

**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 94105-1639 (415) 538-2357</p> <p>Bar # 243691</p>	<p>Case Number(s): 14-N-02887-PEM</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>AUG 13 2014</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Stephen Arthur Harvey Brannan Mt. Rd. Box 998 Willow Creek, CA 95573 (530) 629-2700</p> <p>Bar # 47976</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: STEPHEN ARTHUR HARVEY</p> <p>Bar # 47976</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A: Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **January 7, 1971**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (9) 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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- (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):
 - 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 **13-O-10717; See Attachment to Stipulation at p. 7.**
 - (b) Date prior discipline effective **February 14, 2014**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code, sections 6068(a) and 6106**
 - (d) Degree of prior discipline **6-months actual suspension, 2-years stayed suspension, 2-years probation**
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (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.

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- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-trial Stipulation - See Attachment to Stipulation at p. 7.

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: STEPHEN ARTHUR HARVEY

CASE NUMBER: 14-N-02887-PEM

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 14-N-02887-PEM (State Bar Investigation)

FACTS:

1. On January 15, 2014, the California Supreme Court filed Order No. S214480 (hereinafter "9.20 Order"). The 9.20 Order included a requirement that respondent comply with California Rules of Court, rule 9.20, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the 9.20 Order.
2. On January 15, 2014, the Clerk of the Supreme Court of the State of California properly served upon respondent a copy of the 9.20 Order. Respondent received the 9.20 Order.
3. The Supreme Court Order became effective on February 14, 2014, thirty days after the 9.20 Order was filed. Thus, respondent was ordered to comply with subdivisions (a) and (b) of rule 9.20 of the California Rules of Court no later than on March 16, 2014, and was ordered to comply with subdivision (c) of rule 9.20 no later than on March 26, 2014.
4. On February 12, 2014, the Office of Probation of the State Bar of California sent a letter to respondent which attached a copy of the 9.20 Order, a copy of rule 9.20, and a template for a Rule 9.20 Compliance Declaration. Respondent received this letter.
5. On March 20, 2014, the Office of Probation of the State Bar of California sent a letter to respondent which stated that the Office of Probation had not received respondent's Rule 9.20 Compliance Declaration. Respondent received this letter.
6. To date, respondent has failed to file a declaration of compliance with rule 9.20 (a) and (b), California Rules of Court, as required by rule 9.20(c).

CONCLUSIONS OF LAW:

7. By failing to file with the clerk of the State Bar Court a declaration of compliance with rule 9.20 (a) and (b), California Rules of Court, in conformity with the requirements of rule 9.20(c), as required by Supreme Court Order no. S214480, respondent willfully violated California Rules of Court, rule 9.20.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): In case no. 13-O-10717, the Supreme Court ordered respondent actually suspended from the practice of law for six months for violating Business and Professions Code sections 6068(a) [unauthorized practice of law] and 6106 [moral turpitude]. Respondent had appeared in court on behalf of two clients on eight separate occasions while not entitled to practice law due to a failure to comply with MCLE requirements. Respondent's prior record of discipline constitutes an aggravating factor pursuant to Standard 1.5(a).

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is entitled to some 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, because respondent has one prior record of discipline, Standard 1.8(a) applies. Standard 1.8(a) provides that "[i]f a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Respondent's prior record of discipline is not remote in time, as it became effective in 2014. Respondent's prior disciplinary matter involved the unauthorized practice of law and moral turpitude,

both of which constitute serious misconduct. Therefore, pursuant to standard 1.8(a), the appropriate level of discipline is greater than a six-month actual suspension. As set forth below, disbarment is warranted in this matter.

A rule 9.20 violation is deemed a serious ethical breach for which disbarment generally is considered the appropriate discipline. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131 [“Disbarment is generally the appropriate sanction for a willful violation of rule [9.20].”].) Indeed, rule 9.20 provides that “[a] suspended member’s willful failure to comply with the provisions of this rule constitutes a cause for disbarment....” (Cal. Rules of Court, rule 9.20.)

In the Matter of Esau (2007) 5 Cal. State Bar Rptr. 131, also supports disbarment in this matter. In *Esau*, the Review Department recommended disbarment for an attorney who failed to comply with rule 9.20. The Review Department stated “[i]ndeed, the finding that respondent willfully violated a court order requiring his compliance with rule 9.20 is sufficient grounds for disbarment when, as here, the evidence in mitigation is not compelling.” (*Id.* at 133.) The Review Department noted that “the decisional law has been weighted towards disbarment for violations of rule 9.20. (*Id.* at 138.) The Review Department further noted that recent cases that “resulted in discipline of less than disbarment involved significant evidence in mitigation and/or substantial compliance with rule 9.20[.]” (*Id.*)

Here, as in *Esau*, there is no significant evidence in mitigation, nor is there substantial compliance with rule 9.20. Indeed, to date, respondent has not attempted to file a Rule 9.20 Declaration with the State Bar Court. Although respondent is only entitled to some mitigation for entering into a pretrial stipulation, this mitigation is substantially tempered by the fact that respondent’s misconduct is aggravated by his prior record of discipline.

Based on Standard 1.8(a), rule 9.20, and applicable caselaw, disbarment is the appropriate level of discipline in this matter.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 25, 2014, the prosecution costs in this matter are \$2,488. 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: STEPHEN ARTHUR HARVEY	Case number(s): 14-N-02887-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.

7-31-2014 *Stephen Arthur Harvey* Stephen Arthur Harvey
Date Respondent's Signature Print Name

NA

Date Respondent's Counsel Signature Print Name

8/4/14 *[Signature]* Heather E. Abelson
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: STEPHEN ARTHUR HARVEY	Case Number(s): 14-N-02887-PEM
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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:

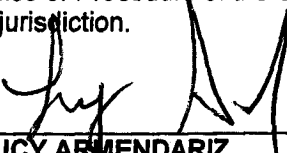
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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 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.

Aug. 13, 2014

Date



LUCY ARMENDARIZ
 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 13, 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:

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

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

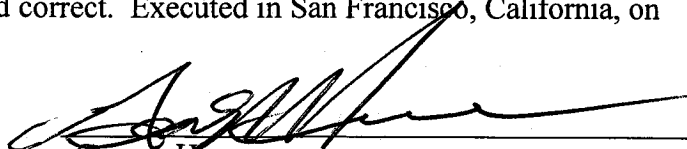
by overnight mail at , California, addressed as follows:

By 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 13, 2014.



George Hue
Case Administrator
State Bar Court