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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
<b>Counsel For The State Bar</b>  <b>Anand Kumar</b> <b>Deputy Trial Counsel</b> <b>845 South Figueroa Street</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1714</b>  <b>Bar # 261592</b>	<b>Case Number(s):</b> <b>13-O-14733 (INV)</b>	For Court use only  <div style="text-align: right;"> <b>FILED</b>  <b>SEP 17 2014</b> P.B.  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>	
<b>Counsel For Respondent</b>  <b>Arthur Lewis Margolis</b> <b>Margolis &amp; Margolis LLP</b> <b>2000 Riverside Drive</b> <b>Los Angeles, CA 90039</b> <b>(213) 953-8996</b>  <b>Bar # 57703</b>	Submitted to: <b>Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
<b>In the Matter of:</b> <b>JOHN SHAFFER SMITH</b>  <b>Bar # 56107</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>			

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **June 29, 1973**.
- (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 **14** 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."



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- (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: **two (2) billing cycles immediately following the effective date of the Supreme Court order in this matter.** (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 **87-O-17699**
  - (b)  Date prior discipline effective on **May 15, 1990**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **former Rules of Professional Conduct, rule 3-110(A) and Business and Professions Code section 6068(m)**
  - (d)  Degree of prior discipline **public reproof with conditions including a one (1) year reproof period.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.

In addition to the discipline imposed against Respondent in case number 87-O-17699, Respondent has two other prior records of discipline.

In State Bar case number 95-O-13587, et al., Respondent received a private reproof with conditions including a two (2) year reproof period for violations of Business and Professions Code sections 6157.1 and 6157.2. The discipline became effective on May 17, 1997.

In State Bar case number 98-O-02230, Respondent received a public reproof with conditions including a one (1) year reproof period for violations of of rule 3-110(A), Rules of Professional Conduct [failure to perform competently]. The discipline became effective on June 15, 2002.

For further discussion of Respondent's prior of discipline, see stipulation, at page 10.

- (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.

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- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See stipulation, at page 10.**
- (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.

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- (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.  
**See stipulation, at page 10.**
- (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:**

*Physical difficulties, see stipulation at page 11.*

*Pre-filing stipulation, see stipulation, at page 11.*

**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 **two (2) 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:

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|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions  |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation 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:** \_\_\_\_\_

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In the Matter of: JOHN SHAFFER SMITH	Case Number(s): 13-O-14733
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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

- 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 reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

#### c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

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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:                      JOHN SHAFFER SMITH

CASE NUMBER:                            13-O-14733

**FACTS AND CONCLUSION 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-14733 (State Bar Investigation)

FACTS:

1. Between June 17, 2013 and July 22, 2013, Respondent issued the following six checks from his client trust account ("CTA") at Bank of the West against insufficient funds when he was grossly negligent in not knowing that there were insufficient funds in the CTA to pay them:
  - a. On April 26, 2013, Respondent issued CTA check number 17903 made payable to Vermont Urgency Chiropractic Clinic in the amount of \$1,300, which was presented for payment on June 27, 2013 and paid by Bank of the West;
  - b. On May 24, 2013, Respondent issued CTA check number 17958 made payable to Vermont Urgency Chiropractic Clinic in the amount of \$1,100, which was presented for payment on June 27, 2013 and paid by Bank of the West;
  - c. On June 6, 2013, Respondent issued CTA check number 17990 made payable to Abba Chiropractic in the amount of \$4,981, which was presented for payment on June 27, 2013 and paid by Bank of the West. On June 27, 2013, the balance in Respondent's CTA was \$470.99, which after CTA check numbers 17903, 17958, 17990 were paid by the bank, caused an overdraft of -\$7,015.01, including a \$105 overdraft fee;
  - d. On June 6, 2013, Respondent issued CTA check number 18002 made payable to Wilmore Premier Health Group in the amount of \$3,904.44, which was presented for payment on June 17, 2013 and paid by Bank of the West. On June 17, 2013, the balance in Respondent's CTA was \$1,765.42, which after CTA check number 18002 was paid by the bank, caused an overdraft of -\$2,174.02, including a \$35 overdraft fee; and
  - e. On June 27, 2013, Respondent issued CTA check numbers 18014 and 18015 made payable to Anthony Figueroa and Beles Figueroa respectively in the amounts of \$4,491.45 each, which were presented for payment on July 22, 2013 and returned by Bank of the West, because, the balance in Respondent's CTA on July 22, 2013, was \$3,550.89.

