

(Do not write above this line.)

State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p>Hugh G. Radigan Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 213-765-1206</p> <p>Bar # 94251</p>	<p>Case Number(s): 11-C-10604</p> <p><b>PUBLIC MATTER</b></p>	<p>For Court use only</p> <p><b>FILED</b> OCT 13 2011 <i>[Signature]</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Theodore A. Cohen, Esq. 4601 Admiralty Way Marina Del Rey, California 90292 310-277-0711</p> <p>Bar # 28637</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Diane Amelia Walder</p> <p>Bar # 152374</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 June 6, 1991.
- (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 10 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



*[Handwritten signature]*  
9/27/11

(Do not write above this line.)

- (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: two 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 [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.
- (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.

(Effective January 1, 2011)

DAJ  
9/27/11

(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.
- (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. Respondent self-reported this criminal judgment after her guilty plea to a federal misdemeanor and cooperated with the State Bar throughout the pendency of this matter.
- (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.

(Effective January 1, 2011)

*Handwritten signature and date:*  
9/27/11

(Do not write above this line.)

- (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:**

Respondent has no record of prior discipline over the course of her twenty years of practice as an attorney.

**D. Discipline:**

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of three 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 1.4(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:
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of three 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 eighteen months.
- 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:

**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 1.4(c)(ii), 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.

(Effective January 1, 2011)

*DD*  
9/27/11

(Do not write above this line.)

- (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**

(Effective January 1, 2011)

*[Handwritten signature]*  
9/29/11

(Do not write above this line.)

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: May 3, 2011.
- (5)  **Other Conditions:**

(Effective January 1, 2011)

DAW 9/27/11

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: Diane Amelia Walder

CASE NUMBER(S): 11-C-10604

**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. 11-C-10604 (Conviction Proceedings)

**PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:**

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On August 2, 2010, Respondent pleaded guilty to violating Title 18 USC section 641 (theft of United States property valued less than \$1,000).
3. On March 25, 2011, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: inasmuch as the subject misdemeanor involves moral turpitude, the recommended discipline to be imposed is to be determined.

**FACTS:**

4. On August 15, 2005, Respondent and her husband, James Groomes, took ownership of a residential property located at 6109 Mary Mahoney Drive, Ocean Springs, Mississippi. That property was destroyed by the effects of Hurricane Katrina on August 29, 2005.
5. As of August 29, 2005, Respondent was employed at the United States Department of Housing and Urban Development, in Los Angeles, California as an attorney advisor.
6. On October 12, 2005, Respondent filed a disaster assistance claim to the Federal Emergency Management Agency wherein she represented her primary residence at the time of Hurricane Katrina was 6109 Mary Mahoney Drive, Ocean Springs, Mississippi.
7. On March 6, 2006, Respondent requested the grant of a loan in excess of \$5,000.00 from the Small Business Administration, an agency of the United States of America, wherein she again represented her primary residence at the time of Hurricane Katrina was 6109 Mary Mahoney Drive, Ocean Springs, Mississippi.
8. On May 28, 2006, Respondent filed a homeowner assistance grant application with the Mississippi Development Agency, wherein she represented her primary residence at the time of Hurricane Katrina was 6109 Mary Mahoney Drive, Ocean Springs, Mississippi.

9. On November 15, 2006, Respondent executed an affidavit which she submitted to the Mississippi Development Agency, wherein she represented she occupied as her principal residence 6109 Mary Mahoney Drive, Ocean Springs, Mississippi, at the time of Hurricane Katrina.

10. As a result of the claims and grant applications submitted by Respondent, benefits in the sum of less than \$1,000.00 were secured by Respondent which she was not entitled to from the Small Business Administration.

11. A one count bill of information was filed July 28, 2010, in the Southern District of Mississippi, Southern Division, Case No. 1:10cr59WJG-RHW-1, charging that Respondent did steal, purloin and knowingly convert to her own use less than \$1,000.00 in funds of the United State of America, in violation of Title 18, United States Code, section 641.

12. On August 2, 2010, Respondent entered a plea agreement requiring that she make restitution to the Small Business Association in the amount of \$25,000.00, resign her position with the Department of Housing and Urban Development, and agree not to seek employment with any agency or department of the United States of America.

13. On October 28, 2010, judgment in a criminal case was executed in Case No. 1:10cr59WJG-RHW-1, Respondent having pled guilty to one count of violating Title 18 USC section 641, setting Respondent's probation term at five years, requiring forty hours of community service and ordering restitution to the Small Business Administration in the amount of \$25,000.00.

