

State Bar Court of California
Hearing Department
San Francisco

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Counsel For The State Bar Manuel Jimenez 180 Howard Street San Francisco, CA 94105 (415) 538-2288 Bar # 218234	Case Number (s) 08-O-11331-LMA	(for Court's use) PUBLIC MATTER FILED <i>[Signature]</i> NOV 10 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Mitchell Chyette 1300 Clay Street, Suite 600 Oakland, CA 94612 (510) 446-7886 Bar # 113087	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: MITCHELL CHYETTE Bar # 113087 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 June 13, 1984.
- (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 **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☒ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. The multiple acts of moral turpitude set forth in the stipulated facts particularly reflect respondent's bad faith and dishonesty. In addition, respondent wilfully aided and abetted the unauthorized practice of law by a resigned attorney and another non-attorney.
- (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. Four of the ten counts of misconduct at issue involve respondent's mishandling and misuse of his trust account. Respondent is unable to account for his allowing a resigned attorney to have access to his trust account.
- (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. By submitting false

evidence to the State Bar in order to conceal his misconduct, respondent displayed a lack of candor and cooperation to the State Bar.

- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Respondent's 10 counts of misconduct, which occurred over a two-year period, demonstrate multiple acts of wrongdoing.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☒ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

Respondent suffers from significant emotional and/or mental health problems which are ongoing and thus do not form the basis for as significant a mitigating factor as if they were resolved.

Respondent did ultimately agree to the imposition of discipline, thus relieving the State Bar and State Bar Court from further expenditures relating to this prosecution and has had to take responsibility for his misconduct in the process.

Although respondent took or allowed a resigned attorney to improperly take many thousands of dollars from respondent's trust account improperly, all known clients received all the monies due to them.

D. Discipline:

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of three (3) years.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

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

- (2) ☒ **Probation:**

Respondent must be placed on probation for a period of four (4) 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 two (2) years.

- i. ☒ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☒ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

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

☐ Medical Conditions

☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MITCHELL CHYETTE

CASE NUMBER: 08-O-11331-LMA

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.

Count One – Facts.

Case No. 08-O-11331 - Rules of Professional Conduct, rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

1. At all relevant times herein, respondent maintained a client trust funds account at Wells Fargo Bank (Account No. xxx-xxxx135; hereinafter "trust account" or "respondent's trust account").¹

2. From September 12, 2007, through May 8, 2009, respondent misappropriated at least \$90,174.97 from the funds held in his trust account on behalf of his clients, as follows:

a. Michael Smith: \$8,846.45

3. On September 12, 2007, respondent deposited \$75,000.00 in settlement funds into his trust account on behalf of his client, Michael Smith ("Smith"). From September 12, 2007, through October 10, 2007, respondent was required to maintain at least \$38,777.24 in his trust account on behalf of Smith. As of On October 10, 2007, respondent misappropriated at least \$8,846.45 of Smith's funds for his own use and benefit.

b. Anthony Tam: \$1,000.00

4. On September 26, 2007, respondent deposited \$1,000.00 in settlement funds into his trust account on behalf of his client, Anthony Tam ("Tam"). From September 26, 2007 through October 30, 2007, respondent was required to maintain at least \$1,000.00 in his trust account on behalf of Tam. On October 30, 2007, the balance in respondent's trust account fell below \$0. As of October 30, 2007, respondent misappropriated at least \$1,000.00 of Tam's funds for his own use and benefit.

c. Alissa DeFreitas: \$8,000.00

5. On October 11, 2007, respondent deposited \$14,750.00 in settlement funds into his trust account on behalf of his client, Alissa DeFreitas ("DeFreitas"). From October 11, 2007 through October 30, 2007, respondent was required to maintain at least \$8,000.00 in his trust account on behalf of DeFreitas. On October 30, 2007, the balance in respondent's trust account fell below \$0. As of October 30, 2007, respondent misappropriated at least \$8,000.00 of DeFreitas' funds for his own use and benefit.

