

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Hugh G. Radigan Deputy Trial Counsel Office of the Chief Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2515 Telephone: (213) 765-1206 Bar # 94251	Case Number(s): 14-J-00582	For Court use only <div style="text-align: center;"> FILED JUL -1 2014 <i>Mc</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Diane Joan Beall 243 South Escondido Boulevard #125 Escondido, CA 92025 Telephone: (760) 807-5417 Bar # 86877	PUBLIC MATTER	
In the Matter of: DIANE JOAN BEALL Bar # 86877 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 **June 22, 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 entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** 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."

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(Effective January 1, 2014)

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.** (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.

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- (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. **See Attachment to Stipulation, at page 10.**
- (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 page 10.**
- (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.

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(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 to Stipulation, at page 10.

Profiling Stipulation - See Attachment to Stipulation, at page 10.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **two (2) years**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(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 (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 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.

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

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

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

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

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further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DIANE JOAN BEALL
CASE NUMBER: 14-J-00582

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 14-J-00582 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On January 13, 2009, Respondent was admitted to the practice law in the State of Washington.
2. On November 16, 2012, Washington State Bar Association Disciplinary Counsel filed a Formal Complaint against Respondent charging her with four counts of professional misconduct.
3. Following a default disciplinary hearing on April 26, 2013, the Hearing Officer filed a report on June 28, 2013, finding that each violation charged in the Formal Complaint was deemed admitted and established. The Hearing Officer found that Respondent had committed violations of rules 1.15A(c)(2), 1.15A(b), 1.15A(e), and 8.4(c) of the Washington Rules of Professional Conduct.
4. The matter went before the Disciplinary Board of the Washington State Bar Association ("Disciplinary Board") at its September 6, 2013 meeting on automatic de novo review of the Hearing Officer's findings and recommendation. On September 19, 2013, the Disciplinary Board ordered that the Hearing Officer's decision be adopted.
5. On November 25, 2013, the Supreme Court of Washington filed its order finding that the Disciplinary Board's order should be entered and ordering that Respondent be suspended from the practice of law for one year. Thereafter, the order of the Supreme Court of Washington became final.
6. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

7. In March 2010, Respondent was retained by April Rucker ("Rucker") to represent her in an ongoing quiet title action, which was filed in the King County Superior Court in October 2008.
8. Respondent prepared and transmitted to Rucker an "Attorney-Client Fee Contract."
9. The "Attorney-Client Fee Contract" that Respondent prepared and transmitted to Rucker provided (a) that Rucker would pay Respondent for legal services at the rate of \$300 per hour; (b) that

Rucker would pay Respondent \$6,000 in advance for legal fees and expenses; and (c) that Respondent would send Rucker monthly statements for fees and expenses incurred.

10. On March 4, 2010, Respondent emailed wire-transfer instructions to Rucker for a transfer of \$6,000. According to Respondent's instructions, the funds were to be transferred to an account at Wells Fargo Bank in the name of "Advocates Christian Ministries, Inc."

11. That account was not a trust account.

12. Rucker forwarded the instructions to Dan Nelson ("Nelson"), a lawyer in Oklahoma who was holding the funds from which the \$6,000 payment would be made.

13. On March 5, 2010, Respondent sent an email to Rucker stating, "I need to get a signed Retainer Agreement and verification of the deposit before I sub in."

14. On the same date, Nelson wired the funds as instructed by Respondent, and Rucker sent Respondent the signed "Attorney-Client Fee Contract."

15. The address that appears on the bank statements for "Advocates Christian Ministries, Inc." is the same residential address that Respondent used on her "Attorney-Client Fee Contract" and on the pleadings she filed in the quiet title action.

16. Respondent was an authorized signer on the bank account of "Advocates Christian Ministries, Inc."

17. Respondent withdrew all the funds in the bank account of "Advocates Christian Ministries, Inc." three business days after the \$6,000 wire transfer was received.

18. Before Respondent withdrew the \$6,000 that Rucker caused to be transferred to her, Respondent did not give Rucker notice of her intent to do so.

19. At the time Respondent withdrew the \$6,000, Respondent had not earned or incurred \$6,000 in fees or expenses.

20. In late March 2010, Respondent told Rucker she had used up the \$6,000 payment, and she asked Rucker for more money.

21. On this occasion and others, Rucker asked Respondent for an invoice and an accounting, but Respondent never provided either.

