

(Do not write above this line.)

| <b>State Bar Court of California</b><br><b>Hearing Department</b><br><b>Los Angeles</b>  |  |  |
|--|--|--|
| <b>STAYED SUSPENSION</b>   |  | <b>PUBLIC MATTER</b>   |
| <b>Counsel For The State Bar</b><br><br>Anand Kumar<br>Deputy Trial Counsel<br>845 South Figueroa Street<br>Los Angeles, CA 90017<br>(213) 765-1714<br><br>Bar # 261592        | <b>Case Number(s):</b><br>14-O-00493 (INV)<br>14-O-00962<br>14-O-01217   | For Court use only<br><br><br><div style="text-align: center;"> <b>FILED</b><br/> <b>SEP 17 2014</b> P.B.<br/>                     STATE BAR COURT<br/>                     CLERK'S OFFICE<br/>                     LOS ANGELES                 </div> |
| <b>Counsel For Respondent</b><br><br>Thomas John Borchard<br>Borchard & Callahan APC<br>25909 Pala, Suite 300<br>Mission Viejo, CA 92691<br>(949) 457-9505<br><br>Bar # 104008 | Submitted to: <b>Settlement Judge</b><br><br>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br>DISPOSITION AND ORDER APPROVING |  |
| In the Matter of:<br><b>MICHELLE SUSAN RHEINTGEN</b><br><br>Bar # 159501<br><br>A Member of the State Bar of California<br>(Respondent)  | <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b><br><br><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 15, 1992.
- (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 15 pages, not including the order.

kwiktag® 048 638 793



(Do not write above this line.)

- (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".
- (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 are added to membership fee for calendar year following effective date of discipline.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two (2) billing cycles immediately 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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
  - (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 or a separate attachment entitled "Prior Discipline."
- (2)  **Dishonesty:** Respondent's misconduct was 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.

(Do not write above this line.)

---

- (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. See stipulation, at page 11.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

**C. Mitigating Circumstances [see standard 1.2(e)]. 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 or person who was the object of the misconduct.
- (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 in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (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 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.

(Do not write above this line.)

---

(13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

Lack of Prior Record of Discipline, see stipulation, at page 11.

Pre-filing stipulation, see stipulation, at page 11.

**D. Discipline:**

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of one (1) year.
  - i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), 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:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is 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.)

**E. Additional Conditions of Probation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  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.
- (4)  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.

- (5)  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.

(Do not write above this line.)

---

- (6)  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.
- (7)  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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  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.
- (9)  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 within one year. **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)  **Other Conditions:**



5. While Respondent was not entitled to practice law in New Jersey, she did perform the home mortgage loan modification services outlined in the retainer agreement by submitting a loan modification package to Connors' lender, which resulted in a six-month forbearance plan being offered by the lender in January 2014. Connors rejected the offer as being an unsatisfactory resolution of the matter.

6. Pursuant to rule 5.5(c) of the New Jersey Rules of Professional Conduct defining the unauthorized practice of law in that jurisdiction ("New Jersey Rule 5.5"), a "lawyer admitted to practice in another jurisdiction ... shall (4) not hold himself or herself out as being admitted to practice in this jurisdiction."

7. On June 26, 2014, Respondent issued a full refund of the illegal fees to Connors.

#### CONCLUSIONS OF LAW:

8. By entering into an agreement to perform and performing loan modification services for Connors, and charging and collecting legal fees from Connors, when she was not entitled to practice law in the state of New Jersey, Respondent held herself out as entitled to practice law in that jurisdiction, when to do so was in violation of New Jersey Rule 5.5(c), and thereby willfully violated the Rules of Professional Conduct, rule 1-300(B).

9. By entering into an agreement with, charging, and collecting from Connors, a fee of \$3,500 to perform legal services in New Jersey that was illegal because she was not admitted and entitled to practice law in the state of New Jersey, Respondent willfully violated the Rules of Professional Conduct, rule 4-200(A).

#### Case No. 14-O-00962 (Complainants: Barry and Valerie Thompson)

#### FACTS:

10. On October 10, 2012, Barry and Valerie Thompson (collectively, the "Thompsons") entered into two retainer agreements for Respondent to perform legal services including one agreement to perform home mortgage loan modification services for the Thompsons' North Carolina home ("loan modification retainer agreement") and a second agreement to perform pre-litigation services ("pre-litigation services retainer agreement"), such as drafting and sending a demand letter to the Thompsons' mortgage lender, drafting and sending a qualified written request to the lender, and drafting a prospective federal lawsuit for claims against the lender. Respondent was not admitted to practice in the state of North Carolina when the Thompsons entered into the agreements.