¹ The account number has been excluded to protect the account from identity theft.

d. Anil Kumar: \$4,666.67

6. On December 13, 2007, respondent deposited \$7,000.00 in settlement funds into his trust account on behalf of his client, Anil Kumar ("Kumar"). From December 13, 2007 through January 2, 2008, respondent was required to maintain at least \$4,666.67 in his trust account on behalf of Kumar. On January 2, 2008, the balance in respondent's trust account fell below \$0. As of January 2, 2008, respondent misappropriated at least \$4,666.67 of Kumar's funds for his own use and benefit.

e. Connie Sears: \$2,013.34

7. On December 26, 2007, respondent deposited \$3,500.00 in settlement funds into his trust account on behalf of his client, Connie Sears ("Sears"). From December 26, 2007 through January 2, 2008, respondent was required to maintain at least \$2,013.34 in his trust account on behalf of Sears. On January 2, 2008, the balance in respondent's trust account fell below \$0. As of January 2, 2008, respondent misappropriated at least \$2,013.34 of Sears' funds for his own use and benefit.

f. Kelly Horton: \$6,103.57

8. On February 20, 2008, respondent deposited \$14,500.00 in settlement funds into his trust account on behalf of his client, Kelly Horton ("Horton"). From February 20, 2008 through March 4, 2008, respondent was required to maintain at least \$6,103.57 in his trust account on behalf of Horton. On March 4, 2008, the balance in respondent's trust account fell below \$0. As of March 4, 2008, respondent misappropriated at least \$6,103.57 of Horton's funds for his own use and benefit.

g. Betty Williams: \$1,280.29

9. On September 10, 2008, respondent deposited \$15,000.00 in settlement funds into his trust account on behalf of his client, Betty Williams ("Williams"). From September 10, 2008 through October 10, 2008, respondent was required to maintain at least \$5,000.00 in his trust account on behalf of Williams. On October 10, 2008, the balance in respondent's trust account was \$3,719.71. As of October 10, 2008, respondent misappropriated at least \$1,280.29 of Williams' funds for his own use and benefit.

h. Jennifer Tejada: \$10,000.00

10. On September 15, 2008, respondent deposited \$17,219.83 in settlement funds into his trust account on behalf of his client, Jennifer Tejada ("Tejada"). From September 15, 2008 through October 9, 2008, respondent was required to maintain at least \$10,000.00 in his trust account on behalf of Tejada. On October 9, 2008, the balance in respondent's trust account fell below \$0. As of October 9, 2008, respondent misappropriated at least \$10,000.00 of Tejada's funds for his own use and benefit.

i. Elsa Chu: \$3,901.95

11. On October 2, 2008, respondent deposited \$13,214.37 in settlement funds into his trust account on behalf of his client, Elsa Chu ("Chu"). From October 2, 2008 through October 6, 2008, respondent was required to maintain at least \$10,000.00 in his trust account on behalf of Chu. On October 6, 2008, the balance in respondent's trust account was \$6,098.05. As of October 6, 2008, respondent misappropriated at least \$3,901.95 of Chu's funds for his own use and benefit.

j. Eduardo Pagsanjan: \$2,926.15

12. On October 15, 2008, respondent deposited \$7,500.00 in settlement funds into his trust account on behalf of his client, Eduardo Pagsanjan ("Pagsanjan"). From October 15, 2008 through November 3, 2008, respondent was required to maintain at least \$3,040.50 in his trust account on behalf of Pagsanjan. On November 3, 2008, the balance in respondent's trust account was \$114.35.

As of November 3, 2008, respondent misappropriated at least \$2,926.15 of Pagsanjan's funds for his own use and benefit.

k. Michele Rownd: \$8,742.22

13. On November 4, 2008, respondent deposited \$15,000.00 in settlement funds into his trust account on behalf of his client, Michele Rownd ("Rownd"). As of November 4, 2008, respondent was required to maintain at least \$8,742.22 in his trust account on behalf of Rownd. On November 5, 2008, the balance in respondent's trust account fell below \$0. As of November 5, 2008, respondent misappropriated at least \$8,742.22 of Rownd's funds for his own use and benefit.

l. Xuan Dieu Le: \$2,852.91

14. On November 5, 2008, respondent deposited \$6,520.00 in settlement funds into his trust account on behalf of his client, Xuan Dieu Le ("Le"). On November 10, 2008, respondent deposited \$2,452.10 in settlement funds into his trust account on behalf of Le. From November 10, 2008 through November 19, 2008, respondent was required to maintain at least \$2,852.91 in his trust account on behalf of Le. On November 19, 2008, the balance in respondent's trust account fell below \$0. As of November 19, 2008, respondent misappropriated at least \$2,852.91 of Le's funds for his own use and benefit.

