ORIGINAL

(Do not write above this line.)

State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION

Counsel For The State Bar	Case Number(s):	For Court use only
Tammy M. Albertsen **Deputy Trial Counsel** **180 Howard Street** **San Francisco, CA 94105** **(415) 538-2527** Bar # **154248**	**13-O-11381 - LMA** **13-O-15878**	**PUBLIC MATTER** **FILED** **DEC 15 2014** **STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO**
In Pro Per Respondent **Michael Alan Milnes** **1320 W. Herndon Avenue** **Fresno, CA 93711** **(559) 435-2764** Bar # **37609**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **MICHAEL ALAN MILNES** Bar # **37609** 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 **January 11, 1966** .

(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."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

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

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

(1) ☒ **Prior record of discipline**

(a) ☒ State Bar Court case # of prior case **04-O-14107 (see attachment at page 11).**

(b) ☒ Date prior discipline effective **September 6, 2005**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 3-110(A) [failure to perform]; and rule 3-700(A)(2) [failure to properly withdraw]; Business and Professions Code section 6068(i) [failure to cooperate with State Bar investigation]**

(d) ☒ Degree of prior discipline **Private reproval**

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.

(2) ☐ **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See Attachment at page 12.**

(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 Attachment at page 11.**

(8) ☐ **Restitution:** Respondent failed to make restitution.

(9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

(1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.

(2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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

Additional mitigating circumstances:

Prefiling Stipulation - See Attachment at page 12.
Restitution - See Attachment at page 12.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) years**.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.

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

iii. ☐ and until Respondent does the following:

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

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **three (3) 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 **ninety (90) days**.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

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

iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

(1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

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

(3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of

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

(4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

(6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

(7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason: .

(9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

(10) ☒ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☒ Financial Conditions

F. Other Conditions Negotiated by the Parties:

(1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 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:**

In the Matter of: MICHAEL ALAN MILNES	Case Number(s): 13-O-11381; 13-O-15878

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

☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than .

b. Installment Restitution Payments

☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), 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:

a. 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";

b. Respondent has kept and maintained the following:

i. A written ledger for each client on whose behalf funds are held that sets forth:
   1. the name of such client;
   2. the date, amount and source of all funds received on behalf of such client;
   3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
   4. the current balance for such client.

ii. a written journal for each client trust fund account that sets forth:
   1. the name of such account;
   2. the date, amount and client affected by each debit and credit; and,
   3. the current balance in such account.

iii. all bank statements and cancelled checks for each client trust account; and,

iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

i. each item of security and property held;

ii. the person on whose behalf the security or property is held;

iii. the date of receipt of the security or property;

iv. the date of distribution of the security or property; and,

v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:· MICHAEL ALAN MILNES

CASE NUMBERS: 13-O-11381; 13-O-15878

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. 13-O-11381 (State Bar Investigation)

FACTS:

1. During the relevant times herein, and including the period from August 8, 2012 and until February 20, 2013, respondent maintained a client trust account at JP Morgan Chase ("JP Morgan CTA"), account number xxxxxx8481. Respondent used his JP Morgan CTA as a personal bank account.

2. Between August 8, 2012 and February 20, 2013, respondent initiated and/or authorized 18 electronic withdrawals totaling $4,135.06, and otherwise used his JP Morgan CTA for his personal purposes.

3. On November 5, 2012, JP Morgan returned check number 427 drawn on respondent's CTA payable to Esther Milnes in the amount of $5,500 because of insufficient funds. When check number 427 was presented, the balance in respondent's CTA was $594.64.

CONCLUSIONS OF LAW:

4. By using his JP Morgan CTA on 18 separate occasions for his personal purposes, respondent deposited or commingled funds belonging to respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of Rules of Professional Conduct, rule 4-100(A).

5. By issuing check number 427 drawn upon his JP Morgan CTA when he was grossly negligent in not knowing that there were insufficient funds in the CTA to pay the check, respondent committed an act involving moral turpitude, dishonesty, or corruption in wilful violation of Business and Professions Code section 6106.

Case No. 13-O-15878 (Complainant: Francisco and Maria Ramos)

FACTS:

6. On July 11, 2002, Francisco and Maria Ramos ("the Ramoses"), residents of Arizona, hired respondent to transfer two parcels of a deceased relative's real property in Fresno County into their name, as was agreed by other possible beneficiaries. The Ramoses paid respondent $650 for the legal services. Respondent told the Ramoses that it could take up to seven years to complete the transfer.