## CONCLUSION OF LAW:

2. By issuing six checks drawn upon his CTA when he was grossly negligent in not knowing that there were insufficient funds in the CTA to pay them, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

## AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Stds. 1.5(a)):** Respondent was admitted on June 29, 1973 and has three prior records of discipline—all of which resulted in reprovais—for dissimilar misconduct which occurred during the mid-1980s and mid-1990s.

In Respondent's first record of discipline, he entered into a disciplinary stipulation in State Bar case number 87-O-17699, wherein Respondent was publicly reprovaid for one (1) year with conditions. The ensuing disciplinary order became effective on May 15, 1990. Respondent stipulated to two ethical violations, namely failing to perform services competently in violation of former Rules of Professional Conduct, rule 3-110(A) and Business and Professions Code section 6068(m) for misconduct stemming from his failure to inform his client that Respondent that he was no longer working on her case after February 1984, which ultimately resulted in the client's wrongful death case being dismissed by the underlying defendants for failure to timely prosecute the case in 1987.

In Respondent's second record of discipline, he also entered into a disciplinary stipulation in State Bar case number 95-O-13587, et al. after disciplinary charges were filed by the State Bar in December 1996. Respondent was privately reprovaid for two (2) years with conditions. The ensuing disciplinary order became effective on May 17, 1997. Respondent stipulated to seven advertising violations including violations of Business and Professions Code sections 6157.1 and 6157.2 concerning non-compliant television, bus-back and print advertisements that Respondent used for his firm during 1995.

In Respondent's third record of discipline, he entered into a disciplinary stipulation in State Bar case number 98-O-02230, wherein Respondent was publicly reprovaid for one (1) year with conditions. The ensuing disciplinary order became effective on June 15, 2002. Respondent stipulated to one count of violating Rules of Professional Conduct, rule 3-110(A) for failing to obtain court approval to settle a minor client's personal injury claims and to receive more than the statutory limit for his attorney's fees in September 1996.

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent's issuance of six checks against insufficient funds in his client trust account constitute violations of the State Bar Act. Multiple acts of misconduct is considered serious aggravation. (*See e.g., In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. 555.)

## MITIGATING CIRCUMSTANCES.

**Good Character (Std. 1.6(f)):** Respondent has submitted declarations signed under penalty of perjury from six people representing a widespread sample of the legal and general communities, including two attorneys, three clients and his accountant, who are aware of the full extent of his misconduct, attesting to Respondent's extraordinary good character.

### **Additional Mitigating Circumstances:**

**Physical Difficulties:** According to two of his treating physicians, at the time of the misconduct, Respondent suffered from physical difficulties, including a heart condition involving atrial fibrillation and arrhythmia, type I diabetes, and hypoglycemia, which caused Respondent fatigue, difficulty in concentrating, and severe cognitive impairment among other others. Respondent submitted a declaration signed under penalty of perjury, in which he declared that his gross negligence in the management of his client trust account was a direct result of his fatigue, confusion, physical difficulties and inability to prioritize his client trust account obligations. According to Respondent's physicians, after undergoing an atrial fibrillation ablation procedure in December 2013 and receiving additional medical treatment in the early months of 2014, Respondent's physical difficulties are under control. Respondent's physical difficulties warrant "some weight" in mitigation. (See e.g., *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 519 [emotional or physical difficulties may warrant some weight in mitigation even if they are not proven by expert testimony to be directly responsible for an attorney's underlying misconduct]; see also *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 318 [discussing the effect of lay testimony regarding marital difficulties under the predecessor to standard 1.6(d) "notwithstanding standard 1.2(e)(iv), the Supreme Court has often accepted lay testimony regarding marital difficulties as appropriate mitigation.'], citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364.)

**Pre-filing Stipulation:** While some of the facts in this matter are easily provable, Respondent has cooperated with the State Bar by entering into the instant stipulation fully resolving the matter at an early stage in the disciplinary process without the necessity of a trial, thereby saving State Bar resources. (*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).)

