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State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION



<p>Counsel For The State Bar</p> <p>Sean Beckley Deputy Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1226</p> <p>Bar # 260003</p>	<p>Case Number(s): 12-O-15788-PEM, 12-H-15644-PEM</p> <p><b>PUBLIC MATTER</b></p>	<p>For Court use only</p> <p><b>FILED</b> <i>[Signature]</i></p> <p><b>JUN 21 2013</b></p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Jeffrey Alan Agnew 1485 H St. Ramona, CA 92065 (760) 803-1765</p> <p>Bar # 105268</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: JEFFREY ALAN AGNEW</p> <p>Bar # 105268</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 3, 1982.
- (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 15 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."

*CBA*  
*5/1/13*

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: the 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 [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 07-O-14909, et al.
  - (b)  Date prior discipline effective January 29, 2011.
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6068(o)(2), Rules of Professional Conduct, rules 3-110(A), 3-700(D)(2), and 4-100(A).
  - (d)  Degree of prior discipline 90 days' actual suspension, two years' stayed suspension, and three years' probation.
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.

See stipulation at page 12 for further discussion regarding prior record of 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. See stipulation at page 13.

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- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See stipulation at page 13.
- (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.

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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:**

See stipulation at page 13.

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of three years.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.
- (2)  **Probation:**
- Respondent must be placed on probation for a period of three 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 years.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (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: Respondent attended the Ethics School on March 21, 2013, and passed the test given at the end of the session. The protection of the public and the interests of the Respondent do not require the attendance and completion of the Ethics School in this case. (Rules Proc. of State Bar 5.135(a) (Ethics School not required if completed within prior two years).).
- (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:**

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(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.**

No MPRE recommended. Reason: Respondent took and passed the MPRE on August 21, 2012. The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. (See In the Matter of Respondent G (Review Dept. 1992) 2 Cal State Bar Ct. Rptr 181.)

(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:**

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In the Matter of: <b>JEFFREY ALAN AGNEW</b> Member #: <b>105268</b>	Case Number(s): 12-O-15788; 12-H-15644 - PEM
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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
Natalie & Luke Lauer	\$2,500.00	December 20, 2007
Jan Ebert	\$2,000.00	April 4, 2008

- 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 (60) 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
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- 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 certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent as 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";

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In the Matter of: <b>JEFFREY ALAN AGNEW</b> Member #: <b>105268</b>	Case Number(s): 12-O-15788; 12-H-15644 - PEM
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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: JEFFREY ALAN AGNEW**

**CASE NUMBER(S): 12-O-15788; 12-H-15644**

**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 Rules of Professional Conduct.

Case No. 12-O-15788 (State Bar Investigation)

**FACTS:**

1. On December 30, 2010, the California Supreme Court filed an Order in Case No. S187453 (State Bar Court Case Nos. 07-O-14909, et al.) ("Order") ordering Respondent suspended from the practice of law for 90 days and placed on probation for three years subject to certain conditions.
2. On January 29, 2011, the Order became effective.
3. As a condition of probation, Respondent was required to submit to the Office of Probation of the State Bar ("Office of Probation") quarterly reports by no later than April 10, 2011, July 10, 2011, January 10, 2012, April 10, 2012, July 10, 2012, and October 10, 2012, each report covering the preceding calendar quarter. The quarterly reports required Respondent to report his compliance with the State Bar Act and Rules of Professional Conduct and all terms of probation.
4. Respondent submitted the quarterly report due by April 10, 2011 late, on April 12, 2011,
5. Respondent submitted the quarterly report due by July 10, 2011 late, on July 11, 2011.
6. Respondent submitted the quarterly report due by October 10, 2012 late, on October 11, 2012.
7. On January 10, 2012, the Office of Probation received the quarterly report due by January 10, 2012, but it was not accepted because it was dated incorrectly.
8. On April 10, 2012, the Office of Probation received the quarterly report due by April 10, 2012, but it was not accepted because Respondent did not report his compliance with the State Bar Act and Rules of Professional Conduct and all terms of probation.
9. On July 11, 2012, the Office of Probation received the quarterly report due by July 10, 2012, but was not accepted because Respondent did not report his compliance with the State Bar Act and Rules of Professional Conduct and all terms of probation.

