

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Allen Blumenthal 180 Howard Street, 7th Floor San Francisco, California 94105 Telephone: (415) 538-2228  Bar # 110243	<b>Case Number(s):</b> 10-O-06542	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>see</i>  JUN 09 2011  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>In Pro Per Respondent</b>  Mark L. Webb 333 Pine Street, 5th Floor San Francisco, California 94104 Telephone: (415) 434-0500  Bar # 67959	<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> Mark L. Webb  Bar # 67959  A Member of the State Bar of California (Respondent)		

**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 December 18, 1975.
- (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 17 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."



(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: (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 I
  - (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.

Case No. 96-O-8608 et al: Date prior discipline effective: October 11, 2000; Rules of Professional Conduct/State Bar Act violations: 4-100(A), 4-100(B)(1), and 4-100(B)(4) of the Rules of Professional Conduct; Degree of Prior discipline: Private Reprimand.

Case No. 06-O-13454; Supreme Court Case No. S0165314 Date prior discipline effective: October 16, 2008; Rules of Professional Conduct/State Bar Act violations: 3-110(A) of the Rules of Professional Conduct and section 6068(a) of the Business & Professions Code; Degree of Prior discipline: One year stayed, two years probation.

- (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. Respondent filed frivolous and false lawsuits and pleadings to avoid paying for the draft appellate brief that Oregon attorney Julie Follansbee drafted.

- (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. Respondent's misconduct caused harm to Ms. Follansbee and the administration of justice, including Ms. Follansbee having to defend multiple lawsuits and pay an attorney to defend her in those lawsuits. She paid Attorney Nelson Brestoff at least \$24,964.66 to defend her in the three lawsuits respondent filed against her and paid another lawyer to enforce her Oregon judgment. Respondent's misconduct also caused harm to the administration of justice by causing multiple duplicate and unnecessary lawsuits and proceedings because of his filings and failure to comply with proper discovery requests.
- (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. Respondent filed three frivolous lawsuits in California, and frivolous objections to discovery in Ms. Follansbee's lawsuits to enforce her contract and the Oregon judgment she obtained against respondent.
- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

During the time respondent was committing the misconduct in this matter, he was on State Bar probation and filing probation reports declaring under penalty of perjury that he was in compliance with the Rules of Professional Conduct and the State Bar Act. In fact and in truth, he was committing misconduct during that time period and violating the State Bar Act. Respondent knew or with reckless disregard made these false statements in those reports.

**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 has cooperated with the State Bar and paid the attorney fees associated with Ms. Follansbee's enforcement of her contract. This mitigation is somewhat diminished because he has not paid the fees associated with her having to hire an attorney to defend against respondent's frivolous lawsuits. However, he has agreed that restitution shall be part of this stipulated discipline.
- (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.

(Do not write above this line.)

- (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:**

Initially, respondent demonstrated indifference toward rectification or atonement by his repeated lawsuits and motions. However, upon reflection respondent has come to accept and demonstrate his understanding that his misconduct was wrong by respondent's entering into this stipulation, acknowledging his misconduct, and agreeing to pay resitution for Ms. Follansbee's attorney fees in defending against his three frivolous lawsuits. If sworn to testify, Respondent would explain that he was upset with the total bill charged by Ms. Follansbee and felt it was too high. However, instead of negotiating or litigating that in Oregon, he engaged in a course of conduct for the purpose of delay, harassing, and obstructing Ms. Follansbee's entitlement to her fees. Respondent acknowledges his misconduct and promises to be more circumspect in the future. He has come to be remorseful for his misconduct especially the harm he caused Ms. Follansbee.

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of four 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 five 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 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:

**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.

(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.

(Do not write above this line.)

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 checked="" 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 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .
- (5) ☐ **Other Conditions:**

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

IN THE MATTER OF: Mark L. Webb

CASE NUMBER(S): 10-O-06542 et al.