m. Aaron Vandergroen: \$8,154.87

15. On November 6, 2008, respondent deposited \$24,500.00 in settlement funds into his trust account on behalf of his client, Aaron Vandergroen ("Vandergroen"). From November 6, 2008 through November 14, 2008, respondent was required to maintain at least \$11,233.07 in his trust account on behalf of Vandergroen. On November 14, 2008, the balance in respondent's trust account was \$3,078.20. As of November 14, 2008, respondent misappropriated at least \$8,154.87 of Vandergroen's funds for his own use and benefit.

n. Siu Fong Low: \$20,876.55

16. On April 28, 2009, respondent deposited \$33,109.74 in settlement funds into his trust account on behalf of his client, Siu Fong Low ("Low"). From On April 28, 2009, through at least On May 8, 2009, respondent was required to maintain at least \$20,876.55 in his trust account on behalf of Low. On May 8, 2009, the balance in respondent's trust account was \$2,984.65. As of May 8, 2009, respondent misappropriated at least \$17,891.90 of Low's funds for his own use and benefit.

Count One – Conclusion of Law.

17. By failing to maintain in his trust account the funds that he was required to maintain on behalf of his clients, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

Count Two – Facts.

Case No. 08-O-11331; Business and Professions Code, section 6106 [Moral Turpitude-Misappropriation]

18. The allegations contained in Count One are hereby incorporated by reference as if fully set forth herein.

19. As of at least December 2007, respondent knew that there were irregularities in his trust account. Specifically, On November 6, 2007, and On November 30, 2007, the State Bar sent letters to

respondent regarding insufficient funds activity in his trust account. Soon thereafter, respondent received both letters.

20. Thereafter, respondent continued to misappropriate at least \$71,518.52 from 11 of his clients.

Conclusion of Law – Count Two.

21. By misappropriating at least \$89,374.97 of his clients' funds, and by misappropriating at least \$71,518.52 from 10 clients after respondent knew that the State Bar was investigating insufficient funds activity in his trust account, respondent committed an act or acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

Count Three – Facts and Conclusion of Law.

Case No. 08-O-11331; Rules of Professional Conduct, rule 4-100(A) [Commingling Personal Funds in Trust Account]

22. The allegations contained in paragraph 3 are hereby incorporated by reference as if fully set forth herein.

23. From September 4, 2007 through On May 12, 2009, respondent issued 24 checks from his trust account, for a total of \$74,200.00, made payable to resigned attorney, John C. Casey ("Casey"). Casey was never respondent's client. Respondent was grossly negligent in permitting these checks to be used for non-client purposes. These funds were paid either using non-client funds that respondent had left in his trust account after they were earned or using non-client funds that respondent had improperly deposited into his trust account.

24. By issuing checks from the trust account for personal and non-client trust account related business expenses, respondent was grossly negligent in permitting John C. Casey to use his trust account non-client related, personal purposes, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

Count Four – Facts and Conclusion of Law.

Case No. 08-O-11331; Business and Professions Code, section 6106 [Moral Turpitude]

25. The allegations contained in paragraph 3 are incorporated by reference as if fully set forth herein.

26. Respondent issued checks on the trust account when he knew or reasonably should have known that there were insufficient funds in the account to satisfy the charges against the account. As a result, the following checks were either returned by the bank or were paid against insufficient funds or were paid against uncollected deposits:

Check No.	Payee	Amount of Check	Date of Check	Balance on Date Check Issued
1504	Tejada	\$10,000.00	09/25/08	\$6,484.16
1546	Round	\$ 8,742.22	11/04/08	\$4,223.13
1555	Vandergroen	\$11,233.07	11/05/08	-\$2,422.36
1101	P. Phillips	\$ 5,000.00	04/30/09	\$2,169.96

27. By issuing checks drawn on his trust account when respondent knew or should have known that there were insufficient funds in his trust account, respondent committed an act or acts involving moral turpitude, dishonesty and corruption in willful violation of section 6106 of the Business and Professions Code.

Count Five – Facts and Conclusion of Law.

Case No. 08-O-11331; Rules of Professional Conduct, Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

28. In May 2007, respondent opened a law firm in Oakland specializing in personal injury law. At the time, respondent had no background in personal injury law. From May 2007, through May 2009, respondent employed resigned attorney, Casey, and Casey's non-attorney wife, Karen Casey, to work at his law firm. Prior to resigning, Casey maintained a personal injury firm which was managed by his wife. Respondent's law firm occupied the same space as Casey's former firm. From May 2007, through May 2009, in addition to owning the personal injury law firm, respondent worked full-time for a law firm in San Francisco.

