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<p>State Bar Court of California Hearing Department PUBLIC MATTER Los Angeles ACTUAL SUSPENSION</p>		
<p>Counsel For The State Bar</p> <p>Diane J. Meyers Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1496</p> <p>Bar # 146643</p>	<p>Case Number(s): 13-O-17320</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 24pt;">FILED</p> <p style="text-align: center;">SEP 12 2014</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Michael Alan Brush Brush & Sacks P.O. Box 920776 Sylmar, CA 91392 (424) 273-3749</p> <p>Bar # 46576</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of:</p> <p>MICHAEL ALAN BRUSH</p> <p>Bar # 46576</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 26, 1970**.
- (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."

(Effective January 1, 2014)



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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: **the two 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 **11-C-13383 (see Attachment to Stipulation at p. 10)**
 - (b) Date prior discipline effective **July 31, 2012**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code not involving moral turpitude but involving other misconduct warranting discipline**
 - (d) Degree of prior discipline **public reproof**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
 - (a) State Bar case # of prior case: **12-H-17982 (See Attachment to Stipulation at pp. 10-11)**
 - (b) Date prior discipline effective: **March 26, 2014**
 - (c) Rules of Professional Conduct/State Bar Act violations: **Rules of Professional Conduct, rule 1-110**
 - (d) Degree of prior discipline: **60-day actual suspension, one-year stayed suspension and three-year probation**
- (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.
- (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. **See Attachment to Stipulation at p. 11.**
- (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.
- (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:

Profiling Stipulation, see Attachment to Stipulation at p. 11.

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 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 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 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: **Respondent attended Ethics School on June 13, 2013, and passed the test given at the end of the session, in connection with case no. 11-C-13383.**
- (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: **Respondent has been ordered to pass the MPRE in connection with case no. 12-H-17982.**
- (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: Michael Alan Brush	Case Number(s): 13-O-17320
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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:
- 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 BRUSH

CASE NUMBER: 13-O-17320

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-17320 (State Bar Investigation)

FACTS:

1. Between August 2, 2013 and April 21, 2014, respondent deposited funds belonging to respondent into his client trust account at U.S. Bank, as follows:

<u>DATE OF DEPOSIT</u>	<u>AMT. DEPOSITED</u>	<u>FORM OF DEPOSIT</u>
8-02-13	\$ 1,900.00	Cash
8-05-13	\$ 400.00	Cash
8-12-13	\$ 75.00	Cash
8-22-13	\$ 1,900.00	Cash
8-28-13	\$ 2,462.00	Social Security benefit
9-19-13	\$ 2,000.00	Cash
9-25-13	\$ 800.00	Cash
9-25-13	\$ 2,462.00	Social Security benefit
10-07-13	\$ 5,000.00	Cash
10-18-13	\$ 500.00	Cash
10-23-13	\$ 2,462.00	Social Security benefit
11-06-13	\$ 5,100.00	Cash
11-08-13	\$ 420.00	Cash
11-27-13	\$ 2,462.00	Social Security benefit
12-02-13	\$ 600.00	Cash
12-03-13	\$ 400.00	Cash
12-05-13	\$ 886.00	Cash
12-17-13	\$ 300.00	Cash
12-18-13	\$ 500.00	Cash
12-23-13	\$ 1,000.00	Cash
12-24-13	\$ 500.00	Cash
12-24-13	\$ 2,462.00	Social Security benefit
12-27-13	\$ 800.00	Cash
12-28-13	\$ 200.00	Cash
1-10-14	\$ 800.00	Cash
1-22-14	\$ 2,500.00	Social Security benefit

2-18-14	\$ 100.00	Cash
2-24-14	\$ 400.00	Cash
2-26-14	\$ 2,500.00	Social Security benefit
3-03-14	\$ 500.00	Cash
3-14-14	\$ 500.00	Cash
3-26-14	\$ 2,500.00	Social Security benefit
3-31-14	\$ 100.00	Cash
4-01-14	\$ 400.00	Cash
4-15-14	\$ 500.00	Cash
4-21-14	\$ 100.00	Cash

