

(Do not write above this line.)

<p align="center"><b>State Bar Court of California</b>  <b>Hearing Department</b>  <b>Los Angeles</b>  <b>DISBARMENT</b></p>		
<p><b>Counsel For The State Bar</b></p> <p>Mia R. Ellis (SBN 228235)          Senior Trial Counsel          Sue Hong (SBN 285852)          Deputy Trial Counsel          1149 S. Hill St.          Los Angeles, CA 90015          213-765-1380</p> <p>Bar #</p>	<p><b>Case Number(s):</b>          12-O-13648-DFM</p>	<p><b>For Court use only</b></p> <p align="center"><b>FILED</b>  <b>NOV 04 2013</b> PB  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b></p>
<p><b>In Pro Per Respondent</b></p> <p>Stephen Paul Wainer          Law Offices of Stephen P. Wainer          1711 California Avenue          Bakersfield, CA 93304          661-328-9971</p> <p>Bar # 156197</p>	<p><b>Submitted to: Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND          DISPOSITION AND ORDER APPROVING; ORDER OF          INVOLUNTARY INACTIVE ENROLLMENT</p> <p><b>DISBARMENT</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p><b>In the Matter of:</b>          STEPHEN PAUL WAINER</p> <p>Bar # 156197</p> <p>A Member of the State Bar of California          (Respondent)</p>		

**Note:** All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 16, 1991.



(Do not write above this line.)

- (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 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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - ☒ Costs to be awarded to the State Bar.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**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**
  - (a) ☒ State Bar Court case # of prior case 01-O-01573
  - (b) ☒ Date prior discipline effective February 23, 2003
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6106 and Rules of Professional Conduct, rule 3-110(A)
  - (d) ☒ Degree of prior discipline one-year suspension, stayed, three-year probation with conditions including 90-days actual suspension
  - (e) ☐ If respondent has two or more incidents of prior discipline, use space provided below:  
  
See stipulation page 8.
- (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. See Stipulation page 8.
- (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. See Stipulation page 8.
- (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.

(Do not write above this line.)

---

- (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:**

Pretrial Stipulation - See Stipulation page 8.

**D. Discipline:        Disbarment.**

**E. Additional Requirements:**

- (1) **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.
- (2) ☐ **Restitution:** Respondent must make restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_. If the Client Security Fund has reimbursed \_\_\_\_\_ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than \_\_\_\_\_ days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

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

IN THE MATTER OF:                      STEPHEN PAUL WAINER

CASE NUMBER:                          12-O-13648

**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. 12-O-13648 (Complainant: Rosanne Parks)

**FACTS:**

1. On September 14, 2005, Rosanne Parks ("Parks") applied for Service Connected Disability with the Kern County Employees Retirement Association ("KCERA"). Her request was denied by the Board of Kern County Employers Retirement Association ("Board").
2. On October 4, 2006, Parks hired the law firm of Thomas Anton and Associates ("Anton and Associates") to appeal the decision by the Board to deny her claim for disability. The law firm assigned the case to Respondent.
3. On October 4, 2006, Respondent submitted a request for administrative review of the Board's denial of the Service Connected Disability with KCERA. In or about January 2007, an evidentiary hearing was held. On May 8, 2007, the hearing officer ultimately recommended that KCERA deny Parks's application for benefits. In June 2007, the Board approved and adopted the hearing officer's recommendation.
4. On September 27, 2007, Respondent filed a Petition for Writ of Mandamus ("petition") on behalf of Parks in Kern County Superior Court, entitled *Rosanne Parks vs. Board of Retirement of the Kern County Employees Retirement Association*, case number S-1500-CV-261920 (the "civil case").
5. From October 1, 2007 to February 28, 2008, the Board filed demurrers to the petition and Respondent filed responses.
6. Respondent later left Anton and Associates and opened his own practice. Parks agreed to have Respondent continue her representation at his new firm.
7. On December 15, 2009, the Court in the civil case denied the petition.
8. On December 24, 2009, Respondent sent Parks a letter advising her of the denial of the petition in the civil case and recommending that they immediately appeal the decision. Parks agreed to have Respondent file an appeal in the civil case.
9. On January 14, 2010, judgment was entered in favor of the Board in the civil case.

10. After the Court denied the petition, Respondent did not take any steps to pursue the civil matter on behalf of Parks, including filing the appeal, from December 24, 2009 to present. Respondent never filed an appeal on behalf of Parks.

11. On March 3, 2010, Parks called Respondent to inquire about the status of her appeal in the civil case. Respondent told Parks that the necessary paperwork had been filed for the appeal. This statement was false. Respondent had not filed an appeal at the time he made the representation to Parks. Respondent knew the statement was false at the time he made it.

12. On August 16, 2010, Parks called Respondent to inquire about the status of her appeal in the civil case. Respondent advised Parks that all the paperwork was submitted in July 2010 and that he would notify Parks of the date for oral argument, which could take (8) months to one (1) year. The statement was false. Respondent had not submitted paperwork or otherwise filed an appeal. Respondent knew that the statement was false at the time he made it.

13. On January 17, 2012, Respondent advised Parks that the appeal in the civil case was pending and that he had not yet received a notice from the court regarding the appeal and notice of oral argument. The statement was false. Respondent had not filed the appeal. Respondent knew that the statement was false at the time he made it.