29. From at least May 2007, through May 2009, respondent permitted Casey and Karen Casey to handle all of the pre-litigation personal injury matters in respondent's law firm with little or no supervision by respondent.

30. From at least May 2007 through May 2009, respondent permitted Casey and Karen Casey to do the following, with little or no supervision by respondent: 1) provide legal advice to clients; 2) negotiate settlements with insurance companies; and 3) discuss settlement with clients.

31. At no time during the period of May 2007 through May 2009, did respondent advise his clients or any insurance companies that Casey was a resigned attorney and that Karen Casey was not an attorney.

32. By allowing Casey, a resigned attorney, and Karen Casey, a non-attorney, to hold themselves out as attorneys and provide legal advice to clients, negotiate settlements with insurance companies and discuss settlement with clients, all with little or no supervision by respondent, respondent aided Casey and Karen Casey in the unauthorized practice of law in willful violation of rule 1-300(A) of the Rules of Professional Conduct.

Count Six – Facts and Conclusion of Law.

Case No. 08-O-11331; Rules of Professional Conduct, rule 4-100(A) [Misuse of Client Trust Account]

33. The allegations contained in paragraph 3 and Count Five are hereby incorporated by reference as if fully set forth herein.

34. At all relevant times herein, respondent maintained control over his trust account and received monthly bank statements.

35. At all relevant times herein, respondent knew or should have known that before resigning with charges pending, Casey was disciplined for misconduct which included misappropriation from his client trust account. At all relevant times herein, respondent authorized Casey to write trust account checks for respondent's signature and make deposits into respondent's trust account. Karen Casey was not permitted access to respondent's trust account.

36. From September 4, 2007 through May 12, 2009, respondent issued 24 checks from his trust account, for a total of \$74,200.00, made payable to Casey for personal purposes.

37. From September 10, 2007 through May 11, 2009, Casey issued and respondent signed 47 checks, totaling \$132,500.00, from respondent's trust account made payable to "P. Phillips." P. Phillips is Phillesia Phillips ("Phillips"). Phillips has never been respondent's client. All payments made to Phillips were made for Casey's own personal purposes.

38. From December 10, 2007 through May 2009, Casey deposited \$159,000.00 of his personal funds into respondent's trust account to pay to Phillips.

39. At all relevant times herein, Casey was using respondent's trust account to hide the payments to Phillips from Casey's wife. At all relevant times herein, respondent knew or should have known that Casey deposited personal funds into the trust account, issue payments from the trust account to Phillips and used respondent's trust account to hide the payments to Phillips from Casey's wife.

40. By authorizing Casey to write trust account checks and make deposits into respondent's trust account when respondent knew or should have known that Casey was previously disciplined for trust account violations including misappropriation, by making personal payments to Casey from his trust account, by allowing Casey to use his trust account for non-client purposes, by allowing Casey to deposit personal funds into the trust account and by allowing Casey to use his trust account to hide payments to Phillips from Casey's wife, respondent intentionally or with gross negligence, misused his trust account in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

Count Seven – Facts and Conclusion of Law.

Case No. 08-O-11331; Business and Professions Code, section 6106 [Moral Turpitude]

41. The allegations contained in paragraph 3, Count Five and Count Six are hereby incorporated by reference as if fully set forth herein.

42. By authorizing Casey to write trust account checks and make deposits into respondent's trust account when respondent knew or should have known that Casey was previously disciplined for trust account violations including misappropriation, by making personal payments to Casey from his trust account, by allowing Casey to use his trust account for non-client purposes, by allowing Casey to deposit personal funds into the trust account, and by allowing Casey to use his trust account to hide payments to Phillips from Casey's wife, respondent committed an act or acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106 of the Business and Professions Code.

Count Eight – Facts and Conclusion of Law.

Case No. 08-O-11331; Rules of Professional Conduct, Rule 1-311(B) [Employment of Resigned Attorney]

43. The allegations contained in paragraph 3, Count Five, Count Six and Count Seven are hereby incorporated by reference as if fully set forth herein.