10. As a condition of probation, Respondent was required to submit satisfactory proof to the Office of Probation of attendance and completion of the Ethics School by January 29, 2012.

11. Respondent failed to submit satisfactory proof to the Office of Probation of attendance and completion of the Ethics School by January 29, 2012. Respondent attended and completed the Ethics School late, on March 21, 2013, and submitted satisfactory proof of attendance and completion of the Ethics School late, on April 8, 2013.

12. As a condition of probation, Respondent was required to submit satisfactory proof to the Office of Probation of attendance and completion of the Client Trust Accounting School by January 29, 2012.

13. Respondent failed to submit satisfactory proof to the Office of Probation of attendance and completion of the Client Trust Accounting School by January 29, 2012. Respondent attended and completed the Client Trust Accounting School late, on March 22, 2013, and submitted satisfactory proof of attendance and completion of the Client Trust Accounting School late, on April 8, 2013.

14. As a condition of probation, Respondent was required to make restitution to Natalie and Luke Lauer in the amount of \$2,500 plus interest from December 20, 2007, and Jan Ebert in the amount of \$2,000 plus interest from April 4, 2008. Respondent was required to provide satisfactory proof to the Office of Probation that he paid fifty percent of total restitution by January 29, 2012, and that he paid fifty percent of total restitution by January 29, 2013.

15. At no time did Respondent make any restitution payments. Consequently, Respondent failed to provide satisfactory proof to the Office of Probation that he paid fifty percent of total restitution by January 29, 2012, and that he paid fifty percent of total restitution by January 29, 2013.

16. As a condition of probation, Respondent was required to join the State Bar's Law Practice Management and Technology Section for 2012, and submit satisfactory proof to the Office of Probation by April 10, 2012.

17. Respondent failed to join the State Bar's Law Practice Management and Technology Section for 2012 and to submit satisfactory proof to the Office of Probation that he joined the State Bar's Law Practice Management and Technology Section for 2012 by April 10, 2012. On December 6, 2012, Respondent joined the Section for 2013.

#### CONCLUSIONS OF LAW:

18. By submitting three written quarterly reports to the Office of Probation late; by submitting three written quarterly reports to the Office of Probation that were not in compliance with the requirements of his probation and were rejected; by attending and completing the Ethics School late and submitting satisfactory proof to the Office of Probation of attendance and completion of the Ethics School late; by attending and completing the Client Trust Accounting School late and submitting satisfactory proof to the Office of Probation of attendance and completion of the Client Trust Accounting School late; by failing to make restitution payments and provide satisfactory proof to the Office of Probation of restitution; and by failing to join and to submit satisfactory proof to the Office of

Probation that he joined the State Bar's Law Practice Management and Technology Section for 2012, Respondent wilfully failed to comply with all conditions attached to his disciplinary probation in wilful violation of Business and Professions Code section 6068(k).

Case No. 12-H-15644 (State Bar Investigation)

FACTS:

19. On May 4, 2011, the Hearing Department of the State Bar Court filed its Decision and Discipline Order in Case Nos. 07-O-10024; 08-O-10270 (Cons.), imposing on Respondent a public reproof with conditions in effect for one year.

20. On May 25, 2011, the reproof became effective.

21. As a condition of reproof, Respondent was required to contact the Office of Probation and schedule a meeting with his assigned probation deputy by June 24, 2011.

22. Respondent contacted his assigned probation deputy late, on June 27, 2011.

23. As a condition of reproof, Respondent was required to submit to the Office of Probation a quarterly report by no later than June 10, 2011, and submit to the Office of Probation a final quarterly report by no later than May 25, 2012.

