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<b>State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION</b>		
<p>Counsel For The State Bar</p> <p>Robert A. Henderson Deputy Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2385</p> <p>Bar # 173205</p>	<p>Case Number(s): 11-O-12262</p>	<p>For Court use only</p> <p style="text-align: center;"><b>PUBLIC MATTER</b></p> <p style="text-align: center;"><b>FILED</b></p> <p style="text-align: center;">JUN 20 2011</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>John F. Morken 760 Market St., Suite 938 San Francisco, CA 94102 (415) 391-6140</p> <p>Bar # 153979</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: John F. Morken</p> <p>Bar # 153979</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 September 12, 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)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- 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 05-C-04451
  - (b)  Date prior discipline effective February 25, 2009
  - (c)  Rules of Professional Conduct/ State Bar Act violations: 6068(a); 4-100(A); and 6106.
  - (d)  Degree of prior discipline three-years stayed, five-years probation and two-years actual suspension
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.  
  
08-H-10814 - Stayed suspension for violating a condition of his public reproof in case no. 03-C-03937.
- (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 five-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 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:

**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

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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:

- Substance Abuse Conditions                       Law Office Management Conditions
- Medical Conditions                                       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.**

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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:** Respondent shall comply with his prior conditions in case no. 05-C-04451. Respondent shall continue in the Lawyer's Assistance Program ("LAP"). Respondent shall sign all required documents, including but not limited to a contract, participation plan and waiver. Respondent shall comply with all provisions and conditions of his participation plan with LAP, and all modifications thereto, until such time as he graduates from LAP or until the expiration of this Stipulation, whichever is sooner.

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

IN THE MATTER OF:                      John F. Morken

CASE NUMBER(S):                      11-O-12262

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 11-O-12262 (State Bar Investigation)

**FACTS:**

1. On January 26, 2009, the California Supreme Court filed a disciplinary order in State Bar Court case number 05-C-04451 et alia (Supreme Court Case Number S168129).
2. The order became effective on February 25, 2009 (California Rules of Court, rule 9.18(a)), and at all times subsequent has remained in full force and effect.
3. Notice of the rule 9.20 order was properly served upon respondent (California Rule of Court 9.18(b)).
4. The disciplinary order placed respondent on disciplinary probation for five years, beginning on the date the disciplinary order became effective, and required him to comply with the conditions of probation recommended by Hearing Department of the State Bar Court in its Order Approving Stipulation filed on August 26, 2008.
5. At all times subsequent to February 25, 2009, respondent has remained on disciplinary probation and the probation conditions mentioned above have remained in full force and effect.

**6. ETHICS SCHOOL CONDITION**

(a) One of the conditions of probation provided as follows:

“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.”

(b) Respondent violated the condition because he did not attend the Ethics School prior to the expiration of the one-year deadline, i.e, the deadline that expired on or about February 25, 2010.

Respondent failed to attend the course until on or about March 3, 2010. Respondent failed to obtain a

certificate of attendance until on or about August 3, 2010, which was when he paid his enrollment fee for the course.

**7. LAWYER'S ASSISTANCE PROGRAM CONDITION**

(a) One of the conditions of respondent's probation provided as follows:

"Respondent shall be evaluated by the Lawyer's Assistance Program ("LAP"). Respondent shall enter into the LAP by signing all required documents, including but not limited to a contract, participation plan and waiver. Respondent shall thereafter comply with all provisions and conditions of his participation plan with the State Bar LAP, and all modifications thereto, until such time as he graduates from LAP or until the expiration of this Stipulation, whichever is sooner. Within 14 calendar days from the effective date of this Stipulation, Respondent shall provide the Office of Probation with a copy of the waiver which he has signed with LAP that authorizes the LAP to provide Probation with information regarding his compliance with LAP. Revocation of this written waiver would be a violation of this Stipulation. In addition, each quarter and before the due date of his final report, Respondent shall request and obtain from LAP written proof of his compliance with LAP, and provide the original of the LAP compliance report to the Office of Probation with his written report. The written LAP compliance report shall be dated not sooner than 10 calendar days prior to the date Respondent submits his required written reports to the Office of Probation."