**FACTS AND CONCLUSIONS OF LAW.**

**A. FACTS**

1. In or about March 2008, respondent hired Julia A. Follansbee, an Oregon attorney, to consult and evaluate the merits of an appeal respondent was handling in the United States Court of Appeals for the Ninth Circuit for respondent's client, Donald Walker, in a matter entitled *Walker v. Pacific Pride Services Inc.* Appeal No. 07-17373 (hereinafter "Walker appeal"). Respondent had represented Mr. Walker in the trial in the United States District Court for the Northern District of California, Case No. CV-07-02857-SC.

2. On or about March 25, 2008, respondent and Ms. Follansbee entered into a written fee agreement for Ms. Follansbee to consult on the Walker appeal and provide respondent with an evaluation of the merits of the Walker appeal. Respondent agreed to pay Ms. Follansbee \$420 per hour, excluding costs and expenses. Respondent paid Ms. Follansbee \$6,000 as an advance on her fees.

3. Subsequently, Ms. Follansbee performed the services respondent had contracted for and provided respondent with an evaluation of the merits of the Walker appeal. She advised respondent to take a new approach on the appeal. Respondent received this evaluation.

4. In or about April 2008, respondent hired Ms. Follansbee to draft the opening brief in the Walker appeal based on her new approach to the appeal. The appeal brief was due by May 22, 2008.

5. On or about April 18, 2008, respondent and Ms. Follansbee entered into a written fee agreement for Ms. Follansbee to draft the opening brief in the Walker appeal. The April 18, 2008 written fee agreement did not require Ms. Follansbee to draft a reply brief. Respondent agreed to pay Ms. Follansbee \$420 per hour, excluding costs and expenses.

6. Both the March 25, 2008 and April 18, 2008 fee agreements provided that should respondent be delinquent on Ms. Follansbee's bill, Ms. Follansbee had the right to withdraw her services and that if any dispute arose over Ms. Follansbee's fees Oregon law would govern the interpretation and application of this agreement and that venue for the dispute would be in Oregon. The April 18, 2008 agreement also provided that Ms. Follansbee would not contact or

deal directly with the client, Mr. Walker.

7. On or about May 1, 2008, Ms. Follansbee provided respondent with an opening brief in the Walker appeal and billed respondent \$24,414.60 in legal fees and \$965.28 in expenses. She credited respondent \$6,000 for the advanced fees. As of May 1, 2008, respondent owed Ms. Follansbee \$19,379.88. Respondent received Ms Follansbee's brief and bill.

8. On or about May 22, 2008, respondent filed on behalf of Mr. Walker the Opening Brief that Ms Follansbee drafted. Subsequently, respondent failed and refused to pay Ms. Follansbee for her services.

9. On or about July 22, 2008, Ms. Follansbee filed in Oregon a breach of contract and arbitration lawsuit against respondent for her fees, in a matter entitled *Follansbee v. Webb*, Deschutes County Circuit Court (Oregon), Case No. 08CV054541ST (hereinafter "Case No. 08CV054541ST"). On or about May 20, 2009, Ms. Follansbee was awarded by the Oregon Court \$40,713.37 for her fees and attorney fees and costs of \$12,969, for a total award of \$53,682.37. This was after respondent was defaulted in the Oregon matter for failing to comply with a discovery order to produce certain documents and pay Ms. Follansbee's attorney fees in the amount of \$2,828.89 in obtaining that order to compel.

10. On or about March 23, 2009, respondent filed in California a lawsuit for Damages: Fraudulent Inducement into Contract against Ms. Follansbee in a matter entitled *Webb v. Follansbee*, San Francisco Superior Court, Case No. CGC-09-486454 (hereinafter "Case No. CGC-09-486454"). Respondent filed this lawsuit even though his only cause of action was based on his claim in his Complaint that Ms. Follansbee had virtually guaranteed success in the Walker appeal, even though respondent knew that this claim was not true; even though respondent alleged no damages; and even though the underlying Walker appeal was still pending. (The Ninth Circuit Court of Appeals did not file its Opinion in the Walker appeal until August 12, 2009, almost five months after respondent filed his lawsuit against Ms. Follansbee.) In fact, as a matter of law, even if Ms. Follansbee had guaranteed success on the appeal, *arguendo*, predications as to future events, or statements as to future action by some third party, are deemed opinions, and are not actionable fraud in California. (*Borba v. Thomas* (1977) 70 Cal.App.3d 144, 152.)

