

**State Bar Court of California
Hearing Department
San Francisco**

Counsel For The State Bar Robin Brune 180 Howard Street San Francisco, California 94105 Bar # 149481	Case Number (s) 06-O-12095	(for Court's use) PUBLIC MATTER FILED AUG 22 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jerome Fishkin 1111 Civic Drive, Suite 215 Walnut Creek, California 94596 Bar # 47798	Submitted to: Settlement Judge	
In the Matter Of: Amber Haskett Bar # 194129 A Member of the State Bar of California (Respondent)	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 **January 13, 1998**.
- (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 **12** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (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 284, Rules of Procedure.
 - ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs 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.
- (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.
- (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.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) ☒ **Stayed Suspension:**

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

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **two 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 **thirty 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 1.4(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 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.
- (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 further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), 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: Amber Haskett

CASE NUMBER(S): 07-O-12396 ET AL.

FACTS AND CONCLUSIONS OF LAW.

In August of 2003, Melinda Garcia and respondent formed a law partnership, Garcia & Haskett, LLP. In May, 2004, respondent provided legal, estate planning services to Garcia and her husband, Tod Gurney. Respondent prepared estate planning documents, including, but not limited, to a Durable Power of Attorney For Management of Property and Personal Affairs. On May 24, 2004, Melinda Garcia executed the Durable Power of Attorney, appointing her husband, Tod C. Gurney, as her attorney in fact. The Power of Attorney was to become effective upon Ms. Garcia's incapacity. Respondent provided a Lawyer's Certificate as an attachment to the Power of Attorney. The Lawyer's Certificate stated as follows:

I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney.

On May 26, 2004, respondent signed the Lawyer's Certificate. Respondent maintained Garcia's estate documents at the law firm of Garcia and Haskett.

In December, 2004, Melinda Garcia and Tod Gurney went on vacation to Africa. The length of the vacation was approximately three to four weeks. Prior to her departure, Garcia requested that the office manager, Tawnya Montoya, pay Garcia's personal bills by accessing Garcia's personal checking account with Garcia's private access code, and paying the bills through internet use of Garcia's checking account.

On December 30, 2004, Montoya approached respondent and advised that she had inadvertently misplaced the access code for Garcia's checking account. Montoya requested input from respondent as to how to address Garcia's outstanding bills. Thereafter, respondent removed the Power of Attorney from her client file. She altered the first page of the Durable Power of Attorney by covering and replacing the name of "Tod. C. Gurney" with the name "Tawnya Montoya". She then copied the signature page and attached it to the altered first page.

Respondent gave the altered Power of Attorney to Tawnya Montoya, with the understanding that Montoya would use the altered Power of Attorney to contact Garcia's bank

and obtain the access code to Garcia's personal checking account. On December 31, 2004, Tawnya Montoya faxed the altered Power of Attorney to Garcia's bank and the bank did provide Montoya with Garcia's password based upon receipt of the altered Power of Attorney. Montoya used the access code to obtain access to Garcia's checking account. She thereafter used Garcia's checking account funds to pay for Garcia's outstanding debts.

Conclusions of Law

1. By altering the Durable Power of Attorney to replace the name of Tod Gurney with Tawnya Montoya; and by giving the document to Montoya with the knowledge that Montoya would provide it to the bank to get Garcia's access codes; and by knowing that Montoya in fact did so, respondent committed acts of moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code, section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 10, 2007.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of 7-25-07, the costs in this matter are \$ 1,983. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.3 of the Attorney Sanctions for Professional Misconduct calls for actual suspension or disbarment for acts of moral turpitude, depending upon the extent to which the victim was harmed or misled and the degree to which it relates to the member's acts within the practice of law. Case law supports actual suspension, ranging from sixty days to six months, regardless of the degree of harm to the victim of the misrepresentation. *Hallinan v. State Bar* (1948) 33 Cal. 2d. 246; *Allen v. State Bar* (1951) 36 Cal. 2d. 683; *Corviello v. State Bar* (1954) 275 P. 2d 482; *Aronin v. State Bar* (1990) 52 Cal. 3d. 276; *Levin v. State Bar* (1989) 47 Cal. 3d. 1140.