44. By employing Casey, who respondent knew or reasonably should have known was a resigned attorney, to give legal advice to clients of respondent's law firm, to negotiate settlements with insurance companies on behalf of respondent's clients, to negotiate and to receive, disburse, or otherwise handle client funds, and to engage in activities which constitute the practice of law, respondent employed a person that respondent knew or reasonably should have known was a resigned attorney to render legal consultation or advice to a client, to negotiate or transact any matter for or on behalf of a client with a third party, to receive, disburse, or otherwise handle a client's funds, to engage in activities which constitute the practice of law in willful violation of rule 1-311(B) of the Rules of Professional Conduct.

Count Nine – Facts and Conclusion of Law.

Case No. 08-O-11331; Rules of Professional Conduct, Rule 1-311(D) [Failure to notify State Bar of Employment of Resigned Member]

45. The allegations contained in paragraph 3, Count Five, Count Six and Count Seven are hereby incorporated by reference as if fully set forth herein.

46. At no time prior to or at the time of his employment of Casey did respondent notify the State Bar in writing of his employment of Casey.

47. By failing to notify the State Bar in writing of his employment of Casey, a resigned attorney, prior to or at the time of employment, respondent failed to serve upon the State Bar written notice of employment of resigned member in willful violation of rule 1-311(B) of the Rules of Professional Conduct.

Count Ten – Facts and Conclusion of Law.

Case No. 08-O-11331; Business and Professions Code, section 6106 [Moral Turpitude]

48. The allegations contained in Count One, Count Three, Count Four and Count Six are hereby incorporated by reference as if fully set forth herein.

49. Prior to November 6, 2007, the State Bar opened an investigation in this matter pursuant to notification from Wells Fargo Bank of insufficient funds activity in respondent's trust account.

50. On November 6, 2007, a State Bar paralegal sent a letter to respondent requesting a written explanation to the insufficient funds activity in his trust account. Specifically, the letter requested a written explanation about trust account check no. 1082 in the amount of \$38,777.24 made payable to Michael Smith. Soon thereafter, respondent received the November 6, 2007 letter. On November 30, 2007, a State Bar paralegal sent a letter to respondent requesting a written explanation to the insufficient funds activity in his trust account. Specifically, the letter requested a written explanation about trust account check no. 1090 in the amount of \$1,167.38 and trust account check no. 1089 in the amount of \$250.00, both made payable to respondent. Soon thereafter, respondent received the November 30, 2007 letter.

51. Thereafter, respondent provided the State Bar with an undated written response to the November 6 and November 30, 2007 letters. In the response, respondent falsely stated that check no. 1082 was disbursed before the settlement funds cleared respondent's account. In truth and in fact, respondent deposited \$75,000.00 into his trust account on behalf of Smith on September 12, 2007. The funds cleared respondent's trust account shortly thereafter. It was not until October 3, 2007, that respondent issued trust account check no. 1082 in the amount of \$38,777.24 to Smith. On October 10, 2007, Smith attempted to deposit check no. 1082, but the balance in respondent's trust account was \$29,930.70 and check no. 1082 was returned for insufficient funds. At the time of making the false statement, respondent knew or should have known that the settlement funds had cleared the account before Smith attempted to negotiate check no. 1082.

52. In the written response, respondent also falsely stated that check nos. 1090 and 1089 involved the same issue and that the disbursements were made before the settlement funds cleared respondent's account. In truth and in fact, respondent deposited settlement funds on behalf of his client, Harry Meekma, on September 19, 2007. The funds cleared respondent's trust account shortly thereafter. It was not until October 30, 2007, that respondent issued and deposited check nos. 1090 and 1089 which represented his fees and costs in the Meekma case. On October 30, 2007, check nos. 1090 and 1089 were returned for insufficient funds. At the time of making the false statement, respondent knew or should have known that the settlement funds had cleared the account before he negotiated check nos. 1090 and 1089.

53. Based on respondent's response, the State Bar initially closed the matter on December 24, 2007. Thereafter, the State Bar received additional notifications from Wells Fargo Bank of insufficient funds activity in respondent's trust account and re-opened the investigation in this matter.

54. On January 12, 2009, and January 26, 2009, a State Bar Investigator sent letters to respondent's counsel requesting a written explanation of the activity in respondent's trust account. Soon thereafter, respondent's counsel received the January 12 and 26, 2009 letters. On February 20, 2009, respondent, through his counsel, sent a letter to the State Bar enclosing a spreadsheet of the activity in respondent's trust account for the months of October and November, 2008.