11. Respondent's Complaint did not comply with section 128.7 of the California Code of Civil Procedure's requirement that, based on a reasonable inquiry, the Complaint and its allegations not be presented for an improper purpose; that the claims were warranted by existing law or a non-frivolous argument; and the allegations had evidentiary support. Respondent's Complaint met none of these requirements. Respondent's lawsuit was frivolous and done for an improper purpose: to delay, harass, and obstruct Ms. Follansbee's entitlement to her fees and the soon to be awarded Oregon judgment.

12. Subsequently, Ms. Follansbee hired California attorney, Nelson Brestoff, to defend her against respondent's lawsuit. On or about April 28, 2009, Mr. Brestoff, on behalf of Ms. Follansbee, filed a Demurrer to respondent's Complaint. On or about May 8, 2009, respondent filed a two page opposition to the demurrer with no legal citations.



13. On or about July 1, 2009, the court sustained the demurrer without leave to amend and granted judgment to Ms. Follansbee in Case No. CGC-09-486454. The court held that respondent failed to plead damages or an actionable misrepresentation. It held "Generally, an actionable misrepresentation must be made as to past or existing facts. Predications as to future events, or statements as to future action by some third party, are deemed opinions, and are not actionable fraud. *Borba vs. Thomas* (1977) 70 Cal.App.3d 144."

14. Respondent received notice of the court's order sustaining the demurrer without leave to amend and the court's judgment for Ms. Follansbee.

15. On or about July 14, 2009, 13 days after respondent received the court's order sustaining the demurrer without leave to amend in Case No. CGC-09-486454, respondent filed a second lawsuit against Ms. Follansbee in *Webb v. Follansbee*, San Francisco Superior Court, Case No. CGC-09-490421 alleging Damages: Fraudulent Inducement into Contract against Ms. Follansbee. This lawsuit was identical to Case No. CGC-09-486454, even as to the paragraphs in the complaint, except it added one paragraph specifying the amount of damages.

16. Respondent filed this second lawsuit even though he knew the court had issued an order sustaining the demurrer in Case No. CGC-09-486454 without leave to amend; even though he knew the new lawsuit was again based on the false claim that Follansbee had virtually guaranteed success in the appeal; and even though the Walker appeal was still pending. Further, respondent knew as a matter of law that, even if Ms. Follansbee had guaranteed success on the appeal, *arguendo*, predications as to future events, or statements as to future action by some third party, are deemed opinions, and are not actionable fraud. Moreover, respondent knew or should have known that res judicata would bar this lawsuit. Respondent's Complaint in Case No. CGC-09-490421 did not comply with section 128.7 of the California Code of Civil Procedure's requirement that, based on a reasonable inquiry, the lawsuit or its allegations not be presented for an improper purpose; that the claims were warranted by existing law or a non-frivolous argument; and the allegations had evidentiary support. Respondent's Complaint met none of these requirements. Respondent's lawsuit was frivolous and done for an improper purpose: to delay, harass, and obstruct Ms. Follansbee's entitlement to her fees and the Oregon judgment against respondent that she had received.

17. On or about August 13, 2009, Mr. Brestoff, on behalf of Ms. Follansbee, filed a Demurrer to the Complaint in Case No. CGC-09-490421. On or about August 26, 2009, respondent filed an opposition falsely claiming that the demurrer was based on a fraudulent submitted order. On or about September 30, 2009, the court sustained Ms. Follansbee's demurrer without leave to amend. The court held that "Plaintiff cannot either plead an actionable misrepresentation or justifiable reliance." Respondent received notice of this order.

