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| State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION | | |
| Counsel For The State Bar Charles T. Calix Senior Trial Counsel 845 S. Figureoa Street Los Angeles, CA 90017-2515 (213) 765-1000 Bar # 146853 | Case Number(s): 15-O-15746 - LMA | For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED NOV 30 2016 <i>V-18</i> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div> |
| Counsel For Respondent Marisol Ocampo Century Law Group LLP 5200 W Century Boulevard, #345 Los Angeles, CA 90045 (310) 642-6900 Bar # 198087 | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED | |
| In the Matter of: DONALD LEE PRICHARD Bar # 186729 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 16, 1996**.
- (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."

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

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

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment at page 11.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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. **See Attachment at page 11.**
- (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:

No Prior Discipline: See Attachment at page 11.

Family Problems: See Attachment at page 11.

Pretrial Stipulation: See Attachment at pages 11 and 12.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent 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 fitness to practice and present learning and ability in the general 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 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 **six months**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 present 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:
- | | |
|---|---|
| <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: DONALD LEE PRICHARD | Case Number(s): 15-O-15746 |
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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";

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: DONALD LEE PRICHARD

CASE NUMBER: 15-O-15746

FACTS AND CONCLUSIONS OF LAW.

Donald Lee Prichard ("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. 15-O-15746 (Complainant: Brian T. Miller)

FACTS:

1. On or about September 20, 2010, Brian T. Miller ("Miller") employed Donald Lee Prichard ("Respondent") to represent him in a personal injury action arising out of a motor vehicle accident.
2. Between on or about September 21, 2010 and on or about December 29, 2010, Timothy Esposito, D.C. dba Doctor's Chiropractic ("Doctor's Chiropractic") provided health care valued at \$4,359.42 to Miller under a "Doctor's Lien" signed by Miller and Respondent.
3. On or about April 11, 2011, Doctor's Chiropractic sent a letter to Respondent stating that it would settle its lien of \$4,359.42 for the sum of \$2,700. Respondent received the letter.
4. On or about April 21, 2011, The Rawlings Company on behalf of Kaiser Foundation Health Plan, Inc. ("Kaiser") sent a letter to Respondent stating that it agreed to settle its lien of \$1,860.55 for the sum of \$992.34. Respondent received the letter.
5. Between May 1, 2011 and May 31, 2016, Respondent maintained a client trust account at OneWest Bank, account number ending 1478 ("CTA").¹ During that time, Respondent did not prepare a written journal for or monthly reconciliations of his CTA.
6. Between May 9, 2011, and May 11, 2016, Respondent engaged in commingling by issuing 56 checks from his CTA to pay personal expenses.
7. On May 10, 2011, Respondent deposited a check for \$12,000 payable to Respondent and Miller into his CTA. After depositing the check, the balance in the CTA was \$72,134.57. Respondent did not prepare a client ledger for Miller.

¹ The account number has been redacted to protect the account and account holder.

8. On May 13, 2011, Respondent sent a letter to Miller enclosing a "Reconciliation of Funds" that recommended disbursing the settlement proceeds as follows: (A) \$992.34 to Kaiser; (B) \$2,700 to Doctor's Chiropractic; (C) \$4,000 to Respondent for his contingency fee; and (D) \$4,307.66 to Miller. Miller received the letter and reconciliation.

9. On May 20, 2011, Miller signed and returned the Reconciliation of Funds to Respondent. Respondent received the signed reconciliation.

10. On May 20, 2011, Respondent issued CTA check no. 1010 to Miller for \$4,307.66. After paying his contingency fee and Miller, Respondent was required to hold \$3,692.34 in trust for Miller or his health care providers. Miller received and negotiated the check.

11. On December 1, 2011, Respondent issued CTA check no. 1048 to The Rawlings Company for \$992.34. After paying his contingency fee, Miller and The Rawlings Company, Respondent was required to hold \$2,700 in trust for Miller or Doctor's Chiropractic.