22. Respondent represented Rucker in the quiet title action from March 2010 until May 2010, when Rucker discharged her.

23. After Rucker discharged Respondent, Rucker hired lawyer Seth Rosenberg ("Rosenberg").

24. On April 15, 2011, Rosenberg informed Respondent of some complaints that Rucker had about Respondent's representation. Rosenberg informed Respondent that Rucker alleged (a) that Respondent's legal services were substandard, (b) that Respondent had never provided an accounting, and (c) that the \$6,000 payment was not deposited in a trust account.

25. On Rucker's behalf, Rosenberg requested a refund of the \$6,000 payment and "an accounting of the money received and spent in accordance with the Rules of Professional Conduct."

26. Respondent responded by email the next day. Respondent stated to Rosenberg (a) that the \$6,000 payment was "a true retainer, not an hourly," and (b) that it was "paid into a trust account per the retainer instructions."

27. Those representations were false and misleading, and Respondent knew it.

28. Respondent did not provide a refund or an accounting.

29. On April 28, 2011, Rucker filed a grievance against Respondent.

30. In her May 10, 2011 response to the grievance, Respondent admitted that she had not responded to Rosenberg's request for an accounting.

31. On or about June 16, 2011, Respondent telephoned Rosenberg and asked him what Rucker wanted in exchange for withdrawing her grievance. Rosenberg reiterated that Rucker wanted a refund.

32. Respondent told Rosenberg (a) that she could not provide a refund, (b) that she had filed for bankruptcy, and (c) that any debt she owed to Rucker would be discharged in bankruptcy.

33. On June 21, 2011, Disciplinary Counsel requested that Respondent provide (a) copies of all bills or accountings provided to Rucker, and (b) copies of all trust account records for Rucker.

34. On July 14, 2011, Respondent sent Disciplinary Counsel 26 email messages with pleadings and correspondence relating to the quiet title action attached, but she did not provide any of the billing and trust account records Disciplinary Counsel requested.

35. On July 19, 2011, Disciplinary Counsel requested those records a second time.

36. On July 20, 2011, Respondent stated to Disciplinary Counsel that she was "unable to find" any of the records requested.

37. On July 25-26, 2011, Respondent stated to Disciplinary Counsel (a) that she had never taken a fee for her representation of Rucker, and (b) that she had "donated" her time to Rucker in exchange for Rucker's "donation" to Respondent's "ministry."

38. Those representations were false and misleading, and Respondent knew it.

39. On June 28, 2013, the Hearing Officer entered her Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation. The Hearing Officer made the following conclusions of law regarding the charged violation: by failing to deposit into a trust account the \$6,000 that Rucker paid in advance for legal fees and expenses, Respondent violated rule 1.15A(c)(2) of the Washington Rules of Professional Conduct; by withdrawing and using the \$6,000 that Rucker paid in advance before Respondent had earned or incurred \$6,000 in fees or expenses, Respondent violated rule 1.15A(b) of the Washington Rules of Professional Conduct; by failing to provide a written accounting to Rucker after distributing the \$6,000 that Rucker paid in advance, and by failing to provide a written accounting upon request, Respondent violated rule 1.15A(e) of the Washington Rules of Professional Conduct; and by making false statements to Rosenberg about the nature of the fee arrangement and the disposition of Rucker's \$6,000 payment, and by making false statement to Disciplinary Counsel about the nature of the fee arrangement, Respondent violated rule 8.4(c) of the Washington Rules of Professional Conduct.

40. Respondent's culpability in violating rules 1.15A(e) and 8.4(c) of the Washington Rules of Professional Conduct as determined in Washington establishes that the following California statutes or rules have been violated: rule 4-100(B)(3) of the California Rules of Professional Conduct, Failure to Render Accounts of Client Funds; and Business and Professions Code section 6106, Moral Turpitude – Misrepresentation.

CONCLUSIONS OF LAW:

41. As a matter of law, Respondent's culpability of professional misconduct determined in the proceeding in Washington warrants the imposition of discipline under the laws and rules binding upon Respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

AGGRAVATING CIRCUMSTANCES.

Lack of Cooperation (Std. 1.5(h)): Respondent's failure to file an Answer to the Formal Complaint and failure to participate in disciplinary proceedings in Washington constitutes an aggravating factor. (See *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 [where a member's failure to file pre-trial statement and appear at various State Bar Court hearings were serious aggravating circumstances because they showed respondent comprehended neither the seriousness of the charges nor his duty to participate in disciplinary proceedings.]