18. On or about October 1, 2009, after learning of the September 30, 2009 order sustaining the demurrer without leave to amend, respondent filed a third lawsuit against Ms. Follansbee on a matter entitled *Webb v. Follansbee*, San Francisco Superior Court Case No. CGC-09-493082 (hereinafter "Case No. CGC-09-493082"). He filed this lawsuit on his behalf only. Mr. Walker was not part of that lawsuit.

19. This time respondent filed a legal malpractice action, claiming that Ms. Follansbee's "abandonment" during the case caused respondent and the client to sustain substantial damages, even though there was no attorney-client relationship between respondent and Ms. Follansbee and respondent was not suing on behalf of the client, Mr. Walker; the law does not permit an attorney to sue a co-counsel for legal malpractice (see *Beck v. Wecht* (2002) 28 Cal.4<sup>th</sup> 289); even though respondent's contract with Ms Follansbee specifically provided that she was only obligated to draft the opening brief; even though the statute of limitations barred this action; and even though res judicata or collateral estoppel barred the lawsuit. Respondent's Complaint in Case No. CGC-09-493082 did not comply with section 128.7 of the California Code of Civil Procedure's requirement that, based on a reasonable inquiry, it not be presented for an improper purpose; that the claims were warranted by existing law or a non-frivolous argument; and the allegations had evidentiary support. Respondent's complaint met none of these requirements. Respondent's lawsuit was frivolous and done for an improper purpose: to delay, harass, and obstruct Ms. Follansbee's entitlement to her fees.

20. On or about November 16, 2009, Ms. Follansbee filed a lawsuit in California against respondent to enforce her Oregon judgment against respondent, in a matter entitled *Follansbee v. Webb*, San Francisco Superior Court Case No. CPF-09-509999 (hereinafter "Case No. CPF-09-509999"). On or about January 14, 2010, the San Francisco Superior Court entered and filed a sister state judgment against respondent and in favor of Ms. Follansbee for \$57,097.57 in San Francisco Superior Court Case No. CPF-09-509999. This judgment arose from Oregon's judgment against respondent for unpaid fees to Ms. Follansbee.

21. On or about January 19, 2010, the San Francisco Superior Court sustained a demurrer without leave to amend in respondent's malpractice action against Ms. Follansbee and granted judgment to Ms. Follansbee in Case No. CGC-09-493082. It denied Ms. Follansbee's motion for sanctions or request that the court refer the matter to the State Bar.

22. On or about January 31, 2011, the San Francisco Superior court in *Follansbee v Webb*, Case No. CPF-09-509999, granted Ms. Follansbee's motion to compel interrogatories against respondent regarding his financial information and ability to pay the award. Respondent and his counsel failed to appear at the hearing on the motion to compel. Respondent had refused to answer the interrogatories, making frivolous and bad faith objections. These objections were made without justification, in bad faith and solely intended to cause unnecessary delay, harass, or obstruct Ms. Follansbee's rights to enforce her judgment.

23. In the San Francisco Superior Court's January 31, 2011 order in Case No. CPF-09-509999, it ordered sanctions against respondent and his counsel in the amount of \$1,400 because it found that the failure and refusal of both respondent and his attorney to properly respond to the discovery was "willful, without justification, in bad faith and solely intended to cause unnecessary delay or obstruct plaintiff's rights to enforce her judgment." Respondent received notice of this order. Respondent did not seek reconsideration or appeal this sanctions order.

24. On or about January 31, 2011, the San Francisco Superior Court in *Follansbee v. Webb*, Case No. CPF-09-509999, also denied respondent's motion to set aside or vacate the judgment against respondent. Respondent waived oral argument. Respondent argued in his

motion that 1) he never received notice of the Oregon order and 2) that the agreement for fees for drafting the brief was between respondent's law firm and Ms. Follansbee and she improperly sued in their individual capacities. These arguments were false, frivolous and made in bad faith to delay and obstruct Ms. Follansbee's entitlement to the judgment. Respondent knew that he received notice of the Oregon order and he knew the fee agreements were between respondent and Ms. Follansbee in their individual capacities. Further, respondent had sued Ms. Follansbee three times in her individual capacity. Respondent knowingly or with reckless disregard for the truth made these false statements for the purpose of delaying, harassing, and obstructing Ms. Follansbee's entitlement to her fees and judgment. Respondent received notice of the court's order denying his motion to set aside or vacate its judgment against respondent.

