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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Sherrie B. McLetchie Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2297 Bar # 85447	Case Number(s): 15-O-13458-LMA  kwiktag® 226 160 333	For Court use only PUBLIC MATTER FILED JUN 09 2017  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Wayne Jerome Johnson PO Box 19157 Oakland, CA 94619 (510) 451-1166 Bar # 112588	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: CHARLES JEFFREY FLETCHER Bar # 142464 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 11, 1989**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

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

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case **13-O-17115; 13-O-17297; 14-O-04354 S231087**
 - (b) Date prior discipline effective **March 18, 2016**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rule 3-110(A) [Failure to perform competently]; 3-310(F) [Accepting fee from non-client]; 3-700(D)(2) [Failure to refund unearned fee]; and 4-100(B)(3) [Failure to account]**
 - (d) Degree of prior discipline **one-year stayed suspension, two year period of probation.**
 - (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.
- (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.

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- (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 to Stipulation at p. 12.
- (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.

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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:

Pretrial Stipulation - See Attachment to Stipulation at p. 12.
Good Character - See Attachment to Stipulation at p. 12.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one year**.
- 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 **one year**, 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 **60 days**.
- 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: **By order filed April 24, 2017, in 13-O-17115; 13-O-17297; 14-O-04354, respondent was granted an extension of time until May 2, 2017, to attend Ethics School.**
- (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.

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(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 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: **Effective March 18, 2016, respondent was ordered to take and pass the MPRE within one year in 13-O-17115; 13-O-17297; 14-O-04354.**
- (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: CHARLES JEFFREY FLETCHER	Case Number(s): 15-O-13458-LMA
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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
Sandra F. Smith	\$500	January 15, 2015
Sandra F. Smith	\$3,500	November 7, 2014

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

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
Sandra F. Smith	\$430	Monthly

- 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: CHARLES JEFFREY FLETCHER

CASE NUMBER: 15-O-13458-LMA

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. 15-O-13458 (Complainant: Michael L. Smith)

FACTS:

1. In January 2015, respondent represented Michael L. Smith ("Smith") in a Proposition 36 Three Strikes re-sentencing matter ("re-sentencing matter"), *People v. Smith*, Sacramento County Superior Court case no. 00F09247. At the time respondent commenced representation of Smith, the petition for re-sentencing had already been filed, but the briefing on the merits had not yet been submitted. Respondent received an advance fee of \$4,000 for the representation, specifically to file the briefing on the merits, which would allow the matter to be heard.
2. On February 5, 2015, respondent appeared on behalf of Smith in the re-sentencing matter. Respondent asked that the matter be continued to February 26, 2015, at which time respondent would be able to inform the court of whether or not the briefing on the merits had been completed. The matter was continued to February 26, 2015.
3. On February 26, 2015, respondent appeared on behalf of Smith in the re-sentencing matter. The court asked respondent about the briefing schedule for the matter. Respondent requested that he be allowed to file the briefing on the merits on March 26, 2015. The matter was continued to March 26, 2015.
4. On March 26, 2015, respondent appeared on behalf of Smith in the re-sentencing matter. The court asked respondent about the briefing schedule for the matter. Respondent requested that he be allowed to file the briefing on the merits on April 9, 2015. The matter was continued to April 9, 2015.
5. On April 30, 2015, respondent appeared on behalf of Smith in the re-sentencing matter. The court asked about the petitioner's [Smith's] briefing on the merits, which was to have been filed on April 9, 2015. Respondent stated that it had not been filed. When the court asked when respondent would have Smith's brief ready, respondent replied May 21st. Respondent was to file Smith's brief by May 21, 2015. The matter was continued to May 28, 2015.
6. Between April 30, 2015, and May 21, 2015, respondent failed to file Smith's brief.
7. On May 21, 2015, the court dropped the matter based on respondent's failure to file Smith's briefing on the merits.

8. On June 15, 2015, Smith filed a motion with the court seeking to remove respondent as attorney of record, so that Smith could resume representing himself. Smith also requested that the court order respondent to turn over the entirety of the file, which included Motions prepared by Smith.

9. On July 3, 2015, respondent provided Smith with a draft declaration.

10. On July 28, 2015, the court granted Smith's motion to discharge respondent. Respondent learned of his removal from the matter shortly thereafter.

11. On August 27, 2015, Smith filed a Motion requesting the court order respondent to return 12 specific documents. Respondent received this request shortly after it was made.

12. On August 31, 2015, the court ordered respondent to return Smith's file, which included the 12 specific documents received by respondent from Smith, by September 8, 2015. The court further ordered respondent to notify the clerk by September 8, 2015, whether or not the files had been delivered to Smith. If respondent failed to deliver the files by September 8, 2015, he was ordered to appear on September 11, 2015. Respondent received the Order shortly after August 31, 2015.