14. On January 17, 2012, Parks requested a copy of all the documents filed with the Court of Appeals and Respondent agreed to provide them.

15. On January 19, 2012, Respondent provided Parks with what purported to be copies of the Appellant's Opening Brief, Reporter's Transcript, and Clerk's Transcript on Appeal. Respondent told Parks that he had filed all the documents in the appeal of the civil case in the Fifth District Court of Appeal, case number F061553 in July 2010. This statement was false, and Respondent knew it was false when he made it.

16. Respondent affixed or caused to be affixed to the pleadings provided to Parks a case number from a previously filed case, unrelated to the Parks appeal. Respondent gave these documents to Parks knowing that the appeal and other documents had not been filed. Respondent gave these documents to Parks knowing that the documents would mislead Parks into believing that he had filed the appeal and performed services of value.

17. On April 18, 2012, Parks called the Court of Appeals and learned that case number F061553 was assigned to a case entitled *Med-Trans Corporation vs. California City*, a case unrelated to Parks.

18. On April 20, 2012, Respondent called Parks and admitted that he did not file the appeal.

#### CONCLUSIONS OF LAW:

19. By repeatedly misrepresenting to Parks that he had filed the appeal, when in fact he never filed the appeal, and giving Parks documents with a case number that Respondent affixed or caused to be affixed thereto to mislead her as to the status of the appeal, Respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

20. By failing to file an appeal of the civil matter on behalf of Parks, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.2(b)(i)):** Effective February 23, 2003, in State Bar case number 01-O-01573 (S111036), Respondent stipulated to committing acts of moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106 and failing to perform legal services competently in violation of Rules of Professional Conduct, rule 3-110(A) in a single client matter. The misconduct involved Respondent falsifying pleadings and other documents, executing documents on behalf of others without their knowledge, making repeated misrepresentations to his employer and client, and fraudulently affixing superior court filing stamps and case numbers to pleadings. The misconduct occurred between 1999 and 2001. The Supreme Court approved the discipline of one year suspension, stayed, 90 days actual suspension, and three years of probation with conditions, including restitution.

**Harm (Std. 1.2(b)(iv)):** The current misconduct caused significant harm to Rosanne Parks as she lost her right to pursue the appeal related to a service-related disability.

**Multiple Acts of Misconduct (Std. 1.2(b)(ii)):** The current misconduct evidences multiple acts of wrongdoing as it involves two acts of misconduct, including multiple misrepresentations to Parks, in a single client matter.

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** Respondent has entered into a comprehensive stipulation with the State Bar prior to trial, thereby saving the State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

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

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from



that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing two acts of professional misconduct. Standard 1.6 (a) requires that where a respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in standard 2.3, which applies to Respondent's violation of Business and Professions Code section 6106. Standard 2.3 states that culpability of a member of an act of moral turpitude, fraud or intentional dishonesty shall result in actual suspension or disbarment depending on the extent of harm, the magnitude of the misconduct, and the degree to which it relates to the practice of law. Also, Standard 1.7(a), which provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust, applies. Respondent has a prior record of discipline that involved similar misconduct to the instant case.

Respondent's misconduct in the instant case is significant and disbarment is the appropriate disposition of this matter. Here, Parks retained Respondent to represent her in obtaining service-connected disability from her employer. At his recommendation, Parks agreed to pursue an appeal of the denial of those benefits. However, Respondent never filed the appeal and misrepresented to Parks, over a two year period, that the appeal was pending. Thus, the magnitude of Respondent's misconduct is great. Further, Respondent's misconduct significantly harmed Parks as she has permanently lost her right to pursue an appeal of the denial of disability benefits. In light of his prior misconduct which also involved dishonesty, Respondent's prolonged misrepresentation and concealment regarding the status of Parks's appeal establishes a thread of deceit which warrants disbarment. Given the facts and circumstances in the present case and the aggravating factors, including the significant harm to Parks and Respondent's prior record of discipline involving similar misconduct, the parties stipulate that disbarment is appropriate to effectuate the primary purposes of attorney discipline under standard 1.3: the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys; and the preservation of public confidence in the legal profession.

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

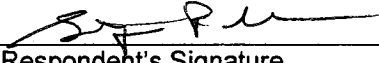
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 16, 2013, the prosecution costs in this matter are \$7,174. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.


(Do not write above this line.)

In the Matter of: STEPHEN PAUL WAINER	Case number(s): 12-O-13648-DFM
--	-----------------------------------

### 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>10/2/13</u>	<u></u>	<u>Stephen Paul Wainer</u>
Date	Respondent's Signature	Print Name

<u>10/7/13</u>	<u></u>	<u>Mia Ellis</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:  
STEPHEN PAUL WAINER

Case Number(s):  
12-O-13648

### DISBARMENT ORDER

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

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

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

Respondent Stephen Paul Wainer is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

11/4/13



Judge of the State Bar Court  
**DONALD F. MILES**

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 4, 2013, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE  
ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

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

**STEPHEN P. WAINER  
LAW OFFICES OF STEPHEN P.  
WAINER  
1711 CALIFORNIA AVE  
BAKERSFIELD, CA 93304**

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

**Mia R. Ellis, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 4, 2013.



\_\_\_\_\_  
Paul Barona  
Case Administrator  
State Bar Court