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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION			PUBLIC MATTER
Counsel For The State Bar Katherine Kinsey Deputy Trial Counsel State Bar of California 1149 S. Hill Street Los Angeles, CA 90015 213-765-1503 Bar # 183740	Case Number(s): 11-O-11320 11-O-11744 11-O-13225 12-O-10009	For Court use only <div style="text-align: center;"> FILED FEB 14 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
In Pro Per Respondent James Michael Powell 231 E. Alessandro Blvd, Ste A-263 Riverside, CA 92508 951-275-9667 Bar # 165639	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: James Michael Powell Bar # 165639 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 August 6, 1993.
- (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 12 pages, not including the order.



- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☐ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2013, 2014. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

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

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
 - (a) ☐ State Bar Court case # of prior case
 - (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 or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances

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

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has cooperated with the State Bar in agreeing to resolve these matters at an early stage and refund unearned fees.
- (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.

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- (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 was admitted to the practice of law on August 6, 1993 and has no prior record of discipline.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of One (1) Year.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of One (1) Year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

(1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) ☒ 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.

(3) ☒ 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.

(4) ☒ 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.

(5) ☐ 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.

- (6) ☒ 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.
- (7) ☒ 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 State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☐ 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.
- (9) ☒ 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☐ **Other Conditions:**

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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
Dean Riley	\$725	August 20, 2010
Jaime and Cecilia Medina	\$4,195	November 23, 2010
Maria Garcia	\$1,200	July 12, 2011

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than within nine (9) months of the effective date of the discipline herein.

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";

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: James Michael Powell

CASE NUMBERS: 11-O-11320, 11-O-11744, 11-O-13225, 12-O-10009

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 11-O-11320 (Complainant: Dean Riley)

FACTS:

1. On March 14, 2009, Dean Riley ("Riley") employed Respondent to assist him with Riley's tax problems. From March 2009 to April 2010, Riley paid \$2,025 of the \$4,000 retainer amount. While Respondent did some initial work on Riley's behalf, Respondent informed Riley that the work would not be completed until Riley paid the full retainer.
2. On August 20, 2010, Riley emailed Respondent stating that he had family issues to deal with and requested the return of his file. Respondent received the email but did not provide the file.
3. In October 2010, Riley wrote Respondent a letter again requesting his file. Respondent acknowledges receiving the letter but misplaced it.
4. In December 2010, Riley filed a complaint against Respondent with the State Bar of California regarding the return of his file and obtaining a refund of fees.
5. On May 2, 2011, Respondent turned over the client file to Riley.
6. On May 25, 2011, Riley wrote Respondent and requested a refund of unearned fees. Respondent received the letter but did not provide a refund.
7. On September 26, 2011, Respondent wrote the State Bar acknowledging that he owed Riley a refund of \$1,450 in unearned fees.
8. As of January 2012, Respondent had refunded \$725 of the \$1,450 in fees to Riley.

CONCLUSIONS OF LAW:

By not promptly returning the client file to Riley despite his requests, Respondent failed to release promptly, upon termination of employment, to his client, at the request of the client, all client papers and property in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

By not promptly refunding the attorney's fees to Riley despite his request, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 11-O-11744 (Complainant: Kariuki Jones)

FACTS:

1. In December 2009, Kariuki Jones ("Jones") hired Respondent to represent him in an unlawful detainer action. Pursuant to the retainer agreement, Jones was to pay Respondent \$3,000 in attorney's fees for the unlawful detainer and a related civil action. On December 30, 2009, Jones paid Respondent \$1,000 in advanced attorney's fees and \$240 in filing fees.

2. Since Jones was not able to pay the full \$3,000 in fees, Jones signed a promissory note and deed of trust on his two vacant lots on Respondent's behalf to secure the balance of the remaining attorney's fees.

3. By having Jones execute the promissory note and deed of trust, Respondent acquired a security and pecuniary interest adverse to his client in order to secure future fees.

4. Respondent agreed not to record the two deeds, but prior to Jones signing the promissory note, Respondent did not advise Jones in writing that he may seek the advice of independent counsel. In addition, Respondent did not disclose all the terms of the transaction to Jones in writing and thereafter did not have Jones consent to the terms of the transaction in writing.

5. Although he never recorded the deeds of trust, Respondent prepared reconveyances on the lots and provided them to Jones.

CONCLUSIONS OF LAW:

Based on the forgoing, Respondent knowingly acquired an ownership or security interest adverse to a client without assuring that the terms of the transaction were fair and fully disclosed to the client, without transmitting the terms in writing to the client in a manner which should reasonably have been understood to the client and without advising the client in writing that he may seek the advice of independent counsel in willful violation Rules of Professional Conduct, rule 3-300.