12. Between July 31, 2013 and September 18, 2013, the balance in Respondent's CTA fell below \$2,700 on repeated occasions due to his gross negligence in relying on his secretary's statement that he was entitled to take all of the funds in his CTA without ever confirming the accuracy of her analysis, including, but not limited to, the following:

| <u>DATE</u> | <u>BALANCE</u> ² |
|-------------|-----------------------------|
| 7/31/13 | \$2,016.85 |
| 8/6/13 | \$416.85 |
| 9/18/13 | \$17.85 |

13. On or about May 9, 2016, Respondent paid \$5,500 to Doctor's Chiropractic by cashier's check.

CONCLUSIONS OF LAW:

14. By failing to pay any portion of the \$992.34 in his possession to The Rawlings Company authorized by his client between May 20, 2011 and December 1, 2011, Respondent failed to pay promptly as requested by his client funds in his possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

15. By grossly negligently allowing his CTA to dip to \$17.85 on September 18, 2013, Respondent failed to maintain the approximate sum of \$2,700 on behalf of his client or his client's health care provider in his client trust account in wilful violation Rules of Professional Conduct, rule 4-100(A).

16. By grossly negligently misappropriating for his own purposes \$2,682.15 that his client or his client's health care provider was entitled to receive, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

² These columns do not reflect all activity in the CTA. They only reflect dates on which the ending balance dipped below the prior amount held in trust for Miller or Doctor's Chiropractic.

17. By failing to prepare and maintain appropriate client trust account records concerning the funds received on behalf of his client, including but not limited to the client ledger for the client, the written journal for the client trust account, and the monthly reconciliation for the client trust account, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

18. By issuing 56 CTA checks to pay personal expenses between May 9, 2011, and May 11, 2016, Respondent commingled funds in his client trust account in willful violation of rule 4-100(A), Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): By failing to promptly pay The Rawlings Company, failing to maintain and misappropriating the \$2,700, failing to maintain records, and commingling funds in his CTA, Respondent committed multiple acts of misconduct for five years between May 9, 2011 and May 11, 2016.

MITIGATING CIRCUMSTANCES.

Character Evidence (Std. 1.6(f)): Respondent presented declarations attesting to his good character, knowledge, skill, compassion, pro bono legal services and dedication to his clients from two attorneys who have known for 18 to 22 years, and are aware of the full extent of his misconduct. Respondent also presented declarations or letters from six former clients, each who have each known him for an average of 14 years. Each declarant attested to Respondent's good character, compassion, professionalism, dedication to his clients, and awareness of the full extent of his misconduct. Each of the declarants also attested to Respondent's providing pro bono services to the clients and frequently, to their family members or in subsequent matters. One family described Respondent as a "guardian," while another family describing him as a "guardian angel."

No Prior Discipline: Respondent had been a member of the State Bar since December 16, 1996, and had no prior record of discipline before the misconduct began in May 2011. Even though the misconduct is serious, Respondent is entitled to mitigation for his 15 years of practice without discipline prior to commencing the misconduct. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [attorney's practice of law for more than 10 years' worth significant weight in mitigation]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49 [attorney's practice of law for more than 17 years considered to be a significant mitigating circumstance even though the misconduct at issue was serious].)

Family Problems: In Spring 2010, Respondent's spouse of 62-years developed liver cancer. She underwent several operations during that time and in Spring 2012, she moved to Temecula to be with their daughter because Respondent could no longer care for her. Respondent lived in an apartment in Redondo Beach during the week to maintain his law practice, but would drive to Temecula each weekend to care for her until her death on December 11, 2013. His wife's condition and caring for her was extremely stressful for him, and consumed significant time and emotional energy that impacted his law practice and contributed to the misconduct set forth herein. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [family difficulties and other stressful emotional difficulties may be considered in mitigation].)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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 Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

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 has committed five acts of professional misconduct. 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 2.1(b) which applies to Respondent's violation of Business and Professions Code section 6106. Standard 2.1(b) provides that actual suspension is appropriate for misappropriation involving gross negligence. Respondent misappropriated Miller's money when the balance in his client trust account fell below the amount he was required to maintain on behalf of Miller as a result of Respondent's gross negligence in maintaining his client trust account. Through an oversight, Miller's health care provider was not paid and Respondent's poor accounting practices resulted in this oversight not being discovered.

To properly assess appropriate discipline under Standard 2.1(b) one must also consider mitigation and aggravation. Standard 1.7(c) offers guidance. Standard 1.7(c) states, in pertinent part, "If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction that what

is otherwise specified in a given standard.” In the present case, there is significant mitigation present for Respondent’s good character, 15 years of discipline-free practice, family problems and pretrial stipulation. In aggravation, Respondent committed multiple acts of misconduct for five years between on or about May 9, 2011 and on or about May 11, 2016. There is no evidence that the misappropriation in this case involved dishonesty or an intent to misappropriate on the part of Respondent.