#### CONCLUSIONS OF LAW:

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

15. By pleading guilty to a violation of Title 18 USC section 641, Respondent willfully violated section 6068(a) of the Business and Professions Code by failing to support the laws of the United States and this state.

#### PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was September 15, 2011.

#### AUTHORITIES SUPPORTING DISCIPLINE.

Standard 3.2 provides that where final conviction of a member of a crime which involves moral turpitude shall result in disbarment unless the most compelling mitigating circumstances clearly predominate. In those cases where the mitigating circumstances clearly predominate, the discipline shall not be less than a two year actual suspension.

In imposing discipline, the court should consider the appropriate discipline in light of the standards, but in so doing the court may consider any ground that may form a basis for an exception to application of the standards. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. Inasmuch as the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. *Bates v. State Bar* (1990) 51 Cal. 3<sup>rd</sup> 1056, 1061.

DMS 9/27/11

The disposition herein allows for a deviation from the strict application of the standards since a two year actual suspension would constitute too harsh a result and would be punitive in nature. Respondent's twenty year career as a practicing attorney without prior discipline together with the fact that Respondent self-reported this violation to the State Bar, constitutes compelling mitigation allowing for a deviation from the controlling standard. Respondent's misconduct in seeking these grant applications and claims from various federal and state agencies, warrants the discipline herein of an eighteen month actual suspension, a three year suspension stayed and a three year probation. The discipline is both warranted and adequately serves to protect the public, courts and legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 8, 2011, the prosecution costs in this matter are approximately \$2330.50. 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.

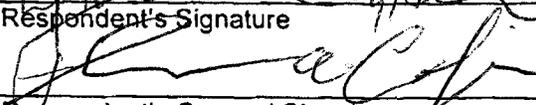
DN 9/27/11

(Do not write above this line.)

In the Matter of: DIANE AMELIA WALDER	Case number(s): 11-C-10604
--	-------------------------------

### 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.

<u>9/27/2011</u> Date	<u></u> Respondent's Signature	<u>Diane A. Walder</u> Print Name
<u>9/29/2011</u> Date	<u></u> Respondent's Counsel Signature	<u>Theodore A. Cohen</u> Print Name
<u>September 30 '11</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Hugh G. Radigan</u> Print Name

(Do not write above this line.)

In the Matter Of <b>DIANE AMELIA WALDER</b>	Case Number(s): <b>11-C-10604</b>
--	--------------------------------------

### 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.

On page 6 of the Stipulation, an "X" is INSERTED in box F(5) ("Other Conditions"), and the following text is INSERTED in paragraph F(5) so that it now reads:

It is not recommended that respondent be ordered to comply with California Rules of Court, rule 9.20 because respondent previously complied with that rule in accordance with the review department's March 25, 2011 order placing her on interim suspension and referring her conviction for a disciplinary hearing.

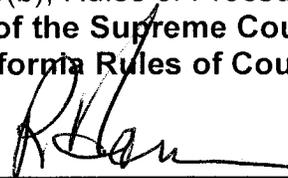
On page 9 of the stipulation, in the first paragraph, the second sentence, which begins "Respondent's twenty year career . . ." is DELETED, and the following text is INSERT in its place:

The fact that respondent's misconduct was not committed in the course of practicing law may be considered as a mitigating factor. (E.g., *Galardi v. State Bar* (1987) 43 Cal.3d 683, 694.) Moreover, respondent's cooperation with the State Bar in this proceeding and her twenty-year career as a practicing attorney without a prior record of discipline establish sufficient mitigation to justify the stipulated deviation from standard 3.2 with respect to respondent's single misdemeanor conviction in this matter. (E.g., *In re Duchow* (1988) 44 Cal.3d 268; *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765; *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96.)

(Do not write above this line.)

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 135(b), 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.)**

10/13/11



Date

Richard A. Honn  
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 October 13, 2011, 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:

THEODORE A COHEN  
LAW OFFICES OF THEODORE A COHEN  
4601 ADMIRALTY WAY  
MARINA DEL REY, CA 90292

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

by overnight mail at , California, addressed as follows:

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

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

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

Hugh Gerard Radigan, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 13, 2011.

  
\_\_\_\_\_  
Cristina Potter  
Case Administrator  
State Bar Court