Case No. 11-O-13225 (Complainant: Jaime and Cecilia Medina)

FACTS:

1. In November 2010, Jaime and Cecilia Medina (the "Medinas") employed Respondent to handle their bankruptcy and other matters related to their real property. On November 23, 2010, the Medinas paid Respondent \$4,195 in advanced attorney's fees.
2. The Medinas gave their paperwork to Respondent's employee Jorge Barrera ("Barrera") and only communicated with Barrera.
3. Respondent did not file the bankruptcy or otherwise provide legal services on the Medinas' behalf.
4. In early 2011, the Medinas requested a refund of the \$4,195 in advanced attorney's fees.
5. In March 2011, Respondent represented to the Medinas that the \$4,195 refund would be processed and returned to them by March 31, 2011. Thereafter, Respondent failed to provide the refund.
6. Respondent agrees that he owes the Medinas \$4,195 in unearned attorney's fees.

CONCLUSIONS OF LAW:

By not promptly refunding the \$4,195 in attorney's fees to the Medinas despite their requests, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 12-O-10009 (Complainant: Maria Garcia)

FACTS:

1. On June 16, 2011, Maria Garcia ("Garcia") met with non-attorney Jorge Barrera ("Barrera") in Respondent's office regarding pursuing an action against her lender stemming from the refinancing of her home. Barrera represented to Garcia that Respondent would file a legal action on her behalf but told Garcia that an audit would have to be done first. Barrera told Garcia that a legal action would be filed on her behalf without Respondent's knowledge or consent.
2. On June 16, 2011, Garcia paid Respondent \$600 in advanced attorney's fees. On July 12, 2011, Garcia paid Respondent an additional \$600 in fees.
3. As of November 2011, Garcia had not met with Respondent and had only communicated

with Barrera. In addition, no legal action had been taken on Garcia's behalf, and she had not received a copy of an audit. Therefore, on November 18, 2011, Garcia wrote Barrera a letter requesting a refund. Barrera received the letter but did not notify Respondent that Garcia had requested the refund.

4. Respondent acknowledges that he failed to supervise his Barrera and agrees that Garcia is owed a refund of \$1,200.

CONCLUSIONS OF LAW:

By failing to supervise Jorge Barrera, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was January 19, 2012.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.4(b) states that culpability of a member of willfully failing to perform services in an individual matter not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of misconduct and the degree of harm to the client.

Standard 2.8 states that culpability of a member of a willful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

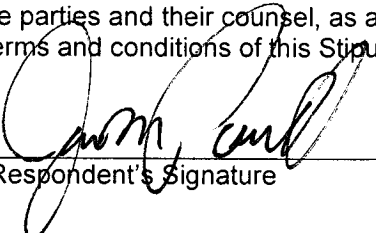
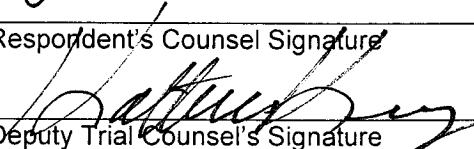
Standard 2.10 states that a willful violation of any Rule of Professional Conduct not specified by the standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in Standard 1.3.

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In the Matter of: James Michael Powell	Case number(s): 11-O-11320, 11-O-11744, 11-O-13225, 12-O-10009
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SIGNATURE OF THE PARTIES

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

<u>2/3/12</u> Date	 Respondent's Signature	<u>James M. Powell</u> Print Name
<u>2/3/12</u> Date	 Respondent's Counsel Signature	<u>Katherine Kinsey</u> Print Name

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In the Matter of: James Michael Powell	Case Number(s): 11-O-11320 11-O-11744 11-O-13225 12-O-10009
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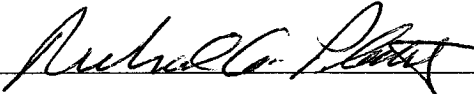
STAYED SUSPENSION ORDER

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.

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.)**

02-14-12
Date


Judge of the State Bar Court
RICHARD A. PLATEL

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 February 14, 2012, 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:

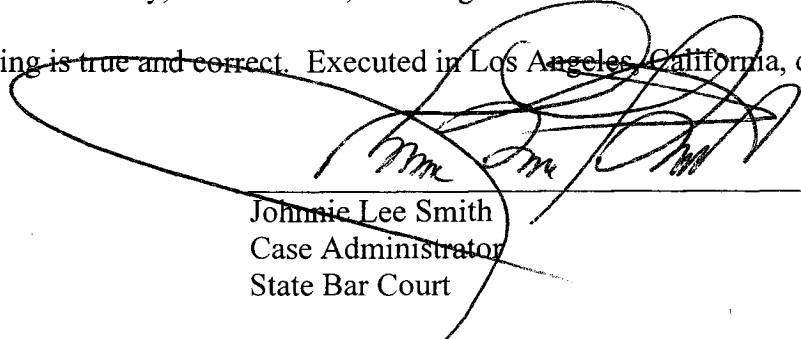
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES M. POWELL
LAW OFFICES OF JAMES M POWELL
231 E ALESSANDRO BLVD
STE A-263
RIVERSIDE, CA 92508

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

Katherine D. Kinsey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 14, 2012.



Johnnie Lee Smith
Case Administrator
State Bar Court