11. Both retainer agreements omitted the fact that Respondent was not admitted to practice law in North Carolina and did not state that she was *only* admitted to practice law in California and Illinois.

12. *Vis-à-vis the pre-litigation services retainer agreement, the Thompsons were charged \$3,400 for Respondent to perform the pre-litigation services, which were illegal fees.*

13. On March 25, 2014, Respondent employed an associate North Carolina licensed attorney, Lynn Coleman ("Coleman"). Coleman was Respondent's local attorney for clients in North Carolina, however, Coleman's presence was in name only. During the course of the representation:



- a. Respondent did not inform the Thompsons of Coleman's role or that she had hired Coleman as an associate in North Carolina;
- b. Coleman had no communication or contact with the Thompsons;
- c. Coleman performed no legal services on the Thompsons' behalf and all legal services on the Thompsons' behalf were performed by Respondent; and
- d. Respondent uploaded the Thompsons' client file on a hard-drive which Coleman could access.

14. During the course of the representation, Respondent emailed the Thompsons on several occasions; the emails were written on Respondent's letterhead. During the course of the representation Respondent did not inform the Thompsons that she was not licensed to practice law in North Carolina. Accordingly, Respondent held herself out as entitled to practice law in North Carolina to the Thompsons.

15. While Respondent was not entitled to practice law in North Carolina, she did perform some of the pre-litigation services and the home mortgage loan modification services outlined in the retainer agreements by submitting a loan modification package and sending a demand letter and a qualified written request to the Thompsons' lender, which resulted in a trial loan modification being offered by the lender to the Thompsons in July 2013.

16. Pursuant to rule 5.5(b) of the North Carolina Rules of Professional Conduct defining the unauthorized practice of law in that jurisdiction ("North Carolina Rule 5.5"), a "lawyer who is not admitted to practice in this jurisdiction shall not ... (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."

17. Starting in April 2014, prior to being notified of the Thompsons filing a State Bar complaint, Respondent began making a refund to the Thompsons and Respondent has since made a full refund to the Thompsons.

#### CONCLUSIONS OF LAW:

18. By entering into agreements to perform and performing pre-litigation services and home mortgage loan modification services for the Thompsons, charging the Thompsons legal fees and emailing the Thompsons on her letterhead, when she was not entitled to practice law in the state of North Carolina, Respondent held herself out as entitled to practice law in that jurisdiction, when to do so was in violation of North Carolina Rule 5.5(b), and thereby willfully violated the Rules of Professional Conduct, rule 1-300(B).

19. By entering into agreements with and charging the Thompsons, a fee of \$3,400 to perform legal services in North Carolina that was illegal because she was not admitted and entitled to practice law in the state of North Carolina at the time or any time thereafter, Respondent willfully violated the Rules of Professional Conduct, rule 4-200(A).

FACTS:

20. On October 26, 2012, Respondent entered into a retainer agreement with a New Jersey client, Ivaretta Brewington ("Brewington"), \$3,500 to perform legal services including home mortgage loan modification services in New Jersey, when Respondent was not admitted to practice in the state of New Jersey.

21. At the time Respondent entered into the retainer agreement with Brewington, she had employed an associate New Jersey licensed attorney, Christopher McDonnell ("McDonnell"). McDonnell was Respondent's local attorney for clients in New Jersey, however, McDonnell's presence was in name only. During the course of the representation:

- a. Respondent did not inform Brewington of McDonnell's role or that she had hired McDonnell as an associate in New Jersey;
- b. McDonnell had no communication or contact with Brewington;
- c. McDonnell performed no legal services on Brewington's behalf and all legal services on Brewington's behalf were performed by Respondent; and
- d. Respondent uploaded Brewington's client file on a hard-drive which McDonnell could access.

22. Vis-à-vis the retainer agreement, Respondent charged Brewington \$3,500 to perform the loan modification services, which Respondent collected and which fees were illegal. The retainer agreement omitted the fact that Respondent was not admitted to practice law in New Jersey, did not state that she was only admitted to practice law in California and Illinois (the other state where Respondent was admitted to practice law), and did not identify McDonnell was Respondent's local counsel.