24. Respondent submitted his quarterly report due by July 10, 2011 late, on July 11, 2011.

25. Respondent failed to submit his final quarterly report due by May 25, 2012.

26. As a condition of reproof, Respondent was required to submit to the Office of Probation quarterly Lawyers Assistance Program ("LAP") reports by no later than July 10, 2011, October 10, 2011, January 10, 2012, and April 10, 2012, and submit to the Office of Probation a final LAP report by no later than May 25, 2012.

27. Respondent submitted the quarterly LAP report due by July 10, 2011 late, on July 12, 2011.

28. Respondent submitted the quarterly LAP report due by October 10, 2011 late, on January 9, 2012.

29. Respondent submitted the quarterly LAP report due by January 10, 2012 late, on January 12, 2012.

30. Respondent submitted the quarterly LAP report due by April 10, 2012 late, on April 11, 2012.

31. Respondent submitted the final LAP report due by May 25, 2012 late, on July 12, 2012.

32. As a condition of reproof, Respondent was required to submit satisfactory proof to the Office of Probation of attendance and completion of the Ethics School by no later than May 25, 2012.

33. Respondent failed to submit satisfactory proof to the Office of Probation of attendance and completion of the Ethics School by May 25, 2012. Respondent attended and completed the Ethics School late, on March 21, 2013, and submitted satisfactory proof of attendance and completion of the Ethics School late, on April 8, 2013.

34. As a condition of reproof, Respondent was required to submit satisfactory proof to the Office of Probation of passage of the Multistate Professional Responsibility Examination ("MPRE") by no later than May 25, 2012.

35. Respondent failed to submit satisfactory proof to the Office of Probation of passage of the MPRE by May 25, 2012. Respondent passed the MPRE late, on August 10, 2012, and satisfactory proof of passage of the MPRE late, on September 11, 2012.

#### CONCLUSIONS OF LAW:

36. By contacting his assigned probation deputy late; by submitting one quarterly report to the Office of Probation late; by failing to submit the final written quarterly report to the Office of Probation; by attending and completing the Ethics School late and submitting satisfactory proof to the Office of Probation of attendance and completion of the Ethics School late; by submitting four quarterly LAP reports to the Office of Probation late; by submitting the final LAP report to the Office of Probation late; and by taking and passing the MPRE late and submitting satisfactory proof to the Office of Probation of passage of the MPRE late, Respondent wilfully failed to comply with conditions attached to his public reproof in wilful violation of Rules of Professional Conduct, rule 1-110.

#### ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.2(b)(i)):** Respondent has been disciplined on two prior occasions.

Effective January 29, 2011, the California Supreme Court ordered that Respondent be suspended from the practice of law in California for two years, that execution of the suspension be stayed, and that he be placed on probation for three years subject to certain conditions, including a 90-day actual suspension. The discipline resulted from Respondent's misconduct in case numbers 07-O-14909, et al., consisting of violations of Rules of Professional Conduct, rule 3-110(A) (failure to perform), rule 3-700(D)(2) (failure to refund unearned fees), 4-100(A) (commingling), as well as Business and Professions Code section 6068(o)(2) (failure to report judicial sanctions). Respondent's misconduct occurred between 2006 and 2010 and involved six client matters.

Effective May 25, 2011, following Respondent's successful completion of the State Bar Court's Alternative Discipline Program for members with substance abuse or mental health issues (Rules Proc. of State Bar 5.380 et seq.); the State Bar Court publically reproofed Respondent. The discipline resulted from Respondent's misconduct in case numbers 07-O-10024 and 08-O-10270, consisting of violations of Rules of Professional Conduct, rule 3-110(A) (failure to perform), rule 3-700(D)(2) (failure to refund unearned fees), as well as Business and Professions Code sections 6106 (misrepresentation to a client)

and 6068(i) (failure to cooperate with a State Bar investigation). Respondent's misconduct occurred between 2005 and 2007 and involved two client matters.

**Harm (Std. 1.2(b)(iv)):** By failing to make full restitution to his former clients as ordered by the Supreme Court in Case No. S187453, Respondent caused financial harm to those clients. Additionally, Respondent's failure to abide by the court orders in each case harmed the administration of justice.