In this matter, Respondent's three prior records of discipline trigger the consideration of standard 1.8(b). Standard 1.8(b) provides that if a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling 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 one of the prior disciplinary matters; 2) the prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; and 3) the prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

Despite Respondent's prior records of discipline, standard 1.8(b) does not apply to Respondent's instant misconduct for the following reasons. Actual suspension was not ordered in any of Respondent's prior records of discipline. The misconduct from his prior records of discipline is dissimilar from the current misconduct as none of the prior misconduct involved client trust account misconduct. Lastly, because the misconduct underlying Respondent's most recent prior record of discipline is remote—the last instance of misconduct occurred in September 1996, nearly seventeen-years prior to the instant misconduct—his prior records of discipline do not demonstrate a current unwillingness or inability to conform ethical responsibilities on his part. Accordingly, although Respondent has three prior records of discipline, the prior records of discipline do not warrant the imposition of standard 1.8(b) here based on the criteria of the standard and the facts and circumstances surrounding Respondent's current misconduct and his prior records of discipline.

Instead, the standard most applicable to Respondent's misconduct is standard 2.7, which applies to Respondent's issuance of checks against insufficient funds in his client trust account, an act of moral turpitude in violation of Business and Professions Code section 6106. Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law. Here, the magnitude of Respondent's misconduct is serious because his current misconduct is directly related to the practice of law as it involves the mismanagement of his client trust account and there are several instances of checks issued against insufficient funds. Accordingly, taken together with Respondent's prior records of discipline and multiple acts of misconduct, the imposition of a period of actual suspension is warranted. Notwithstanding the serious magnitude of Respondent's misconduct, there is no evidence that any of his clients were harmed or misled by the issuance of the checks against insufficient funds and Respondent is entitled to mitigation for good character and physical difficulties, and therefore neither disbarment nor a lengthy period of actual suspension is warranted.

Taking into consideration the magnitude of the instant misconduct, the aggravating circumstances and mitigating circumstances present, a period of a two (2) stayed suspension and a two (2) year probation with conditions including a ninety (90) day actual suspension, completion of State Bar client trust accounting school and compliance with California Rules of Court, rule 9.20, is appropriate discipline to protect the public, the courts and the legal profession, to maintain high professional standards by attorneys and preserve public confidence in the legal profession.

The recommended discipline is also supported by case law. In *Segal v. State Bar* (1988) 44 Cal.3d 1077, the Supreme Court imposed a three (3) stayed suspension and a three (3) year probation with conditions including a one (1) year actual suspension on an attorney who issued two checks from a personal account against insufficient funds, failed to perform in a client matter and failed to promptly refund unearned fees. The attorney had a prior record of discipline, consisting of a one (1) year stayed suspension with a ninety (90) day actual suspension, for the issuance of two other checks against insufficient funds from his personal account. While Respondent's instant misconduct involves the issuance of more checks against insufficient funds and involves his client trust account, the attorney in *Segal* was found to have committed additional misconduct involving a client. Moreover, the attorney in *Segal* had a prior record of discipline for similar misconduct and which included a significant period of actual suspension, which Respondent lacks. Therefore, Respondent's misconduct warrants less serious discipline.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 29, 2014, the prosecution costs in this matter are approximately \$2,992. 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**

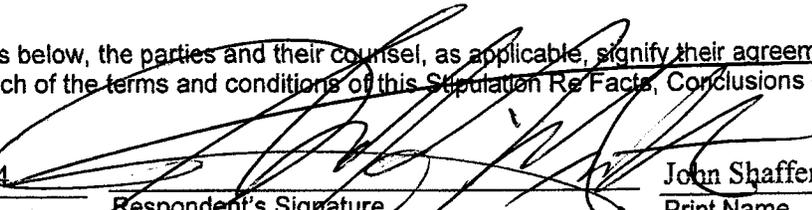
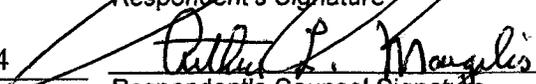
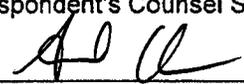
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: JOHN SHAFFER SMITH	Case number(s): 13-O-14733
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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.

August 29, 2014 Date	 Respondent's Signature	John Shaffer Smith Print Name
August 29, 2014 Date	 Respondent's Counsel Signature	Arthur L. Margolis Print Name
August 29, 2014 Date	 Deputy Trial Counsel's Signature	Anand Kumar Print Name

(Do not write above this line.)

In the Matter of: JOHN SHAFFER SMITH	Case Number(s): 13-O-14733
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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.)**

SEPTEMBER 17, 2014  
Date

  
\_\_\_\_\_  
GEORGE E. SCOTT, JUDGE PRO TEM  
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 Los Angeles, on September 17, 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 Los Angeles, California, addressed as follows:

**ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039**

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

**Anand Kumar, Enforcement, Los Angeles**

**Terrie Goldade, Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 17, 2014.



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Paul Barona  
Case Administrator  
State Bar Court