23. During the course of the representation, except for one voice message that Respondent left for Brewington, Respondent had no direct contact with Brewington nor did Respondent ever inform Brewington that she was not licensed to practice law in New Jersey. Accordingly, Respondent held herself out as entitled to practice law in New Jersey to Brewington.

24. While Respondent was not entitled to practice law in New Jersey, she did perform the home mortgage loan modification services outlined in the retainer agreement by submitting a loan modification package to Brewington's lender in January 2013, which the lender denied in June 2013 due to Brewington's being delinquent on mortgage payments. Brewington continued to use Respondent's services to negotiate a repayment plan with Brewington's lender wherein Brewington would make the necessary payments to bring her mortgage payments current and then Respondent would re-submit a loan modification package. In December 2013, due to a lack of progress with respect to the payments by Brewington, Respondent sent a termination letter to Brewington thereby terminating her services.

25. Pursuant to rule 5.5(c) of the New Jersey Rules of Professional Conduct defining the unauthorized practice of law in that jurisdiction ("New Jersey Rule 5.5"), a "lawyer admitted to practice in another jurisdiction ... shall (4) not hold himself or herself out as being admitted to practice in this jurisdiction."

26. On May 8, 2014, Respondent issued a full refund of the illegal fees to Brewington.

**CONCLUSIONS OF LAW:**

27. By entering into an agreement to perform and performing home mortgage loan modification services for Brewington, and charging and collecting legal fees from Brewington, when she was not entitled to practice law in the state of New Jersey, Respondent held herself out as entitled to practice law in that jurisdiction, when to do so was in violation of New Jersey Rule 5.5(c), and thereby willfully violated the Rules of Professional Conduct, rule 1-300(B).

28. By entering into an agreement with, charging, and collecting from Brewington, a fee of \$3,500 to perform legal services in New Jersey that was illegal because she was not admitted and entitled to practice law in the state of New Jersey, Respondent willfully violated the Rules of Professional Conduct, rule 4-200(A).

**AGGRAVATING CIRCUMSTANCES.**

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent committed several violations of the Rules of Professional Conduct. The commission of multiple acts of misconduct is considered serious aggravation. (See *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. 555.)

**MITIGATING CIRCUMSTANCES.**

**Lack of Prior Record of Discipline Over Many Years of Practice:** Respondent has no prior record of discipline since being admitted on June 15, 1992, but the current misconduct is serious due to the nature of the misconduct (unauthorized practice of law in other jurisdictions), the multiple matters involved (3) and the amount of illegal fees charged. While she is not entitled to mitigation under standard 1.6(a), Respondent's more than 20 years of discipline-free practice prior to the instant misconduct is entitled to significant mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than 10 years of discipline-free practice entitled to significant mitigation].)

**Pre-filing Stipulation:** Respondent has cooperated with the State Bar by entering into the instant stipulation fully resolving the matter at an early stage in the disciplinary process without the necessity of a trial, thereby saving State Bar resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, Respondent admitted to committing multiple 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 here is standard 2.15, which applies to Respondent’s unauthorized practice of law in violation of rule 1-300(B). Standard 2.15 provides for a range of discipline for violations of the Rules of Professional Conduct not otherwise specified in the Standards, such as rule 1-300(B), including a suspension not to exceed three (3) years to reproof. In addition to Standard 2.15, Respondent’s misconduct also triggers the application of Standard 2.3(b) for Respondent’s violations of rule 4-200(A) for entering into an agreement for, charging and collecting illegal fees for legal services, that also calls for a range of discipline from suspension to reproof. Willfulness for the purposes of disciplinary proceedings “is simply a general purpose or willingness to commit an act or omission; it does not require any intent to violate the law... and does not necessarily involve bad faith.” (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.)

Here, Respondent’s misconduct is serious because her unauthorized practice of law is directly related to the practice of law and involved a number of clients. Moreover, she entered into fee agreements which charged a significant amount of illegal fees (\$10,400). Accordingly, some period of suspension is appropriate for Respondent’s misconduct. However, when taking into consideration the mitigating circumstances present, namely Respondent’s lack of prior record of discipline, which is entitled to significant mitigation, the appropriate level of discipline should be similarly mitigated and the minimum period of suspension is appropriate here. Accordingly, discipline consisting of a one (1) year

stayed suspension and a two (2) probation with conditions is appropriate for 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.