7. By letter dated November 5, 2003, respondent provided the Ramoses with initial instructions and documents to have signed prior to filing the case in Court. The Ramoses obtained the necessary signatures.

8. Because respondent told the Ramoses that it could take seven years to accomplish the transfer, the Ramoses waited several years to hear from respondent, but when they had heard nothing, the Ramoses attempted to contact respondent to obtain status of the transfer process by telephone and left messages. Respondent received the messages but did not return the Ramoses calls.

9. The Ramoses also went to respondent's office every year during an annual visit they made to California. Respondent's office was locked each time and they were never able to make personal contact with respondent during any of their visits until in or about August, 2011. At this time, respondent told Mr. Ramos that he would have the matter concluded by November, 2011.

10. By May, 2012, respondent had not provided the Ramoses with a status of the transfer, prompting the Ramoses to seek assistance from other attorneys. One of the attorneys checked the Fresno County Superior Court docket and informed the Ramoses that respondent had filed nothing on their behalf.

11. In August, 2012, the Ramoses telephoned respondent's office and left a message on his voice mail in which they informed respondent that he needed to get the transfer completed or they would pursue legal action. Respondent immediately returned the call and said he had been ill but would complete the work. However, another year passed without respondent's contacting the Ramoses or completing the work.

12. In August, 2013, Mr. Ramos visited respondent's office in Fresno. On this visit, respondent's office was open. A woman in the office informed Mr. Ramos that respondent was not in the office, but would be in the following day and that Mr. Ramos should come back the next day. Mr. Ramos returned the next day, but no one answered the door. Thereafter, the Ramoses contacted the State Bar.

13. Respondent never performed any services of value for the Ramoses.

14. On October 7, 2013 the State Bar sent a letter to respondent at his official membership

records address requesting a response to the allegations of nonperformance for and lack of contact with the Ramoses. On October 29, 2013 the State Bar sent a second letter to respondent again requesting a response to the allegations. Respondent did not reply to the investigation letters.

15. On April 10, 2014, a representative of the Fresno County Assessor's office confirmed that the name of the registered owner for the real property was still in the decedent's name. However, the Ramoses had paid taxes on the property for over a decade.

16. Under cover of letter dated May 19, 2014, respondent sent a check to the Ramoses in the amount of $1,365, representing a refund of the $650 they originally paid plus 10% interest from 2003.

CONCLUSIONS OF LAW:

17. By failing to perform the legal services for which the Ramoses hired him to complete, namely to affect the transfer of their deceased relative's property into their name, respondent failed to perform with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By failing to respond to the numerous messages left by telephone and in person by the Ramoses over a period of several years in which they requested an update on the property transfer, respondent willfully violated Business and Professions Code section 6068(m).

19. By failing to respond to the State Bar investigator's letters of October 7, 2013 and October 29, 2013, respondent failed to cooperate in a State Bar Investigation in willful violation of Business and Professions Code section 6068(i).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Additional Aggravating Circumstances:

Prior Record of Discipline (Std. 1.5(a)): Respondent entered into a stipulation in State Bar case number 04-O-14107, wherein respondent was privately reproved effective September 6, 2005 and was required to comply with conditions of probation for one year. In that matter, respondent stipulated to three ethical violations, specifically a violation of Rules of Professional Conduct, rules 3-110(A) and 3-700 (A)(2) and Business and Professions Code section 6068(i) for misconduct stemming from his failure to perform in a client matter and failure to cooperate with the State Bar investigation.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's issuance of an insufficiently funded check, 18 separate instances of using his CTA for his personal purposes and failing to perform any services for the Ramoses constitutes multiple acts of misconduct. (*See, e.g., In the Matter of Valinotti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

Harm (Std. 1.5(f)): Respondent's failure to transfer the decedent's property to the Ramoses name over the course of several years caused harm to the Ramoses as they paid taxes on the property for over a decade and paid respondent $650 in attorney's fees in which he failed provide any legal services on their behalf.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Restitution: Respondent made full restitution to Maria and Francisco Ramos in a total amount of $1,365.00, which represented $650 in original fees paid by the Ramoses and $715 in interest, calculated at 10% from 2003. Respondent paid the restitution after the Ramoses complaint was filed, but before the State Bar filed a Notice of Disciplinary Charges. Although case law has held that restitution made only under the pressure of a forthcoming disciplinary investigation is entitled to no weight as a mitigating circumstance (*Fitzpatrick v. State Bar* (1977) 20 Cal.3d 73, 88), the fact that restitution was made even after a complaint was filed but before proceedings began may be given some favorable consideration. (*Bradpiece v. State Bar* (1974) 10 Cal.3d 747, 748). Here, respondent made restitution well after the Ramoses filed their State Bar complaint. However, respondent offered to complete the services for which he was originally hired and, when the Ramoses declined the offer, respondent made full restitution, which included approximately 10 years' worth of interest.

