen of the Philippines, entered the United States on a visitor's visa. The visitor's visa required that she depart the United States by March 14, 2004. Bayani overstayed her visa.

9. On December 30, 2004, the Department of Veterans Affairs replaced respondent as the fiduciary, but respondent continued to be Ramirez's payee for social security money, as well as his friend.

10. Sometime prior to September 2006, Bayani and respondent became friends, and respondent became aware that Bayani had overstayed her visa.

11. Thereafter, respondent encouraged Bayani to continue to reside in the United States, in reckless disregard that Bayani's residence in the United States was in violation of the law.

12. In October 2006, notwithstanding the fact that respondent was aware that Bayani had overstayed her visa, respondent leased, and paid for, an apartment for Bayani at the Sierra Woods Apartments in Sparks, Nevada. Respondent leased this apartment for Bayani until September 30, 2009.

13. At some point between 2006 and 2009, respondent and Bayani became romantically involved, notwithstanding the fact that respondent was married at the time.

14. On September 2, 2008, Ramirez married Bayani, with the assistance of respondent, at least in part to allow Bayani to obtain permanent resident status.

15. On March 23, 2010, Bayani was granted conditional permanent residency.

16. Beginning in 2010, the Department of Homeland Security and the Department of Veterans Affairs investigated whether Bayani and Ramirez's marriage was a sham marriage. Thereafter, Homeland Security presented a case for prosecution to the United States Attorney's Office in April 2012.

17. Ramirez and Bayani divorced on December 9, 2011, and Bayani and respondent continued their romantic relationship following the divorce.

18. On April 11, 2013, Bayani pled guilty to violating 8 U.S.C. section 1325(a)(2) [Avoidance of Examination or Inspection by Alien], a Class B misdemeanor.

CONCLUSIONS OF LAW:

19. The facts and circumstances surrounding the above-described violation involved moral turpitude.

AGGRAVATING CIRCUMSTANCES.

Dishonesty (Std. 1.5(d)): From October 2006 through September 30, 2009, respondent leased, and paid for, an apartment for Bayani at Sierra Woods Apartments, with full knowledge that Bayani had overstayed her visa. Respondent's act of harboring an alien constitutes intentional misconduct which is an aggravating factor pursuant to Standard 1.5(d).

ADDITIONAL MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although respondent's misconduct is serious, he is entitled to limited mitigation for having practiced law for approximately 35 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: Respondent is entitled to limited 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 Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

Here, Standard 2.11(b) applies based on respondent's felony conviction for violating 8 U.S.C. section 1324(a)(1)(A)(iv) [Harboring an Alien]. Standard 2.11(b) provides that "[d]isbarment is appropriate for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most compelling mitigating circumstances clearly predominate, in which case actual suspension of at least two years is appropriate." (See Std. 2.11(b).) "Criminal conduct not committed in the practice of law or against a client reveals moral turpitude...if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) The Supreme Court has found that harboring a fugitive, which is analogous to harboring an alien, constitutes an act of moral

turpitude. (See e.g., *In re Lawrence Rex Young* (1989) 49 Cal.3d 257, 264 [finding that assisting “a person with the specific intent to help him avoid arrest and with the knowledge that the person had committed a felony or had been charged with committing such felony” involved moral turpitude since “it requires that a party has a specific intent to impede justice with knowledge that his actions permit a fugitive of the law to remain at large.”].)

Respondent’s felony conviction for harboring an alien involves moral turpitude because respondent demonstrated a flagrant disrespect for the laws of the United States. Respondent intentionally assisted Bayani to unlawfully remain in the United States by renting, and paying for, an apartment for her, when he was aware of her illegal status, and by assisting in arranging the marriage between Bayani and Ramirez that was, at least in part, entered into for the purpose of obtaining Bayani permanent residence. And, although respondent is entitled to some mitigation for entering into a pre-trial stipulation and for having no prior record of discipline, this mitigation is substantially tempered by the serious nature of respondent’s felony conviction. Respondent’s misconduct is also aggravated by respondent’s dishonesty in harboring an illegal alien. Therefore, the most compelling mitigating circumstances do not clearly predominate.

Balancing all of the appropriate factors, disrment is consistent with Standard 2.11(b) and applicable caselaw, and is appropriate taking into consideration the facts and circumstances of this case.

COSTS OF DISCIPLINARY PROCEEDINGS.

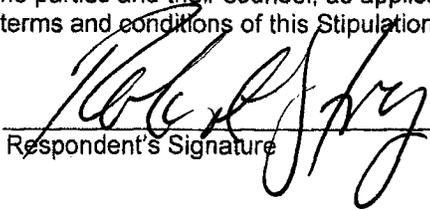
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 23, 2014, the prosecution costs in this matter are \$2,768.45. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

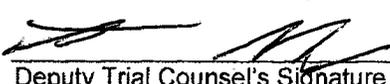
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In the Matter of: ROBERT J. FRY	Case number(s): 14-C-00072-PEM
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SIGNATURE OF THE PARTIES

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.

7/25/14  Robert J. Fry
Date Respondent's Signature Print Name

7/28/14  Heather E. Abelson
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of:
ROBERT J. FRY

Case Number(s):
14-C-00072-PEM

DISBARMENT 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:

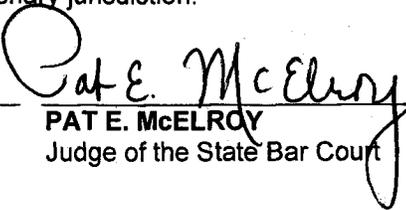
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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.)**

Respondent Robert J. Fry is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

August 8, 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 August 8, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

ROBERT J. FRY
195 CASAZZA DRIVE
RENO, NV 89502

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Heather E. Abelson, Enforcement, San Francisco

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


George Hue
Case Administrator
State Bar Court