In *Corviello*, the attorney received a six month actual suspension for forging names on deed and showing them to opposing counsel, which gave him an advantage in the litigation. The court found that no harm was required, and that the actor intended to deceive. This case also involves actual deception.

In *Hallinan*, the attorney received a three month actual suspension for simulating a client signature on a release. He claimed he was authorized to do so by a broad power of attorney. The court found that, despite his good faith belief that he was legally authorized, his actions

amounted to an act of dishonesty because the release did not contain the actual client's signature. Here, respondent placed the complaining witness's signature on a broad power of attorney to a third party, Tawnaya Montoya, without the client's consent.

In *Levin*, the attorney forged a client signature on a release and gave money to the client's cousin. He received a ninety day actual suspension. The court in *Levin* was not persuaded by the fact that the client was not offended by the forgery. The issue, as in this case, was the attorney's act of dishonesty.

In *Allen*, the attorney received a sixty day actual suspension for preparing a substitute note for a deed of trust, then leaving the room with the knowledge and understanding that his client would be forging the note, because the original note had been lost and the payor wanted the note upon complete payment of the debt. The court acknowledged that there was no harm, but addressed the attorney's dishonesty.

This case is most analogous to *Allen*, in that the respondent gave the altered document to her law office manager with the understanding that it would be used. While *Allen* received sixty days of actual suspension, respondent is given thirty days due to the early resolution, by stipulation, of this matter.

AGGRAVATING CIRCUMSTANCES.

MITIGATING CIRCUMSTANCES.

Standard 1.2(e)(v) candor and cooperation

Standard 1.2(e) objective steps demonstrating remorse

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Respondent has been candid and cooperative in these State Bar proceedings.

Respondent sought to address her misconduct in the underlying dissolution of the partnership and at one point made a payment to her former partner, in relation to the dissolution, that included the costs to her former partner, Garcia, to consult with another attorney as to how to correct and remedy the altered Power of Attorney.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

In the Matter of
Amber Haskett

Case number(s):
06-O-12095

A Member of the State Bar

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a Notice of Disciplinary Charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) **Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admission required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)**

Rule 133, Rules of Procedure of the State Bar of California **STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

(a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:

...

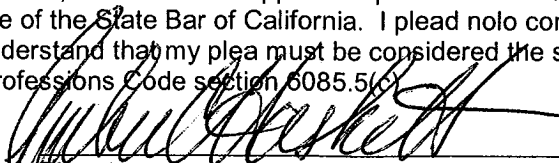
- (5) a statement that Respondent either
 - (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
 - (ii) **pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:**
 - (a) **an acknowledgement that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and**
 - (b) **if requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter (emphasis supplied)**

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as state in Business and Professions Code section 6085.5(b).

Date

7/21/07

Signature



Amber Haskett
Print Name

(Do not write above this line.)

In the Matter of Amber Haskett	Case number(s): 06-O-12095
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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 Fact, Conclusions of Law and Disposition.

<u>7/21/07</u> Date	 Respondent's Signature	<u>Amber Haskett</u> Print Name
<u>7/27/07</u> Date	 Respondent's Counsel Signature	<u>Jerome Fishkin</u> Print Name
<u>8/7/07</u> Date	 Deputy Trial Counsel's Signature	<u>Robin B. Brune</u> Print Name

(Do not write above this line.)

In the Matter Of
Amber Haskett

Case Number(s):
06-O-12095

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.

Paragraph A(3) on page one is modified to reflect that the stipulation consists of 11 pages, not including the order.

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.)**

8-22-07

Date

Amber Haskett
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 22, 2007, 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:

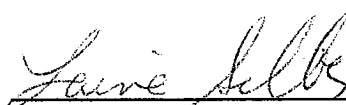
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JEROME FISHKIN
FISHKIN & SLATTER LLP
1111 CIVIC DR STE 215
WALNUT CREEK, CA 94596**

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 22, 2007**.



Laine Silber
Case Administrator
State Bar Court