

(Do not write above this line.)

| State Bar Court of California Hearing Department Los Angeles DISBARMENT | | | PUBLIC MATTER |
|--|---|---|---------------|
| <p>Counsel For The State Bar</p> <p>Stacia L. Johns Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1004</p> <p>Bar # 292446</p> | <p>Case Number(s): 16-N-11046-YDR</p> | <p>For Court use only</p> <p style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</p> <p style="text-align: center; font-size: 1.2em; font-weight: bold;">OCT 27 2017</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> | |
| <p>In Pro Per Respondent</p> <p>Michael Robert McCabe 12491 Gay Rio Drive Lakeside, CA 92040-5510</p> <p>Bar # 137844</p> | <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | | |
| <p>In the Matter of: MICHAEL ROBERT McCABE</p> <p>Bar # 137844</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 7, 1988**.
- (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."



(Do not write above this line.)

- (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case **14-O-05340 (See attachment, page 7.)**
 - (b) Date prior discipline effective **December 17, 2015**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(a) (engaging in the unauthorized practice of law while suspended); Business and Professions Code section 6106 (intentionally engaging in the unauthorized practice of law while suspended); Rules of Professional Conduct, rule 4-200(a) (charging illegal fees).**
 - (d) Degree of prior discipline **One-year suspension, stayed; two-year probation with conditions; 90-day actual suspension and until respondent makes restitution in the amount of \$2,000 plus 10 percent interest per year from December 17, 2015.**
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.

(Do not write above this line.)

- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the

(Do not write above this line.)

product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (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 extraordinarily 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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances: Pretrial Stipulation: see attachment at page 7.

(Do not write above this line.)

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 **John Shoemaker** in the amount of \$ **2,000** plus 10 percent interest per year from **December 17, 2015**. If the Client Security Fund has reimbursed **John Shoemaker** 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: MICHAEL ROBERT MCCABE
CASE NUMBER: 16-N-11046-YDR

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. 16-N-11046-YDR

FACTS:

1. On November 17, 2015, the Supreme Court issued an order in case no. S229377 (State Bar case no. 14-O-05340), effective December 17, 2015, which imposed discipline as to respondent consisting of one year stayed suspension, two years' probation with conditions, including 90 days' actual suspension and until respondent paid restitution in the amount of \$2,000, plus 10 percent interest per year ("the disciplinary order").
2. Pursuant to the disciplinary order, respondent was required to file with the clerk of the State Bar Court the declaration ("compliance declaration") required under subdivision (c) of California Rules of Court, rule 9.20 ("rule 9.20") by January 26, 2016.
3. On November 17, 2015, the Clerk of the Supreme Court properly served respondent with a copy of the disciplinary order. Respondent received the disciplinary order.
4. On December 14, 2015, Probation Deputy May Ling Fernandez ("Probation Deputy Fernandez") from the State Bar Office of Probation ("Office of Probation") sent a letter to respondent at his official membership records address outlining the terms of the Supreme Court's order and reminding respondent that his Rule 9.20 compliance declaration would be due January 26, 2016.
5. On January 12, 2016, the Office of Probation's reminder letter, sent to respondent on December 14, 2015, was returned as undeliverable.
6. On January 21, 2016, Probation Deputy Fernandez mailed, emailed and faxed a non-compliance letter to respondent at his official membership records address, email address, and fax number to inform respondent that the reminder letter was returned as undeliverable. The letter also indicated that respondent was currently not in compliance with his probation terms because he failed to update his current contact information within 10 days to the Membership Records Office of the State Bar and the Office of Probation as required by Business and Professions Code section 6002.1.
7. On January 21, 2016, the Office of Probation received a fax error report regarding the Office of Probation's effort to fax respondent the January 21, 2016, non-compliance letter.

8. On January 22, 2016, Probation Deputy Fernandez received an email read receipt indicating respondent received the non-compliance letter sent via email on January 21, 2016. Respondent received the January 21, 2016 email.