2. On November 7 and 18, 2013, respondent used his personal funds deposited into the CTA to pay personal expenses via electronic withdrawals, as follows:

<u>DATE OF PAYMENT</u>	<u>AMT. PAID</u>	<u>PAYEE</u>
11-07-13	\$ 423.66	Time Warner Cable
11-18-13	\$ 508.93	ACHIVR VISB

CONCLUSION OF LAW:

3. By depositing funds belonging to respondent into the CTA and by using his personal funds deposited into the CTA to pay personal expenses, respondent commingled funds belonging to respondent in the CTA, in wilful violation of Rules of Professional Conduct, rule 4-100(A).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)):

In State Bar case no. 11-C-13383, respondent stipulated to a public reproof for a period of two years for his November 15, 2011 conviction of a violation of Vehicle Code section 23152(b) (driving with a blood alcohol level of .08 percent or higher). An aggravating factor was harm to public property (damage to a light standard). Respondent's lack of a prior record in over 40 years of practice and his cooperation in entering into the stipulation to discipline were mitigating factors. His misconduct did not involve moral turpitude.

In State Bar case no. 12-H-17982, respondent stipulated to a 60-day actual suspension, a one-year stayed suspension and a three-year probation for violating reproof conditions in violation of Rules of Professional Conduct, rule 1-110, as follows:

- (1) Respondent failed to timely contact the Office of Probation by August 30, 2012 to schedule a meeting with his assigned probation deputy to discuss the reproof conditions. He contacted the Office of Probation on January 28, 2013;
- (2) Respondent failed to attend at least four meetings of an abstinence-based self-help group approved by the Office of Probation for the months of August 2012 (attended no meetings), September 2012 (attended no meetings), October 2012 (attended two meetings), November 2012 (attended one meeting) and December 2012 (attended no meetings), and failed to submit to the Office of Probation proof of attendance at the meetings of the approved program;

(3) Respondent failed to declare under penalty of perjury that he had complied with all the conditions of probation in the underlying criminal matter in the quarterly reports that he submitted on October 10, 2012, January 10, 2013, and July 10, 2013;

(4) Respondent failed to contact the City of Los Angeles Department of Streets and/or the City of Los Angeles Department of Water and Power to arrange and pay restitution for any and all property damage to the light standard caused by his misconduct and failed to submit satisfactory proof of payment of restitution to the Office of Probation, which was due no later than July 31, 2013; and

(5) Respondent failed to timely submit three quarterly reports to the Office of Probation. He submitted the report due October 10, 2012 on October 11, 2012, he submitted the report due January 10, 2013 on February 12, 2013, and he submitted the report due on July 10, 2013 on July 30, 2013.

Aggravating factors were respondent's prior public reproof and multiple acts of misconduct. A mitigating factor was respondent's cooperation in stipulating to discipline before formal charges were filed.

MITIGATING CIRCUMSTANCES.

No Harm (Std. 1.6(c)):

There is a lack of harm to any client due to respondent's misconduct, as there were no client funds in the client trust account at the time of the misconduct.

Additional Mitigating Circumstances:

Pre-filing Stipulation:

Respondent has entered into this stipulation as to facts and culpability prior to the filing of formal charges, and thereby saved State Bar 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].)

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 Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.)

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

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

Standard 2.2(a), which applies to respondent’s commingling, provides that actual suspension of three months is appropriate. Also, 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 mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

