State Bar Court of California **Hearing Department** Los Angeles **ACTUAL SUSPENSION** Counsel For The State Bar Case Number(s): For Court use only 13-C-16592-LMA **PUBLIC MATTER** R. Kevin Bucher **Deputy Trial Counsel** 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1630 FEB 0 3 2015 Bar # 132003 In Pro Per Respondent STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO Frank Edward Miller c/o Los Angeles Mission 303 E. 5th Street Los Angeles, CA 90013 (714) 883-0824 Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND **DISPOSITION AND ORDER APPROVING** Bar # 162270 In the Matter of: **ACTUAL SUSPENSION** FRANK EDWARD MILLER PREVIOUS STIPULATION REJECTED Bar # 162270 A Member of the State Bar of California (Respondent)

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 14, 1992**.
- (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 11 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."

(Effective January 1, 2014)

(Do u	ot write	above	e this line.)	
(5)		Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".		
(6)	The "Su	The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."		
(7)		o more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any ending investigation/proceeding not resolved by this stipulation, except for criminal investigations.		
(8)			of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & Check one option only):	
		reli Co bill circ ins due Co	til costs are paid in full, Respondent will remain actually suspended from the practice of law unless ef is obtained per rule 5.130, Rules of Procedure. sts are to be paid in equal amounts prior to February 1 for the following membership years: three ling cycles following the effective date of the Supreme Court order. (Hardship, special cumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any tallment as described above, or as may be modified by the State Bar Court, the remaining balance is and payable immediately. sts are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs". sts are entirely waived.	
N		ond	ing Circumstances [Standards for Attorney Sanctions for Professional uct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are	
(1)	⊠ (a)	Prio	r record of discipline State Bar Court case # of prior case 05-O-01644	
	(b)	\boxtimes	Date prior discipline effective November 21, 2005	
	(c)		Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 4-100(B)(3)	
	(d)	\boxtimes	Degree of prior discipline Private reproval	
	(e)	\boxtimes	If Respondent has two or more incidents of prior discipline, use space provided below.	
			Case no. 07-O-10009; effective July 8, 2009; violations of Rules of Professional Conduct, rules 3-110(A) and 3-700(D)(2), and Business and Professions Code, sections 6068(m) and 6103; public reproval	
(2)		Dishonesty: Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.		
(3)		Trust Violation: Trust funds or property were involved and Respondent refused or was unable to accout to the client or person who was the object of the misconduct for improper conduct toward said funds or property.		
(4)			m: Respondent's misconduct harmed significantly a client, the public or the administration of justice. attachment, page 8.	

(Do no	ot write	e above this line.)		
(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)		Restitution: Respondent failed to make restitution.		
(9)		No aggravating circumstances are involved.		
Additional aggravating circumstances:				
		ating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating imstances are required.		
(1)		No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.		
(2)		No Harm: Respondent did not harm the client, the public, or the administration of justice.		
(3)		Candor/Cooperation: Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.		
(4)		Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.		
(5)		Restitution: Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.		
(6)		Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.		
(7)		Good Faith: Respondent acted with a good faith belief that was honestly held and reasonable.		
(8)		Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.		
(9)		Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.		
(10)		Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.		

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(11)		Good Character: Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.		
(12)		Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.		
(13)		No n	nitigat	ing circumstances are involved.
Addi	itiona	al miti	gatin	g circumstances:
	P	re-tria	al Stip	ulation - See attachment, page 8
D. E)isci	pline	e:	
(1)	\boxtimes	Stayed Suspension:		
	(a)	\boxtimes	Resp	ondent must be suspended from the practice of law 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 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
		ii.		and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
		iii.		and until Respondent does the following:
	(b)	\boxtimes	The	above-referenced suspension is stayed.
(2)	\boxtimes	Prob	ation	:
				ust be placed on probation for a period of two years , which will commence upon the effective breme Court order in this matter. (See rule 9.18, California Rules of Court)
(3)				spension:
	(a)	\boxtimes		ondent must be actually suspended from the practice of law in the State of California for a period days.
		i.		and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
		ii.		and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
		iii.		and until Respondent does the following:
E. /	\ddi	tiona	al Co	nditions of Probation:
(1)		he/s	he pro	dent is actually suspended for two years or more, he/she must remain actually suspended until oves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the w, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

(Do no	t write	ove this line.)		
(2)		uring the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of ofessional Conduct.		
(3)		ithin ten (10) days of any change, Respondent must report to the Membership Records Office of the ate Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of formation, including current office address and telephone number, or other address for State Bar urposes, 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		
(5)		promptly meet with the probation deputy as directed and upon request. 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.		
		addition to all quarterly reports, a final report, containing the same information, is due no earlier than renty (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 Probation satisfactory proof of attendance at a session of the Ethics School, and passage of at the end of that session.			
		No Ethics School recommended. Reason:		
(9)	\boxtimes	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)		he following conditions are attached hereto and incorporated:		
		☐ Substance Abuse Conditions ☐ Law Office Management Conditions		
		Medical Conditions		
F. C	the	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		

(Do no	ot write	above this line.)
		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:
(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:

FRANK EDWARD MILLER

CASE NUMBER:

13-C-16592-LMA

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

Case No. 13-C-16592 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

- 1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
- 2. On September 17, 2013, a criminal complaint was filed charging respondent with one count of violation of California Penal Code section 243(e)(1), a misdemeanor [battery against a person with whom defendant was co-habiting].
- 3. On January 15, 2013, the court entered respondent's plea of nolo contendere to the count of violation of Penal Code section 243(e)(1).
- 4. On January 15, 2013, the court found respondent guilty and imposed a suspended sentence, and a three year period of probation, with conditions that he serve four days in jail, perform community service, attend a domestic violence program and pay related fees and assessments.
- 5. On February 21, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

- 6. On September 15, 2013, police were called to the residence of respondent's former girlfriend, with whom he had been living for four years, although they had not been dating for two years.
- 7. Respondent's former girlfriend told the police that she and respondent had been drinking and began arguing about their living arrangement. She attempted to call the police when she felt the argument was getting out of hand and respondent tried to grab the phone away from her. She attempted to draw away, when she claims respondent struck her on her left arm with his right fist, causing her pain.