9. Respondent failed to file a compliance declaration with the clerk of the State Bar Court by January 26, 2016.

10. On August 18, 2016, respondent filed a compliance declaration with the State Bar Court.

11. On August 19, 2016, Supervising Attorney Terry Goldaide from the Office of Probation sent a letter to respondent indicating his belated compliance declaration, filed August 18, 2016, was substantively non-compliant with rule 9.20.

12. To date, respondent has not filed a compliant rule 9.20 declaration.

CONCLUSIONS OF LAW:

13. By failing to file with the clerk of the State Bar Court a compliant affidavit showing that he had fully complied with rule 9.20, California Rules of Court, as required by subdivision (c) of rule 9.20, within the time prescribed by the disciplinary order issued in Supreme Court case no. S229377 (State Bar case no. 14-O-05340), Respondent willfully violated rule 9.20, California Rules of Court.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior imposition of discipline. In case number 14-O-05340, effective December 17, 2015, respondent was suspended from the practice of law for one year, with execution of that period of suspension stayed, and was placed on probation for two years with conditions, including the condition that respondent be actually suspended for 90 days and until respondent makes restitution in the amount of \$2,000, plus 10 percent interest per year. Respondent stipulated to 11 counts of misconduct consisting of five counts of violation of Business and Professions Code section 6068(a) (engaging in the unauthorized practice of law while suspended); five counts of 6106 (intentionally engaging in the unauthorized practice of law while suspended); and one count of Rules of Professional Conduct, rule 4-200(a) (charging illegal fees). Respondent's misconduct occurred between January 2014 and April 2014. Respondent's failure to make restitution and multiple acts of misconduct were aggravating circumstances. Respondent received mitigation credit for lack of prior discipline and entering into a prefiling stipulation.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is entitled to mitigation credit for acknowledging his misconduct and entering into a pretrial stipulation as to facts and conclusions of law, thereby obviating the need for trial and saving State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigation credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

///
///

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In the present matter, respondent failed to timely file his rule 9.20 compliance declaration, and respondent’s belated declaration did not substantively comply with rule 9.20. Under rule 9.20, a suspended member’s willful failure to comply with the provisions of rule 9.20 is cause for disbarment or suspension. Accordingly, the appropriate level of discipline in this case is either actual suspension or disbarment.

Standard 1.8(a) states that when a respondent has a single prior record of discipline, the sanction for the current misconduct must be greater than the previously-imposed discipline. Respondent’s prior record of discipline involved five counts of engaging in the unauthorized practice of law in three separate client matters, five counts of intentionally engaging in the unauthorized practice of law in three separate client matters, and one count of charging illegal fees. Respondent’s prior misconduct resulted in a substantial actual suspension, and, therefore, was not of minimal severity. In the current matter, respondent has failed to comply with a Supreme Court order. Accordingly, disbarment is warranted under Standard 1.8(a).

The sanction recognized and generally imposed by the Supreme Court in rule 9.20 wilful violation cases is disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) When it has not been imposed, the attorney had complied with the notification requirement to all their clients, participated in the disciplinary process, and presented substantial mitigating evidence regarding the noncompliance and their present good character. Here, respondent failed to timely file his rule 9.20 compliance declaration, and respondent’s belated declaration did not substantively comply with rule 9.20. Respondent’s lack of

compliance tends to demonstrate an inattention to important duties to his clients, the courts, and the public, as well as an inability to conform to professional norms.

In *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131, the Review Department found that an attorney's willful violation of a court order requiring his compliance with rule 9.20 was sufficient grounds for disbarment where the evidence in mitigation was not compelling. In *Esau*, the attorney filed his rule 9.20 declaration 104 days past the deadline and presented evidence in mitigation at trial, which the Review Department deemed to be non-compelling. Here, respondent has not filed a compliant rule 9.20 declaration and has provided no evidence in mitigation. Therefore, disbarment in the present matter is warranted.

In light of the foregoing, disbarment will best serve the goals of protecting the public, the courts, and the legal profession; maintaining high professional standards for attorneys; and preserving public confidence in the legal profession.