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

Standard 1.8(b) (formerly standard 1.7(b)), must be applied with due regard for the purposes of imposing professional discipline, and the Supreme Court has declined to apply this standard in the appropriate circumstances. (*Conroy v. State Bar* (1991) 53 Cal.3d 495.) In *Conroy*, the attorney’s misconduct included withdrawing as counsel without cooperating with his successor counsel; failing to respond to reasonable status inquiries of his client; making misrepresentations to the client about the status of his case; and prolonged inaction in a case in reckless disregard of his obligation to perform diligently. Aggravating factors included a prior private reproof and a 60-day actual suspension for failure to take and pass the Professional Responsibility Examination before the deadline imposed by the conditions of the private reproof; and failure to cooperate with the State Bar. There was no mitigation. Rather than disbarring the attorney, the Supreme Court imposed a one-year actual suspension despite the existence of the two prior impositions of discipline. The Supreme Court agreed with the conclusion of the Hearing Department and Review Department rejecting rigid application of former standard 1.7(b) because it would result in a harsh result, citing *Arm v. State Bar* (1990) 50 Cal.3d. 763, 778-779, 781. As in *Arm*, the Review Department had concluded that it was not required to treat all priors as having equal weight, but to consider the facts underlying the various proceedings in arriving at the appropriate discipline. Less weight was given to the attorney’s failure to take the Professional Responsibility Examination than to his earlier private reproof. The Supreme Court agreed with the conclusion of the Hearing Department and the Review Department to follow an analysis under former standard 1.7(a), which provided that if an attorney has one prior offense, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior discipline matter.

Respondent’s disbarment is not warranted under standard 1.8(b). While one of respondent’s two prior discipline matters involved an actual suspension of 60 days, his prior misconduct did not involve any trust account violation and there is no pattern of misconduct involved. Further, respondent’s commingling occurred between August 2, 2013 and January 22, 2014, after his misconduct in his

reproval violation case, which occurred between August 2012 and July 2013, and some of his commingling occurred before and some commingling occurred after he stipulated to discipline in the reproval violation case in October 2013. Since respondent's commingling occurred before he was aware of or disciplined for trust account violations, he did not have the "opportunity to 'heed the import of that discipline.' [Citation.]" (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171.) As a result, we consider the totality of the misconduct to determine what discipline would have been recommended had all charges been brought together. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [aggravating factor of prior discipline generally diminished if misconduct occurred during same period].)

As in *Conroy*, rigid application of standard 1.8(b) would not be appropriate and would result in a harsh result given the timing of respondent's present misconduct and last imposition of discipline, and the lack of a pattern of misconduct (i.e., his prior public reproval stemmed from a driving under the influence conviction and 60-day actual suspension stemmed from his reproval violations). Thus, it is appropriate to look to standard 1.8(a) for guidance, which provides that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Consistent with standard 1.8(a), a six-month actual suspension is appropriate in light of respondent's prior discipline and the mitigating factors present. This recommendation is greater than the 60-day actual suspension imposed against respondent for his reproval violations. A six-month actual suspension is also consistent with standard 2.2(a), requiring a minimum three-month actual suspension for a commingling violation and Supreme Court case law involving commingling and more serious misconduct, including misappropriation of client funds. (*Kelly v. State Bar* (1991) 53 Cal.3d 509 [attorney failed to deposit client funds in trust, commingled funds, failed promptly to pay out client funds, and misappropriated \$750 in client funds; court refused to apply former standard 2.2(a) rigidly and, focusing on circumstances surrounding the misappropriation as well as mitigation evidence, including the attorney's 13 years of practice without discipline, the absence of serious injury to clients or other parties, and the lack of convincing evidence of wrongful intent, determined that a 120-day actual suspension was appropriate].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 5, 2014, the prosecution costs in this matter are \$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.

(Do not write above this line.)

In the Matter of: Michael Alan Brush	Case number(s): 13-O-17320
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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.

8/20/2014 Michael A. Brush Michael A. Brush
Date Respondent's Signature Print Name

8/25/14 [Signature] Diane J. Meyers
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: Michael Alan Brush	Case Number(s): 13-O-17320
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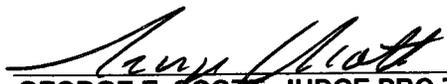
ACTUAL SUSPENSION ORDER

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 11, 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 12, 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:

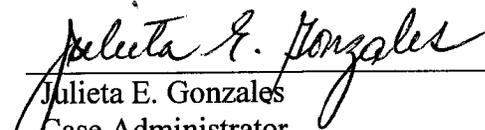
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL ALAN BRUSH
BRUSH & SACKS
PO BOX 920776
SYLMAR, CA 91392

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

Diane J. Meyers, Enforcement, Los Angeles
Terrie Goldade, Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 12, 2014.



Julieta E. Gonzales
Case Administrator
State Bar Court