**Multiple Acts of Misconduct (Std. 1.2(b)(ii)):** Respondent's failure to comply with numerous conditions of his probation in violation of Business and Professions Code section 6068(k), and failure to comply with numerous reprobation conditions in violation of Rules of Professional Conduct, rule 1-110, constitutes multiple acts of misconduct, although not a pattern.

#### **ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving the State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156.)

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

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

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing numerous violations of probation and reprobation conditions in violation of two provisions of the State Bar Act and Rules of Professional Conduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in standard 2.6, which applies to Respondent's violation of Business and Professions Code section 6068(k) and provides that a violation of Business and Professions Code section 6068 shall result in disbarment or suspension

depending on the gravity of the offense or the harm, if any to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

Standard 1.7(b) provides if a member has a record of two prior impositions of discipline, the discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. Although Respondent has two prior disciplines, it would be manifestly unjust to apply standard 1.7(b) in the present matter. The misconduct in Respondent's prior disciplines occurred during the same time period and could have been resolved by a single disciplinary stipulation. Discipline in case numbers 07-O-14909, et al. was imposed pursuant to a stipulation that addressed the ongoing State Bar matters in case numbers 07-O-10024 and 08-O-10270. It stated that the Court should consider all of the charges brought in all cases as though they had been brought together to determine the appropriate discipline and that the stipulated discipline of 90 days' actual suspension was appropriate for all pending cases. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) Additionally, the probation condition violations and reproof condition violations that constitute the misconduct in the present cases were contemporaneous in time.

Accordingly, standard 1.7(a) is the more appropriate standard to consider in this case. It provides if a member has a prior record of discipline, the discipline in the present proceeding shall be greater than that imposed in the prior proceeding.

The current misconduct includes numerous violations of California Supreme Court ordered probation conditions and numerous violations of State Bar Court ordered reproof conditions. Respondent's failure to comply with the orders of the California Supreme Court and the State Bar Court is serious misconduct and harms the administration of justice. In aggravation, the Respondent's prior discipline of a 90-day actual suspension, the harm caused by his failure to make restitution and follow the court order in each case, and the multiple acts of misconduct in each case, far outweighs the mitigation Respondent receives for entering into a pretrial stipulation. In consideration of the standards, the gravity of the misconduct in the present cases, and consideration of the circumstances in aggravation and mitigation in these cases, the appropriate level of discipline here is a two-year actual suspension.

The level of discipline is consistent with case law. The failure to abide by the terms and conditions of probation is a serious violation. (See *Potack v. State Bar* (1991) 54 Cal. 3d 132, 139.) In *Potack*, the Supreme Court upheld an additional two-year actual suspension in a probation revocation hearing after the attorney failed to file one quarterly report and defaulted in the revocation hearing. While Respondent has participated in these proceedings, his misconduct involves violations of both probation and reproof conditions that are far more serious than a failure to file a single quarterly report.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to on page 2, paragraph A(7), was April 24, 2013.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 18, 2013, the estimated prosecution costs in this matter are \$6,944.00. 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.

(Do not write above this line.)

In the Matter of <b>JEFFREY ALAN AGNEW</b> Member # 105268	Case number(s): <b>12-O-15788; 12-H-15644 - PEM</b>
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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.

May 2, 2013 Date	 Respondent's Signature	Jeffrey A. Agnew Print Name
, 2013 Date	Respondent's Counsel Signature	Print Name
<del>JUNE</del> May 5, 2013 Date	 Deputy Trial Counsel's Signature	Sean Beckley Print Name

(Do not write above this line.)

In the Matter of <b>JEFFREY ALAN AGNEW</b> Member # 105268	Case number(s): <b>12-O-15788; 12-H-15644 - PEM</b>
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**ACTUAL SUSPENSION ORDER**

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

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

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.)**

6/19/13 \_\_\_\_\_  
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 San Francisco, On June 21, 2013, 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:

JEFFREY ALAN AGNEW  
1485 H ST  
RAMONA, CA 92065

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

Sean S. Beckley, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 21, 2013.

  
Laurretta Cramer  
Case Administrator  
State Bar Court