(Do not write above this line.)

| | |
|--|-----------------------------------|
| In the Matter of: Michael Robert McCabe | Case number(s): 16-N-11046-YDR |
|--|-----------------------------------|

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

10/10/17
Date


Respondent's Signature

Michael McCabe
Print Name

10-10-17
Date


Deputy Trial Counsel's Signature

Stacia L. Johns
Print Name

ORIGINAL

FILED

OCT 20 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

1 STATE BAR OF CALIFORNIA
 2 OFFICE OF CHIEF TRIAL COUNSEL
 3 STEVEN J. MOAWAD, No. 190358
 4 CHIEF TRIAL COUNSEL
 5 MELANIE J. LAWRENCE, No. 230102
 6 DEPUTY CHIEF TRIAL COUNSEL
 7 JOHN T. KELLEY, No. 193646
 8 ASSISTANT CHIEF TRIAL COUNSEL
 9 R. KEVIN BUCHER, No. 132003
 10 SUPERVISING ATTORNEY
 11 STACIA L. JOHNS, No. 292446
 12 DEPUTY TRIAL COUNSEL
 13 845 South Figueroa Street
 14 Los Angeles, California 90017-2515
 15 Telephone: (213) 765-1004

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE BAR COURT
 HEARING DEPARTMENT - LOS ANGELES

| | | |
|----------------------------|---|---------------------------------|
| In the Matter of: |) | Case No. 16-N-11046 |
| MICHAEL ROBERT McCABE, |) | SUPPLEMENT TO STIPULATION |
| No. 137844, |) | REGARDING FACTS, CONCLUSIONS OF |
| |) | LAW, AND DISPOSITION; |
| A Member of the State Bar. |) | DECLARATION OF STACIA L. JOHNS |

On October 10, 2017, the parties submitted to the court a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") in the above-entitled matter. On October 12, 2017, the court served the parties with a Request for Supplement to Stipulation Regarding Facts, Conclusions of Law, and Disposition ("Supplement"). The court requested the Supplement be signed by both parties and contain a certified copy of Respondent's prior record of discipline. The court requested that the parties file the Supplement by no later than Friday, October 20, 2017.

In response to the court's request, by and through the Office of the Chief Trial Counsel of the State Bar of California, Deputy Trial Counsel Stacia L. Johns, submits this Supplement and corresponding Declaration of Stacia L. Johns, and attaches hereto as Exhibit 1: Respondent's prior record of discipline in State Bar Case No. 14-O-05340, including the order in Supreme Court of California Case No. S229377 (State Bar Case No. 14-O-05340), filed November 17,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2015, and the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving
the Stipulation, in State Bar Case No. 14-O-05340, filed July 23, 2015.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: October 20, 2017

By: *Stacia L. Johns*
Stacia L. Johns
Deputy Trial Counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF STACIA L. JOHNS

I, Stacia L. Johns, declare:

1. All statements made herein are based on my personal knowledge, except for those stated to be under information and belief.

2. I am an attorney admitted to all courts of the State of California. I have been employed as a Deputy Trial Counsel in the Office of Chief Trial Counsel since December 5, 2016.

3. I have checked Respondent's address, email address, and telephone number as noted in the case file and confirmed its accuracy against the official membership records address, email address, and telephone number for Respondent maintained by the State Bar on its computer data base pursuant to Business and Professions Code, section 6002.1.

4. This matter was assigned to me on or about May 25, 2017.

5. During settlement discussions in this matter, Respondent and I communicated via both email and telephone at his official membership records email address and telephone number.

6. On October 10, 2017, Respondent reported to the State Bar at 845 S. Figueroa Street, Los Angeles, California, for the purpose of signing the Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter.

7. On October 10, 2017, the parties submitted to the court the Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter.

8. On October 12, 2017, the court served the parties with a Request for Supplement to Stipulation Regarding Facts, Conclusions of Law, and Disposition ("Supplement"). The court requested the Supplement be signed by both parties and contain a certified copy of Respondent's prior record of discipline. The court requested that the parties file the Supplement by no later than Friday, October 20, 2017.