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed at least three separate acts of misconduct in a single client matter over a period of a few months. Respondent's multiple acts of misconduct constitute an aggravating factor pursuant to standard 1.5(b).

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Prefiling Stipulation: Respondent stipulated to facts, conclusions of law, and disposition in order to resolve her disciplinary proceedings as efficiently as possible, prior to the filing of charges, thereby avoiding the necessity of a trial and 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].) The weight of this mitigating circumstance is tempered by the fact that Respondent failed to participate in the Washington disciplinary matter.

No Prior Discipline: Respondent has been practicing law since 1979 with no prior record of discipline. She is entitled to mitigating credit for no prior discipline in over thirty years of practice at the time the misconduct commenced even though the misconduct is serious. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn.13.) The California Supreme Court has found an attorney's practice of law for more than twenty years with an unblemished record to be a "highly significant" fact. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.)

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).)

In this matter, Respondent admits to committing three 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 most severe sanction applicable to Respondent’s misconduct is found in standard 2.7, which applies to Respondent’s violations of rule 8.4(c) of the Washington Rules of Professional Conduct by making false statements to Rosenberg about the nature of the fee arrangement and the disposition of Rucker’s \$6,000 payment, and by making false statements to Disciplinary Counsel about the nature of the fee arrangement, which is equivalent to violations of Business and Professions Code section 6106.

Standard 2.7 provides that “[d]isbarment 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.” While the victims of Respondent’s misconduct were not misled by Respondent’s false statements, the misconduct was directly related to Respondent’s practice of law. Respondent’s misconduct is also aggravated by the multiple acts of misconduct and lack of cooperation during the Washington disciplinary proceedings. Conversely, Respondent is entitled to significant mitigation for over thirty years of discipline-free practice. The fact that Respondent practiced law for over thirty years with no prior discipline indicates that the current misconduct is aberrational. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.) Additionally, Respondent is entitled to mitigation for entering into a prefiling stipulation. Under these circumstances, disbarment does not appear to be warranted. However, the misconduct is serious and actual suspension is warranted. Considering the totality of circumstances in this case, a stayed suspension for a period of two years and probation for a period of two years on condition that Respondent be actually suspended from the practice of law for the first 90 days is appropriate.

This level of discipline is supported by case law. In *Gold v. State Bar* (1989) 49 Cal.3d 908, the attorney was found culpable in two matters of failing to perform services and failing to communicate properly with his clients with deceit in one of the matters. He had no prior record of discipline in 25 years of practice. A four-member Supreme Court majority imposed a three-year suspension stayed on conditions including 30 days' actual suspension. Three members of the Court would have followed the State Bar Court's recommendation of a 90-day actual suspension. In reducing the actual suspension from the 90 days recommended by the State Bar Court to 30 days, the Court relied on significant mitigation in addition to his 25 years of discipline-free practice, which is not present in our case. A longer period of suspension is warranted in the present case.

In *Levin v State Bar* (1989) 47 Cal.3d 1140, the attorney was found culpable in two matters involving repeated acts of deceit. One involved settlement of a client's injury claim without permission and failure properly to account for funds. The other involved the attorney falsely representing that he had authority to sign a stipulation, that he was an officer and that the board of directors had met and agreed to surrender the premises. When the attorney realized that opposing counsel knew of the false statements, the attorney contacted opposing counsel's associate and tried to persuade him to reassign the case to an attorney who did not know about the false statements. He had no prior record in 18 years of practice. The Supreme Court ordered a three-year suspension, stayed on conditions, including a six-month actual suspension. The Court was particularly concerned with Levin's multiple acts of dishonesty which bordered on establishing a pattern of misconduct. On our facts, a level of discipline less than that in *Levin* is warranted, due to the fact that the current misconduct occurred in one matter and appears to be aberrational.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 29, 2014, the prosecution costs in this matter are approximately \$2,447. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

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

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In the Matter of:
DIANE JOAN BEALL

Case Number(s):
14-J-00582

ACTUAL SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

July 1, 2014


GEORGE E. SCOTT, JUDGE PRO TEM
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 July 1, 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 Los Angeles, California, addressed as follows:

**DIANE JOAN BEALL
ADVOCATE'S LAW AND REAL ESTATE
243 S ESCONDIDO BLVD #125
ESCONDIDO, CA 92025**

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

**HUGH RADIGAN, Enforcement, Los Angeles
TERRIE GOLDADE, Probation Dept., Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 1, 2014.



Tammy Cleaver
Case Administrator
State Bar Court