Prefiling Stipulation: Respondent is entitled to some mitigation for entering into this stipulation. (*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; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

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 furtherreferences 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.) Ifa recommendation is at the high end or low end of a Standard, an explanation must be given as

to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, respondent admits to using his client trust account for personal purposes on 18 occasions over a six month period, presenting a check when his CTA contained insufficient funds to honor the check and to failing to perform competently in a single client matter. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed." The most severe sanction applicable to respondent's misconduct is found in standard 2.2, discussed below.

Standard 1.8(a) also applies based on respondent's prior record of discipline. Standard 1.8(a) provides that "the sanction to be imposed in the instant matter must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Respondent's prior discipline in 2005 is not remote and involved client harm making the imposition of greater discipline appropriate in the instant matter.

Here, respondent used his CTA over a six-month period for his personal purposes on 18 separate occasions and issued an insufficiently funded check from his CTA in violation of Rules of Professional Conduct, rule 4-100(A). Disbursing funds from a client trust account to pay personal expenses constitutes a violation of the Rules of Professional Conduct, rule 4-100(A) even if client funds are not on deposit. (See *Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 ["Trust accounts, open or closed, are never to be used for personal purposes ...."].) The applicable sanction for the client trust account violations is found in Standard 2.2, which requires a minimum of three months of actual suspension.

In aggravation, respondent has a prior record of discipline, effective in 2005, the instant misconduct evidences multiple acts of misconduct and respondent's clients were harmed by the delay in transferring the real property into their name while having paid taxes on the property for over a decade. Respondent has two factors in mitigation. Respondent made full restitution to the Ramoses and has entered into a full stipulation prior to the filing of a Notice of Disciplinary Charges.

Under the circumstances presented in respondent's case, there is no reason to deviate from Standard 2.2 which calls for a three month actual suspension. Respondent's use of his client trust account to pay personal expenses demonstrated a misuse and mismanagement of his client trust account. However, there is no evidence to suggest that respondent misappropriated

client funds, used client funds to pay his expenses or that a client was harmed as a result of respondent's misuse of his client trust account. Thus, a period of actual suspension is appropriate under standard 2.2.

Case law is instructive. In *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, respondent used his client trust account as his personal account, issued 27 insufficient checks for personal expenses over a three-year period, and abandoned one client. Respondent continued to use his client trust account and issue insufficient checks even after he was aware that the State Bar was investigating him for trust account violations. Respondent was actually suspended for six months and until completion of specified educational courses. Respondent had only been in practice for two years at the time of his misconduct.

Here, respondent's misconduct is less severe than that of the attorney in Doran. Respondent has fewer instances of personal use of his CTA than did Doran and there is no evidence that respondent continued to use his client trust after he knew the State Bar was investigating him. In addition, Doran had only been practicing for two years at the time of his misconduct; respondent in the instant matter has been practicing for 47 years. Respondent also has more mitigation than did the attorney in Doran. Therefore, the misconduct committed by respondent herein is, on balance, less serious than that committed by Doran and the discipline imposed should therefore be less than the six months imposed on Doran.

Accordingly, a two year stayed suspension and a three year probation with conditions including a 90 day actual suspension and client trust accounting school to ameliorate respondent's client trust account mismanagement, is appropriate to protect the public, the courts, and the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 24, 2014, the prosecution costs in this matter are $3,947.00. 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.

EXCLUSION FROM MCLE CREDIT

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

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In the Matter of:	Case number(s):
MICHAEL ALAN MILNES	13-O-11381; 13-O-15878

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.

Date	Respondent's Signature	Print Name
12-2-2014		MICHAEL ALAN MILNES
Date	Respondent's Counsel Signature	Print Name
		SUSAN CHAN ~~TAMMY M. ALBERTSEN~~
Date	Deputy Trial Counsel's Signature	Print Name
12/9/2014		

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In the Matter of:	Case Number(s):
MICHAEL ALAN MILNES	13-O-11381; 13-O-15878

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.)**

Dec. 15, 2014
Date

Judge of the State Bar Court

LUCY ARMENDARIZ

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 December 15, 2014, 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:

MICHAEL ALAN MILNES
1320 W HERNDON AVE
FRESNO, CA 93711

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

TAMMY A. ALBERTSEN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 15, 2014.

Bernadette C.O. Molina
Case Administrator
State Bar Court