9. On October 12, 2017, I emailed Respondent at his official membership records email address to discuss the Supplement pursuant to the court's request. Also on October 12, 2017, I emailed Respondent two drafts of the Supplement for his review and signature. In these emails, I

1 informed Respondent of the approaching deadline and the requirement that the court receive his
2 original signature on the Supplement.

3 10. On October 16, 2017, at 11:19 a.m., I attempted to contact Respondent at his official
4 membership records telephone number. I left a voicemail message requesting a call back
5 regarding the status of his signature on the Supplement.

6 11. On October 17, 2017, at 11:05 a.m., I emailed Respondent at his official membership
7 records email address. The email stated, "I am writing to follow up on the issue of the
8 Supplement the court requested. I left a voicemail regarding this issue yesterday. Please advise
9 whether you have signed and mailed the Supplement. Again, the court requires that we submit
10 the supplement **with original signatures by Friday, October 20.**"

11 12. On October 18, 2017, at 12:06 p.m., I attempted to contact Respondent at his official
12 membership records telephone number. I left a voicemail requesting a call back regarding the
13 status of his signature on the Supplement.

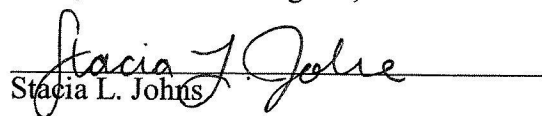
14 13. On October 19, 2017, at 9:47 a.m., I emailed Respondent at his official membership
15 records email address. The email stated, "I am writing to follow up on the issue of the
16 Supplement the court requested. I have attempted to reach you every day this week regarding this
17 issue. To date, I have not received a response. The court's order requires that we jointly submit
18 the Supplement **by Friday, October 20.**"

19 14. The Office of Chief Trial Counsel has not had any contact with Respondent since
20 October 10, 2017.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed this 20th day of October, 2017 at Los Angeles, California.

24


Stacia L. Johns

25

26

27

28

EXHIBIT 1

SUPREME COURT
FILED

(State Bar Court No. 14-O-05340)

NOV 17 2015

S229377

Frank A. McGuire Clerk

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re MICHAEL ROBERT McCABE on Discipline

The court orders that Michael Robert McCabe, State Bar Number 137844, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Michael Robert McCabe is suspended from the practice of law for a minimum of the first 90 days of probation, and he will remain suspended until the following conditions are satisfied:
 - i. He makes restitution to John Shoemaker in the amount of \$2,000 plus 10 percent interest per year from February 24, 2014 (or reimburses the Client Security Fund, to the extent of any payment from the Fund to John Shoemaker, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
 - ii. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Michael Robert McCabe must also comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on July 23, 2015.
3. At the expiration of the period of probation, if Michael Robert McCabe has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Michael Robert McCabe must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order, or during the period of his suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Michael Robert McCabe must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-third of the costs must be paid with his membership fees for each of the years 2017, 2018, and 2019. If Michael Robert McCabe 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.

I, Frank A. McGuire, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

NOV 17 2015

____ day of _____ 20____

Clerk

By: _____

Deputy

CANTIL-SAKAUYE
Chief Justice

ORIGINAL

(Do not write above this line.)

| | | | | |
|---|--|--|----------------------|--|
| State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION | | | PUBLIC MATTER | |
| Counsel For The State Bar Kim Kasrellovich Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1378 Bar # 261766 | Case Number(s): 14-O-05340 | For Court use only FILED JUL 23 2015 STATE BAR COURT CLERK'S OFFICE LOS ANGELES | | |
| In Pro Per Respondent Michael Robert McCabe 140 W Park Ave Ste 217 El Cajon, CA 92020 (619) 249-2236 Bar # 137844 | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED | | | |
| In the Matter of: MICHAEL ROBERT MCCABE Bar # 137844 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 7, 1988**.
- (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 **13** 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".

(Do not write above this line.)

- (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: **three billing cycles following the effective date of the Supreme Court order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was intentional, 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.

(Do not write above this line.)