(b) **Failure to Provide Timely Waiver.** Respondent violated this condition by failing to provide the Office of Probation with the signed waiver prior to the expiration of the 14-calendar-day period, i.e., prior to on or about March 11, 2009. Respondent did not provide the waiver until on or about July 6, 2009.

(c) **Failure to Participate in LAP.** Respondent also violated the LAP condition by failing to participate in the Lawyers Assistance Program from on or about February 25, 2009 until on or about June 29, 2009.

(d) **Violation of Participation Plan.**

(i) At all times mentioned, respondent's participation plan with the Lawyer's Assistance Program required him to appear for laboratory drug/alcohol testing as directed by LAP and to refrain from the use of alcohol and specified drugs (hereinafter jointly referred to as unauthorized substances).

(ii) Respondent violated the participation plan, and therefore violated the LAP condition of his probation, by repeatedly failing to appear for required testing as directed by LAP and ingesting an unauthorized substance, as follows:

<u>Date</u>	<u>Event</u>
-------------	--------------



11/20/2009	Respondent failed to appear for required laboratory testing.
12/2/2009	Respondent failed to appear for required laboratory testing.
12/14/2009	Respondent failed to appear for required laboratory testing.
3/10/2010	Respondent used an unauthorized substance.
7/22/2010	Respondent failed to appear for required laboratory testing.
11/16/2010	Respondent used an unauthorized substance.

#### CONCLUSIONS OF LAW:

7. By failing to comply with the Ethics School and Lawyer Assistance Program conditions of his probation, respondent intentionally failed to comply with all conditions of probation in willful violation of Business and professions Code section 6068(k).

#### PENDING PROCEEDINGS.

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

#### AUTHORITIES SUPPORTING DISCIPLINE.

*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646 – disbarment recommended for probation violations in aggravated case.

#### COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 2, 2011, the prosecution costs in this matter are \$2,797. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: John Morken	Case number(s): 11-O-12262
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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.

6/2/2011                      *Vi. Morken*                      John Morken  
Date                                  Respondent's Signature                      Print Name

6/2/11                      *Robert A. Henderson*                      Robert A. Henderson  
Date                                  Deputy Trial Counsel's Signature                      Print Name

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In the Matter of: John Morken	Case Number(s): 11-O-12262
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### ACTUAL SUSPENSION ORDER

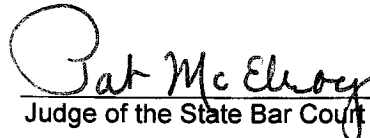
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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) At p. 2, item B.(1)(a), add: Supreme Court order no. S168129;
- 2) At p. 2, item B.(1)(d), delete the description of the prior discipline and insert: Stayed suspension for three years and until respondent complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct[1] ; five years' probation on conditions including actual suspension for two years and until respondent complies with standard 1.4(c)(ii);
- 3) At p. 2, item B.(1)(e), delete the description of the prior discipline and insert: "(i) Supreme Court order no. S145169 (State Bar Court case no. 06-H-10814), effective October 26, 2006: one years' stayed suspension and two years' probation with conditions. Discipline imposed for noncompliance with a condition of a public reproof (lab screening reporting); (ii) State Bar Court case no. 03-C-3937, public reproof effective July 13, 2005, based on violation of Business and Professions Code section 6068(a) (for conviction pursuant to Vehicle Code section 23152(a)).";
- 4) Remove the "and until" std. 1.4(c)(ii) condition from the stayed suspension at page 4, item D.(1)(a)(i) as unnecessary. (See, In the Matter of Luis (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.) The SCO already reflects that change; and
- 5) At p. 4, item E.(1), delete the conditional compliance with standard 1.4(c)(ii) recommendation.

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.)**

June 20, 2011  
Date

  
Judge of the State Bar Court

(Effective January 1, 2011)

## 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 20, 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:

JOHN F. MORKEN  
ATTORNEY AT LAW  
760 MARKET ST STE 938  
SAN FRANCISCO, CA 94102

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:

Robert Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 20, 2011.

  
George Hue  
Case Administrator  
State Bar Court