25. Subsequently, respondent paid the judgment in Case No. CPF-09-509999. On April 18, 2011, the Court filed a Satisfaction of Judgment in the matter.

26. In Case Nos. CGC 09-486454 and CGC-09-490421, respondent falsely stated that Ms. Follansbee virtually guaranteed a successful result, when in fact and in truth she made no such representation and respondent knew that.

27. In Case No. CGC-09-493082, respondent filed an Opposition to Demurrer in which he falsely stated that Ms. Follansbee assured him that she could be successful in the appeal based on her intimate knowledge of the Ninth Circuit. In fact and in truth, respondent knew she made no such statement.

28. In Case No. CPF-09-509999, respondent filed a motion to vacate Ms. Follansbee's California judgment to enforce Oregon's judgment. In that motion, respondent falsely claimed that he had not received notice of the Oregon award when in fact he had. Respondent knew his statement was false. Likewise, he falsely claimed that he was not the proper party because she had not sued his law firm, only him individually. He made this claim even though he had sued Ms. Follansbee in his individual capacity and even though his fee agreements with her state that are between him and her.

29. On or about September 16, 2008, the California Supreme Court in Case No. S165314 suspended respondent for one year, stayed, with two years' probation and ordered him to file probation reports under penalty of perjury. During the time respondent was filing his false and frivolous lawsuits and motions against Ms. Follansbee, he filed probation reports with the State Bar probation unit in which he falsely declared under penalty of perjury that he was in compliance with the Rules of Professional Conduct and the State Bar Act. In fact and in truth, he was committing misconduct during that time period and violating the State Bar Act. Respondent knew or with reckless disregard made these false statements in those reports.

#### CONCLUSIONS OF LAW

30. By filing three frivolous lawsuits against Ms. Follansbee, by refusing to answer interrogatories and making frivolous objections without justification, in bad faith and solely intended to cause unnecessary delay or obstruct Ms. Follansbee's entitlement to her fees and right to enforce her Oregon judgment, and by filing lawsuits and motions to set aside the judgment in Case No. CPF-09-509999 that contained false and frivolous statements and arguments,

respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just, in violation of section 6068(c) of the Business & Professions Code.

31. By filing three frivolous lawsuits against Ms. Follansbee for the purpose of delay, harassing, and obstructing Ms. Follansbee's entitlement to her fees, including filing an identical lawsuit after the court granted a demurrer without leave to amend and filing a malpractice lawsuit against a co-counsel, even though the law did not allow this and even though the statute of limitations had expired, in order to delay, harass, and obstruct Ms. Follansbee's entitlement to her fees, by making frivolous and bad faith discovery objections in Case No. CPF-09-509999 without justification, in bad faith and solely intended to cause unnecessary delay, harass, or obstruct Ms. Follansbee's rights to enforce her judgment, by making a frivolous motion to vacate the California judgment enforcing the Oregon judgment and discovery objections that were false, frivolous and made in bad faith to delay and obstruct Ms. Follansbee's entitlement to the judgment, respondent encouraged either the commencement or the continuance of an action or proceeding from a corrupt motive of passion or interest, in violation of section 6068(g) of the Business & Professions Code.

32. By filing Case No. CGC-09-490421 after the court granted the demurrer in Case No. CGC 09-486454, even though the lawsuits were identical, respondent willfully failed to maintain the respect due the courts of justice and judicial officers, in violation of section 6068 (b) of the Business & Professions Code.