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. For a further discussion of Multiple Acts, see page 10.
- (8) **Restitution:** Respondent failed to make restitution. For a further discussion of Restitution, see page 10.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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.

(Do not write above this line.)

- (13) No mitigating circumstances are involved.

Additional mitigating circumstances:

**No Prior Discipline, see page 10.
Prefiling Stipulation, see page 10.**

D. Discipline:

- (1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **one year**.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

- (b) The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent must be placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), 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 1.2(c)(1), 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

(Do not write above this line.)

information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input 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.**

(Do not write above this line.)

- 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:**

(Do not write above this line.)

| | |
|---|--------------------------------------|
| In the Matter of: MICHAEL ROBERT MCCABE | Case Number(s): 14-O-05340 |
|---|--------------------------------------|

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 |
|----------------|------------------|-----------------------|
| John Shoemaker | \$2,000 | February 24, 2014 |
| | | |
| | | |

- 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";

(Do not write above this line.)

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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL ROBERT MCCABE
CASE NUMBER: 14-O-05340

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. 14-O-05340 (State Bar Investigation)

FACTS:

1. Respondent was suspended from the practice of law on December 20, 2013 for failure to pay child support.
2. On November 26, 2013, Membership Services of the State Bar of California sent Respondent a letter stating that unless a release was sent to Membership Services by December 19, 2013 indicating compliance with child support, Respondent would be suspended on December 20, 2013. A copy of the Supreme Court order indicating the same was included with the letter. The letter was sent to Respondent's current membership records address. Respondent received the letter.
3. On December 20, 2013, Membership Services sent Respondent a second letter indicating that his suspension was effective the same day. The letter was sent to Respondent's current membership records address. Respondent received the letter.
4. Between January 6, 2014 and April 28, 2014, Respondent engaged in the unauthorized practice of law in three separate client matters.
5. In *People v. Shoemaker*, Respondent appeared in court three times on behalf of his client, John Shoemaker, while suspended. On January 6, 2014, Respondent appeared at Shoemaker's arraignment where Shoemaker entered a not guilty plea. On January 28, 2014, Respondent appeared at a readiness conference on behalf of Shoemaker. On March 7, 2014, Respondent again appeared at a readiness conference on behalf of Shoemaker. On April 18, 2014, Respondent was substituted out of the case.
6. Shoemaker paid Respondent \$2,000 in advanced attorney fees. All the fees were collected while Respondent was not entitled to practice law: \$1,500 on December 30, 2013 and \$500 on February 24, 2014. This was an illegal fee. To date, Respondent has not refunded the illegal fee.
7. In a second matter, *People v. Brown*, Respondent filed a fax arraignment on behalf of his client on April 24, 2014.
8. In a third matter, on April 8, 2014, Respondent submitted a Petition for Certificate of Rehabilitation to the Rehabilitation Unit of the San Diego County District Attorney's Office on behalf of

his client. On April 28, 2014, Respondent sent a second letter regarding the Petition to the Rehabilitation Unit. Both letters were signed by Respondent and sent on his law office letterhead.

CONCLUSIONS OF LAW:

9. By appearing in court on January 6, 2014, on behalf of his client when he was not an active member of the State Bar, in violation of Business and Professions Code, sections 6125 and 6126, Respondent thereby willfully violated Business and Professions Code, section 6068(a).
10. By appearing in court on January 6, 2014, on behalf of his client when Respondent knew Respondent was not an active member of the State Bar, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.
11. By appearing in court on January 28, 2014, on behalf of his client when he was not an active member of the State Bar, in violation of Business and Professions Code, sections 6125 and 6126, Respondent thereby willfully violated Business and Professions Code, section 6068(a).
12. By appearing in court on January 28, 2014, on behalf of his client when Respondent knew Respondent was not an active member of the State Bar, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.
13. By appearing in court on March 7, 2014, on behalf of his client when he was not an active member of the State Bar, in violation of Business and Professions Code, sections 6125 and 6126, Respondent thereby willfully violated Business and Professions Code, section 6068(a).
14. By appearing in court on March 7, 2014, on behalf of his client when Respondent knew Respondent was not an active member of the State Bar, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.
15. By charging and collecting a fee of \$2,000 from John Shoemaker, to perform legal services while Respondent was not entitled to practice law, Respondent collected an illegal fee in willful violation of the Rules of Professional Conduct rule 4-200(A).
16. By filing a fax arraignment on behalf of his client on April 24, 2014, when he was not an active member of the State Bar, in violation of Business and Professions Code, sections 6125 and 6126, Respondent thereby willfully violated Business and Professions Code, section 6068(a).
17. By filing a fax arraignment on April 24, 2014, on behalf of his client when Respondent knew Respondent was not an active member of the State Bar, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.
18. By submitting a Petition for Certificate of Rehabilitation on April 8, 2014 and letter regarding the Petition on April 28, 2014 to the Rehabilitation Unit of the San Diego County District Attorney's Office on behalf of his client when he was not an active member of the State Bar, in violation of Business and Professions Code, sections 6125 and 6126, Respondent thereby willfully violated Business and Professions Code, section 6068(a).
19. By submitting a Petition for Certificate of Rehabilitation on April 8, 2014 and letter regarding the Petition on April 28, 2014 to the Rehabilitation Unit of the San Diego County District

Attorney's Office on behalf of his client when Respondent knew Respondent was not an active member of the State Bar, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): The misconduct evidences multiple acts of wrongdoing. Here, Respondent committed 11 acts of misconduct which constitutes multiple acts.

Failure to Make Restitution (Std. 1.5(i)): To date, Respondent has failed to make restitution to John Shoemaker in the amount of \$2,000.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent had been in practice for many years at the time of the misconduct; 25 years without prior discipline. This is a significant mitigating factor. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [ten years of practice without discipline is worth significant weight in mitigation].)

Prefiling Stipulation: Respondent entered into this stipulation as to facts and culpability prior to the filing of a Notice of Disciplinary Charges. (*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 "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the

member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing 11 acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

There are two standards applicable to the misconduct in this case and they offer the same range of discipline. Standard 2.3(b) states that "Suspension or reproof is appropriate for entering into an agreement for, charging, or collecting an illegal fee for legal services." Similarly, Standard 2.6(b) states that suspension or reproof is appropriate when a member engages in the unauthorized practice of law when he is not entitled to practice law for non-disciplinary reasons. The degree of sanction shall depend on whether the member knowingly engaged in the unauthorized practice of law.

In the present case, Respondent repeatedly engaged in the practice of law despite his suspension. Engaging in the unauthorized practice of law is a serious breach of the duties of an attorney and cannot be considered minimal or technical misconduct. Respondent's unauthorized practice ceased after five months and there is no evidence that Respondent has continued representing clients. However, Respondent represented three separate clients over the five month period. These multiple acts make the lowest end of the range inappropriate for this case. Conversely, Respondent's many years, 25 years, in practice without discipline is significantly mitigating. Therefore, a moderate level of actual suspension, 90 days to continue until restitution is paid, is appropriate in this matter to protect the public and serve the purposes of attorney discipline.

In *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, Wells engaged in the prolonged unauthorized practice of law in another jurisdiction in two cases and over several years, charged an illegal and unconscionable fee, failed to return client fees, failed to maintain funds in trust and engaged in moral turpitude for misrepresenting her entitlement to practice law. The court expressed deep concern about Wells' overreaching with clients and although there was significant mitigation and aggravation present, Wells received six months actual suspension and until restitution is paid in full. Unlike *Wells*, Respondent in the present case did not engage in misconduct regarding entrusted funds and the period of unauthorized practice is significantly shorter. Therefore, a period of actual suspension slightly less than *Wells* is consistent with both the Standards and case law.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 10, 2015, the prosecution costs in this matter are \$3,066. 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.