55. On the spreadsheet, respondent falsely designates the payee on the following checks as "privileged":

Check No.	Date	Payee	Amount of Check	Memo
1492	10/2/08	Privileged	\$4,000.00	Casey
1587	10/15/08	Privileged	\$2,000.00	Casey
1583	10/24/08	Privileged	\$1,000.00	Casey
1584	11/04/08	Privileged	\$5,000.00	Casey
1670	11/25/08	Privileged	\$2,000.00	Casey

56. In truth and in fact, the payee on each of the above checks was Phillips and is not privileged. Respondent knew that the checks were made payable to Phillips and not privileged.

57. On respondent's spreadsheet, respondent falsely designated the following deposits into his trust account as "privileged," or provided no explanation for the deposit:

Date of Deposit	Explanation	Amount of Deposit	Memo
10/14/08	Privileged	\$7,000.00	Casey
10/15/08	Privileged	\$10,000.00	Casey
11/20/08	(blank)	\$9,000.00	(blank)

58. In truth and in fact, each of the above deposits was made by Casey with Casey's personal funds and not privileged. Respondent knew that the deposits were made by Casey with Casey's personal funds and not privileged.

59. At the time of submitting the spreadsheet to the State Bar, respondent knew that the spreadsheet contained false information. Respondent caused the spreadsheet to be provided to the State Bar for the purpose of deceiving the State Bar into believing that respondent was not allowing Casey to improperly use his trust account, when this in fact was not true.

60. By making false statements in his response to the State Bar's letters of November 6 and November 30, 2007, and by submitting the spreadsheet to the State Bar which contained information respondent knew to be false, respondent intentionally or by gross negligence, committed an act or acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106 of the Business and Professions Code.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A (7), was October 15, 2010.

CLIENT TRUST ACCOUNT SCHOOL

Respondent attended and passed the State Bar's Client Trust Account school in May, 2010, and is therefore not being required to take and pass the school again for this Stipulation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 15, 2010, the prosecution costs in this matter are \$ 3654.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Case Law:

In the Matter Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498;
Giovanazzi v. State Bar (1980) 28 Cal.3d 465, 475;
Murray v. State Bar (1985) 40 Cal.3d 575, 582; and
Palomo v. State Bar (1984) 36 Cal.3d 785, 795.

Standards:

Standard 2.2(a) requires disbarment for the willful misappropriation of entrusted funds. The standard requires not less than a one-year actual suspension if the amount of funds is insignificantly small or if the most compelling mitigating circumstances clearly predominate. Neither of those circumstances exist in this matter;

Standard 2.2(b) requires at least a three-month actual suspension for a violation of rule 4-100, irrespective of mitigating circumstances;

Standard 2.3 requires an actual suspension or disbarment for a respondent that has committed an act of moral turpitude. Respondent committed multiple acts of moral turpitude; and

Standard 2.10 requires that a violation of any provision of the Rules of Professional Conduct not specified in the standards (e.g., rules 1-300(A) and 1-311) shall result in reproof or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

RESTRICTIONS WHILE ON ACTUAL SUSPENSION.

During the period of actual suspension, respondent shall not:

Render legal consultation or advice to a client;

Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

Appear as a representative of a client at a deposition or other discovery matter;

Negotiate or transact any matter for or on behalf of a client with third parties;

Receive, disburse, or otherwise handle a client's funds; or

Engage in activities which constitute the practice of law.

Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the Office of Probation, pertaining to periods in which the respondent was actually suspended from the practice of law.

(Do not write above this line.)

In the Matter of MITCHELL CHYETTE	Case number(s): 08-O-11331-LMA
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SIGNATURE OF THE PARTIES

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

10/15/10
Date


Respondent's Signature

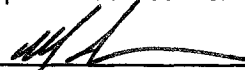
Mitchell Chyette
Print Name

MA
OK.
Date

Respondent's Counsel Signature

Print Name

Oct. 15, 2010
Date


Deputy Trial Counsel's Signature

Manuel Jimenez
Print Name

(Do not write above this line.)

In the Matter Of MITCHELL CHYETTE	Case Number(s): 08-O-11331-LMA
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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 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

November 10, 2010
Date

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 10, 2010, I deposited a true copy of the following document(s):

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

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

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

**MITCHELL CHYETTE
1300 CLAY ST STE 600
OAKLAND, CA 94612**

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

TAMMY A. ALBERTSEN-MURRAY, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 10, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court