In *Edwards v. State Bar* (1990) 52 Cal.3d 28, 38, the Court discussed the effect that lack of dishonesty has on assessing a level of discipline:

An attorney who deliberately take a client’s funds, intending to keep them permanently, and answers the client’s inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception. Although lack of evil intent does not immunize an attorney’s conduct from discipline [citations omitted], the attorney’s good faith is an important consideration in determining the degree of discipline to be imposed.

Respondent in the present case did not act with an evil intent, or with lies and evasion. The nature of the misconduct demonstrate that lengthy actual suspension or disbarment is not necessary due to Respondent’s good character, lack of prior discipline, and family problems, there is no evidence to indicate that a period of actual suspension of less than a year would be inadequate to protect the public. Therefore, a six month period of actual suspension is within the standards and is sufficient to achieve the purposes of attorney discipline.

Case law also supports the level of discipline in this case. In *Sugarman v. State Bar* (1990) 51 Cal.3d 609, the Supreme Court placed Sugarman on one year’s stayed suspension and three years’ probation on conditions, including a one year period of actual suspension. Sugarman was found culpable of willfully misappropriating \$15,317 through gross negligence caused by his secretary mistakenly depositing the funds into his general account without his knowledge in one client matter, and acquiring an adverse interest in client property without the required disclosures in a second client matter. The misconduct was mitigated by Sugarman’s terminating the secretary who made the deposits, promptly hiring an accountant to manage his client trust account, and no further client trust accounting problems, but was aggravated by his failure to repay the funds until after the clients filed their State Bar complaint and harm to the clients.

In *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, the Supreme Court placed Guzzetta on three year’s stayed suspension and three years’ probation on conditions, including a six-month period of actual suspension. Guzzetta was found culpable of willfully misappropriating the approximate sum of \$1,550 through gross negligence in one client matter, and failing to perform with competence and improperly withdrawing in a second client matter. The misconduct was mitigated by Guzzetta’s good character and absence of prior discipline, but was aggravated by his misrepresentation to a client.

In *Brockway v. State Bar* (1991) 53 Cal.3d 51, the Supreme Court placed Brockway on one year’s stayed suspension and two years’ probation on conditions, including a 90-day period of actual suspension. Brockway was found culpable of willfully misappropriating \$500 through gross negligence and failing to refund funds to the client in one client matter and of acquiring an adverse interest in client property without the required disclosures in a second client matter. The misconduct was mitigated by Brockway’s 13 years of discipline-free practice and favorable character evidence, but was aggravated by questionable candor and indifference.

The case at hand involves more funds than *Brockway, supra*, 53 Cal.3d 51, but less funds and more mitigation than *Sugarman, supra*, 51 Cal.3d 609. The amount of funds is similar to *Guzzetta, supra*, 53 Cal.3d 51, which involves greater misconduct, but less mitigation, which supports a similar level of discipline, and therefore a discipline of six months actual suspension is appropriate in this case.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of November 15, 2016, the prosecution costs in this matter are \$3,669. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

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


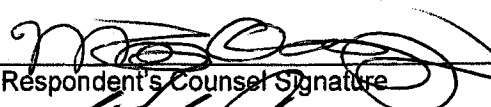
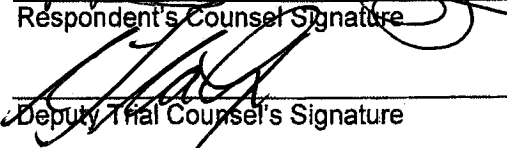
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In the Matter of:
DONALD LEE PRICHARD

Case number(s):
15-O-15746

SIGNATURE OF THE PARTIES

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

| | | |
|-------------------------|---|---|
| <u>11/19/16</u> Date |  Respondent's Signature | <u>Donald L. Prichard</u> Print Name |
| <u>11/18/16</u> Date |  Respondent's Counsel Signature | <u>Marisol Ocampo</u> Print Name |
| <u>11-21-16</u> Date |  Deputy Trial Counsel's Signature | <u>Charles T. Calix</u> Print Name |

(Do not write above this line.)

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| In the Matter of: DONALD LEE PRICHARD | Case Number(s): 15-O-15746 |
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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.)**

November 23, 2016
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, 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 San Francisco, on November 30, 2016, 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:

MARISOL OCAMPO
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:

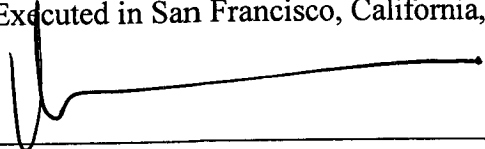
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 30, 2016.



Vincent Au
Case Administrator
State Bar Court