8. Police arrived at the scene. Respondent's father, who lived in a guest apartment on the premises, told police he saw respondent strike his former girlfriend. Respondent does admits that he struck his former girlfriend on the arm. Respondent was arrested at the scene for violation of Penal Code, section 243(e)(1).

CONCLUSIONS OF LAW:

9. The facts and circumstances surrounding the above-described violation did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a record of two prior State Bar disciplinary matters.

05-O-01664

Respondent received a private reproval, effective November 21, 2005, for misconduct in a single client matter wherein he failed to refund unearned advanced fees of \$2,204.50 following termination of his employment.

07-O-10009

Respondent received a public reproval, effective July 8, 2009, for misconduct in a single client matter, involving failure to perform, failure to communicate, failure to refund unearned advanced fees, and failure to comply with a court order to pay judicial sanctions.

Harm (Std. 1.5(f)): The crime of which respondent was convicted involved actual harm to a victim of the crime, in that she was injured and believed she was in danger. (See *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr 406, 414 [harm considered as aggravation in matter involving criminal battery where victim was struck and believed he was in danger].)

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation - Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to the trial of the present matter, thereby saving State Bar Court time and resources (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (In re Silverton (2005) 36 Cal.4th 81, 92, quoting In re Brown (1995) 12 Cal.4th 205, 220 and In re Young (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (In re Naney (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; Blair v. State Bar (1989) 49 Cal.3d 762, 776, fn. 5.)

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

Standard 1.8 (b) provides:

If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

- 1. Actual suspension was ordered in any of the prior disciplinary matters;
- 2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
- 3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

In the present matter, although respondent has a record of two prior disciplinary matters, neither one involved actual suspension. Likewise, the prior disciplinary matters, coupled with the current misconduct, do not demonstrate a pattern or an unwillingness or inability to conform to ethical responsibilities. Accordingly, disbarment is not appropriate. However, respondent's record of discipline is serious and substantial aggravation should be afforded therefore.

Standard 2.12(b) is the applicable standard in cases such as this, where a respondent has been convicted of a crime that does not on its face or in the surrounding facts and circumstances involve moral turpitude. This standard provides suspension or reproval is appropriate for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.

Since Standard 2.12(b) is so broad, consulting case law is helpful. In *In re Hickey* (1990) 50 Cal. 3d 571, Hickey was convicted of one misdemeanor violation of Penal Code section 12025(b) [carrying a concealed weapon] arising from an incident at a nightclub during which he struck his wife in the head with a gun and later threatened her. The Court found Hickey's conduct warranted discipline. After trial, the discipline adopted was three years of probation, three years stayed suspension, and 30 days actual suspension. Hickey had no prior discipline but the Supreme Court did find that his misconduct demonstrated a pattern of abuse.

In the present matter, actual suspension is appropriate. Although respondent is entitled to mitigation for entering into the present pre-trial stipulation, aggravating circumstances clearly prevail, particularly respondent's two prior disciplinary matters and the harm to the victim of respondent's crime. Accordingly, discipline greater than that afforded in *Hickey* is warranted. A two year suspension, stayed, with two years of probation, including an actual suspension for the first sixty days, serves the purpose of protecting the public, the courts and the legal system.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 16, 2015, the prosecution costs in this matter are \$5,249. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may <u>not</u> receive MCLE credit for completion of State Bar ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)	
In the Matter of	Case number(s):
FRANK EDWARD MILLER	13-C-16592
TIONIN EDWAND MILLEN	10-0-10002

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.

Date Respondent's Signature Print Name

PRANK EDWARD MILLER
Print Name

R. KEVIN BUCHER
Print Name

(Do not write above this line.)	
In the Matter of: FRANK EDWARD MILLER	Case Number(s): 13-C-16592
ACTU.	AL SUSPENSION ORDER
Finding the stipulation to be fair to the parties a requested dismissal of counts/charges, if any, i	and that it adequately protects the public, IT IS ORDERED that the is GRANTED without prejudice, and:
The stipulated facts and dispositi Supreme Court.	ion are APPROVED and the DISCIPLINE RECOMMENDED to the
The stipulated facts and disposition DISCIPLINE IS RECOMMENDE	ion are APPROVED AS MODIFIED as set forth below, and the D to the Supreme Court.
All Hearing dates are vacated.	
within 15 days after service of this order, is gra stipulation. (See rule 5.58(E) & (F), Rules of Pr	proved unless: 1) a motion to withdraw or modify the stipulation, filed inted; or 2) this court modifies or further modifies the approved rocedure.) The effective date of this disposition is the effective date y 30 days after file date. (See rule 9.18(a), California Rules of
Court.)	Ly W
Date	LUCY ARMENDARIZ 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 February 3, 2015, I deposited a true copy of the following document(s):

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

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

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

FRANK E. MILLER FRANK MILLER C/O LOS ANGELES MISSION 303 E 5TH ST LOS ANGELES, CA 90013

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

RONALD K. BUCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 3, 2015.

Bernadette C.O. Molina Case Administrator State Bar Court