The case law also supports the recommended discipline in the instant matter. In *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, a California-licensed attorney living in South Carolina represented two South Carolina clients in their respective employment discrimination cases despite never having been admitted to practice law in South Carolina. Wells was charged with violations of rule 1-300(B), charging illegal fees in violation of rule 4-200(A), failing to refund unearned fees in violation of rule 3-700(D)(2), and committing acts of moral turpitude in violation of Business and Professions Code section 6106 for engaging in the unauthorized practice of law and for misleading the State Bar and the South Carolina Deputy Solicitor's office in their respective investigations of Wells' misconduct. The hearing judge found the attorney culpable of violations of rules 1-300(B), 4-200(A), 3-700(D)(2) and section 6106 for engaging in the unauthorized practice of law and misleading the State Bar and the South Carolina Deputy Solicitor's office.

On appeal, the Review Department affirmed the rule 1-300(B) violations on the basis that the record clearly showed that the attorney represented her clients in court and by holding herself out she created the misimpression of being licensed to practice in that jurisdiction opining that an attorney "simply cannot expressly or impliedly create or leave undisturbed the false impression that he or she has the present or future ability to practice law when in fact [he or she] is ineligible to practice" in that jurisdiction. (*Id.* at p. 904, internal quotation marks omitted.) However, as to the violations of section 6106, the Review Department found insufficient evidence of moral turpitude to support culpability for the unauthorized practice of law, but did find culpability for misleading the investigations of the State Bar and the South Carolina Deputy Solicitor's office. The Review Department found that Wells was entitled to significant mitigation for suffering from extreme emotional difficulties, good character and cooperating with the State Bar by entering into a stipulation of material facts. However, the Review Department found Wells's prior record of discipline which included a 1993 private reproof for trust account violations, multiple acts of misconduct, significant harm to her clients and the administration of justice and indifference in making restitution to the clients (\$17,500), to be equally strong evidence of aggravation. Pursuant to former standard 2.7 (the predecessor to current standard 2.3(a)), the Review Department imposed discipline upon Wells consisting of a two (2) year stayed suspension with a two (2) year probation with conditions including a six (6) month actual suspension and until she made complete restitution to her former clients.

Here, Respondent's misconduct involves more client matters (three compared to two); however, her misconduct does not involve moral turpitude (she did not mislead the State Bar), requires no restitution and she has no prior record of discipline over more than 20 years of discipline-free practice. Accordingly, the recommended discipline for Respondent's misconduct should be less severe than that imposed in *Wells*.

///  
///  
///  
///  
///  
///  
///  
///  
///

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 29, 2014, the prosecution costs in this matter are approximately \$4,902. 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. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

|   |   |
|---|---|
| In the Matter of:<br>MICHELLE SUSAN RHEINTGEN | Case number(s):<br>14-O-00493, 14-O-00962, 14-O-01217 |
|---|---|

**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.

|                                 |   |  |
|---------------------------------|---|--|
| August <u>29</u> , 2014<br>Date | <br>Respondent's Signature          | Michelle Susan Rheintgen<br>Print Name |
| August <u>29</u> , 2014<br>Date | <br>Respondent's Counsel Signature   | Thomas John Borchard<br>Print Name     |
| August <u>29</u> , 2014<br>Date | <br>Deputy Trial Counsel's Signature | Anand Kumar<br>Print Name              |

(Do not write above this line.)

|   |   |
|---|---|
| In the Matter of:<br>MICHELLE SUSAN RHEINTGEN | Case Number(s):<br>14-O-00493, 14-O-00962, 14-O-01217 |
|---|---|

**STAYED 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.)**

SEPTEMBER 17, 2014  
Date

  
\_\_\_\_\_  
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 September 17, 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:

**THOMAS JOHN BORCHARD  
BORCHARD & CALLAHAN APC  
25909 PALA #300  
MISSION VIEJO, CA 92691**

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

**Anand Kumar, Enforcement, Los Angeles**

**Terrie Goldade, Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 17, 2014.



---

Paul Barona  
Case Administrator  
State Bar Court