33. By filing frivolous lawsuits, motions, and discovery objections and by making false statements to the courts that Ms. Follansbee had guaranteed or virtually guaranteed success and that he had never received the Oregon judgment, by falsely claiming that he had not received notice of the Oregon award and that he was not a proper party to the lawsuit, respondent committed an act involving moral turpitude, dishonesty or corruption, in violation of section 6106 of the Business & Professions Code.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was May 5, 2011.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

This matter would ordinarily be a disbarment case because respondent has two prior records of discipline. Standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct recommends disbarment for an attorney who has been found culpable of misconduct and has two prior records of discipline. However, given the totality of the circumstances, including that no client was harmed or directly involved in the misconduct, and in the interest of justice and the purposes of attorney discipline, including public protection, the parties are recommending a one year actual suspension. This is necessary given respondent's misconduct and his aggravating circumstances, especially the prior record of discipline and the harm he caused. Moreover, there is a common thread in respondent's misconduct: not paying obligations

(personal or client obligations related to the practice of law) and violating his duties as an attorney.

A prior record of discipline is an important factor in aggravation regardless of when the discipline is imposed.<sup>1</sup> This is because a prior record of discipline is indicative of a recidivist attorney's inability to conform his or her conduct to the profession's ethical norms.<sup>2</sup> It is also important because the purposes of discipline mandate that the Court either "reform the offender or remove him from the practice."<sup>3</sup>

A prior record of discipline is, therefore, highly probative and significant for the determination of the discipline to be imposed. As the Supreme Court wrote:

There can be no doubt that any lawyer who is guilty of successive breaches of duty with relation to the management of his clients' affairs should be deprived of the license under which he is authorized to practice law and by which he is recommended to the public as worthy of trust.<sup>4</sup>

Standard 1.7 generally expresses the discipline that is warranted due to an attorney's history of misconduct and his unwillingness to conform his conduct to the standards required of those who are posed with the trust of the public as attorneys. In this case, there are strong aggravating circumstances, including significant harm, and acts of moral turpitude.

The Supreme Court has held that great weight is to be given the Standards and that they should be followed whenever possible. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) Thus, while the Standards are not mandatory, the Supreme Court has held that they should be followed unless the charged attorney can demonstrate the existence of extraordinary circumstances justifying a lesser sanction. (*In re Silverton*, *supra*, 36 Cal.4th at 92.) That is, it is Respondent's burden to demonstrate that there are extraordinary circumstances justifying a lesser sanction than that recommended by the Standards.

However, the Supreme Court has at times deviated from Standard 1.7(b)'s disbarment recommendation. Where it has done so, the discipline has usually been a significant actual suspension. In *Conroy v. State Bar*, the attorney's prior disciplines were a private reproof and a 60 day actual suspension for failing to comply with the conditions of that reproof. Respondent's misconduct in total was equally if not more serious than Conroy; and there was significant harm in respondent's case unlike in *Conroy*, although Conroy had received more discipline in his prior disciplines. Conroy received a one year actual suspension.<sup>5</sup> In *Arm v. State Bar*, an attorney's prior disciplines involved a public reproof, an all stayed suspension, and a 60 day actual

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1 *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 282. See also *Eschwig v. State Bar* (1969) 1 Cal.3d 8, 18; *Marsh v. State Bar* (1934) 2 Cal.2d 75, 79; and Standard 1.2(b) (i).

2 *In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at 619.

3 *Hill v. State Bar*, *supra*, 2 Cal.2d at 624; *Emslie v. State Bar*, *supra*, 11 Cal.3d at 225; *Giddens v. State Bar*, *supra*, 28 Cal.3d at 734.

4 *Herron v. State Bar* (1944) 24 Cal.2d 53, 67.

5 *Conroy v. State Bar*, *supra*, 53 Cal.3d at 495.

suspension. The priors predated the Standards and, in *Arm*, the court found no harm. *Arm* received an 18 month actual suspension. The Court found that the mitigating circumstances clearly predominate in *Arm*.<sup>6</sup>

Here, respondent's two prior disciplines resulted in no actual suspension and for that reason and that no client was harmed or directly involved in the misconduct, the State Bar is not recommending disbarment at this time. However, the parties agree that, like the attorney in *Conroy*, he should receive a one year actual suspension.