EXCLUSION FROM MCLE CREDIT


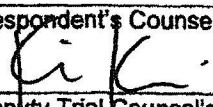
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

| | |
|--|-------------------------------|
| In the Matter of: MICHAEL ROBERT MCCABE | Case number(s): 14-O-05340 |
|--|-------------------------------|

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>6-27-15</u> |  | <u>Michael Robert McCabe</u> |
| Date | Respondent's Signature | Print Name |
| <u>7.2.15</u> |  | <u>Kim Kasreljovich</u> |
| Date | Deputy Trial Counsel's Signature | Print Name |

(Do not write above this line.)

| | |
|--|-----------------------------------|
| In the Matter of: MICHAEL ROBERT McCABE | Case Number(s): 14-O-05340-RMR |
|--|-----------------------------------|

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 3 of the Stipulation, at paragraph B.(7) and B.(8), "page 10" is deleted, and in its place is inserted "page 11".
 2. On page 4 of the Stipulation, at the top of the page under "Additional mitigating circumstances", "page 10" is deleted at both places, and in its place is inserted "page 11".
 3. On page 7 of the Stipulation, at paragraph a., line 2, "and provide satisfactory proof of restitution to the State Bar's Office of Probation" is added after "below".

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

July 22, 2015

Rebecca Meyer Rosenberg

REBECCA MEYER ROSENBERG, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 23, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

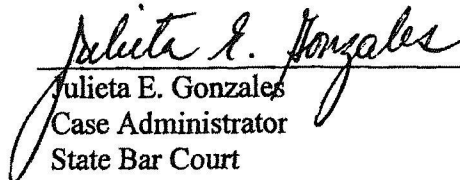
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHAEL R. MCCABE
140 W PARK AVE STE 217
EL CAJON, CA 92020**

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

**Kimberly G. Kasreliovich, Enforcement, Los Angeles
Terrie L. Goldade, Office of Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 23, 2015.



Julieta E. Gonzales
Case Administrator
State Bar Court



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST October 17, 2017

State Bar Court, State Bar of California,
Los Angeles

By _____
Clerk

A handwritten signature in cursive script, appearing to read "Christine Settle", is written over a horizontal line.

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 16-N-11046

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

SUPPLEMENT TO SITPULATION REGARDING FACTS, CONCLUSIONS OF LAW, AND DISPOSITION; DECLARATION OF STACIA L. JOHNS

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to:
MICHAEL ROBERT McCABE, Michael R. McCabe, 12491 Gay Rio Dr., Lakeside, CA 92040-5510, Electronic Address

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: October 20, 2017

SIGNED:

Kimberly Baudales
Kimberly Baudales
Declarant

(Do not write above this line.)

| | |
|--|-----------------------------------|
| In the Matter of: Michael Robert McCabe | Case Number(s): 16-N-11046-YDR |
|--|-----------------------------------|

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.

This order approves the forgoing stipulation regarding facts, conclusions of law, and disposition as supplemented by the parties' supplement, which the court filed on October 20, 2017. and that is attached to this order

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 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 Michael Robert McCabe 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.

10/25/17
Date


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 27, 2017, 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:

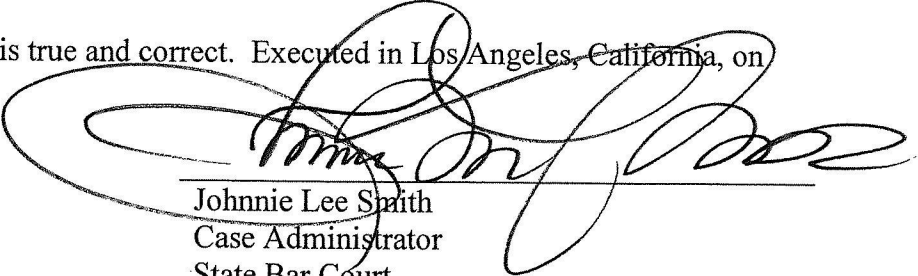
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHAEL R. MCCABE
12491 GAY RIO DR
LAKESIDE, CA 92040 - 5510**

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

STACIA L. JOHNS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 27, 2017.



Johnnie Lee Smith
Case Administrator
State Bar Court