This recommendation for one year actual suspension is consistent with the case law and the Standards for the specific violations found. Standard 2.6 recommends disbarment or suspension for a violation section 6068 of the Business & Professions Code. Standard 2.3 recommends actual suspension or disbarment for an act or acts of moral turpitude, dishonesty, or corruption. Thus, even without his two priors, this matter would be an actual suspension case.

Case law also strongly supports a significant period of actual suspension for this type of misconduct. Disciplines for violating section 6068(c) or 6068(g) have ranged from disbarment to 30 days actual suspension.<sup>7</sup> Disciplines for moral turpitude have usually resulted in at minimum actual suspensions.<sup>8</sup>

The California Supreme Court has held that in determining the level of discipline the court must ask what discipline will most likely protect the public, the courts, and the legal profession, or stated conversely to deter the errant attorney from future wrongdoing?<sup>9</sup> A period of one year actual suspension (and five years probation and the other conditions of discipline) is minimally required here to impress upon respondent the significance of his misconduct and to give him an opportunity to reflect on and rehabilitate himself while protecting the public, the profession, and the courts.

Given the seriousness of his misconduct and his prior record of discipline, a one year actual suspension is fair and consistent with the purposes of attorney discipline, especially public protection, the standards, and case law. Respondent understands that this is his last chance and that should he commit any further misconduct, no matter how minimal, it is very likely that he will be disbarred.

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<sup>6</sup> *Arm v. State Bar*, *supra*, 50 Cal.3d at 763.

<sup>7</sup> See *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179 [disbarment]; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112 [2 year actual suspension, prior record of discipline for 90 days]; *In the Matter of Scott*, *supra*, 4 Cal. State Bar Ct. Rptr. at 446 [60 days actual suspension]; *Sorensen v. State Bar*, *supra*, 52 Cal.3d at 1036 [30 days actual suspension].

<sup>8</sup> See e.g. *Davis v. State Bar* (1983) 33 Cal.3d 231; *In the Matter of Lais*, *supra*, 4 Cal. State Bar Ct. Rptr. 112.

<sup>9</sup> *In re Morse*, *supra*, 11 Cal.4th at 210.

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In the Matter of:  
Mark L. Webb

Case Number(s):  
10-O-06542

## Financial Conditions

### a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Julie A. Follansbee	\$24,964.66	June 15, 2011

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

### b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ 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.

### c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- ☐ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

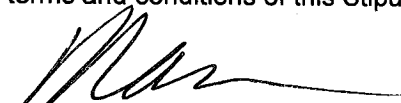



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In the Matter of: Mark L. Webb	Case number(s): 10-O-06542
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### SIGNATURE OF THE PARTIES

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.

<u>5/9/10</u>	<u></u>	<u>Mark L. Webb</u>
Date	Respondent's Signature	Print Name

<u>May 26, 2011</u>	<u></u>	<u>Allen Blumenthal</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: Mark L. Webb	Case Number(s): 10-O-06542
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### ACTUAL SUSPENSION ORDER

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

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

1. On page 4 of the stipulation, the "X" in the box next to paragraph D.(1)(a)(i) is deleted; and
2. On page 4 of the stipulation, the "X" in the box next to paragraph D.(1)(a)(ii) is deleted.

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

Date

June 8, 2011

Judge of the State Bar Court

Pat McElroy

## 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 June 9, 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 San Francisco, California, addressed as follows:

MARK LOPERT WEBB  
LAW OFFICE OF MARK L WEBB  
333 PINE ST 5TH FL  
SAN FRANCISCO, CA 94104

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

ALLEN BLUMENTHAL , Enforcement San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 9, 2011.

  
Laurretta Cramer  
Case Administrator  
State Bar Court