13. Between August 31, 2015 and September 8, 2015, respondent failed to deliver the file to Smith.

14. On September 9, 2015, Smith's "Defendant's Notice to the Court Relevant to Delivery of Case Files" was filed. Smith served the Notice on respondent. Respondent received this Notice shortly thereafter.

15. On September 10, 2015, respondent told the court clerk, that respondent had delivered the file and all the documents respondent had received from Smith to Smith. This statement was false. Respondent knew at the time he made the statement that he had not returned all of the documents to Smith.

16. On September 22, 2015, Smith prepared: "Defendants Update on the Disposition of Case File" which was subsequently filed on October 5, 2015. The update identified four items which respondent had failed to turn over: (1) the handwritten affidavit in support of Defendant's Brief for resentencing pursuant to P.C. 1170.12; (2) The handwritten Opening Brief that the Defendant wrote to accompany his handwritten affidavit; (3) Court Original Transcripts of Judge Kenneth L. Hake; and (4) Grievance and Response to Grievance on the issue of language on defendant's Sacramento Jail Locator Card.

17. On September 24, 2015, Smith wrote a letter to respondent regarding the return of Smith's file. Smith informed respondent that respondent had failed to return: (1) CDCR 128 G Classification Document; (2) [RT1072-1075] Judge Hake's comments to Sheriff Jones; (3) Handwritten Motion w/ Memorandum of Points and Authorities and Handwritten Declaration. Respondent received this letter shortly after it was sent.

18. On October 5, 2015, the court ordered respondent to inform the court regarding the return of four specific documents to Smith: (1) an affidavit in support of Smith's brief for resentencing drafted by Smith; (2) an opening brief drafted by Smith; (3) the transcripts of Smith's proceedings before the Honorable Kenneth Hake; and (4) Smith's grievance and response thereto regarding Smith's jail location card. Respondent was ordered to inform the court by October 16, 2015, regarding the return of the identified items. Respondent received the order shortly after it was mailed.

19. On October 10, 2015, Smith filed a motion with the court regarding four items that had not been returned: (1) Petitioner's proposed affidavit in support of his brief for resentencing; (2) Petitioner's draft

opening brief; (3) The transcripts of petitioner's proceedings before Judge Kenneth Hake; and (4) Petitioner's grievance and the response thereto regarding his jail location card.

20. On October 16, 2015, respondent told the clerk of the court that he had delivered to Smith all the documents respondent had received from Smith. This statement was false. Respondent knew at the time he made the statement that he had not returned to Smith the four items identified by the court on October 5, 2015.

21. On November 19, 2015, Smith notified the court that respondent had failed to comply with the court's October 5, 2015 order to turn over documents. Smith served respondent with the notice on November 24, 2015.

22. On December 1, 2015, Smith notified the court that respondent had failed to return the four identified items.

23. On December 8, 2015, respondent wrote a letter to Dave Howard ("Howard"), an investigator for the pro per coordinator. Respondent enclosed some documents that belonged to Smith.

24. On December 9, 2015, the court ordered respondent to file with the court not later than 12:00 noon December 18, 2015, an affidavit under penalty of perjury attesting that respondent had delivered the four documents to petitioner, giving the date of delivery, or in the alternative an explanation as to why the documents had not been returned to Smith as ordered. Respondent received the order shortly after it was mailed.

25. On December 10, 2015, Howard wrote a letter to Smith, which enclosed documents received from respondent which belonged to Smith.

26. On December 11, 2015, Howard wrote a letter to respondent regarding the court's October 5, 2015 order. Howard noted that respondent had not turned over any of the four items identified in the order. Howard's letter identified the items received from respondent.

27. On December 17, 2015, Smith received from Howard the "Original Motion with Memorandum of Points and Authorities and Affidavit" Smith had provided to respondent.

28. On December 18, 2015, respondent filed a declaration with the court in response to the court's December 9, 2015 order.

29. Respondent failed to file Smith's brief in the Proposition 36 Three Strikes re-sentencing matter, *People v. Smith*, Sacramento County Superior Court case no. 00F09247. Respondent provided no legal work of value in the matter and therefore earned none of the advanced fee of \$4,000.

CONCLUSIONS OF LAW:

30. By not delivering to his client Smith all documents Smith had provided respondent when Smith requested their return on August 27, 2015, respondent failed to release promptly upon termination of employment, at the request of the client, all client papers, in willful violation of Rules of Professional Conduct, rule 3-700(D)1).

29. By not returning to his client Smith all Smith's documents as respondent was ordered to do on August 31, 2015, respondent willfully violated a court order requiring him to do an act in the course of respondent's profession which he ought in good faith have done in willful violation of Business and Professions Code, section 6103.

30. By not refunding upon his termination as Smith's attorney any portion of the unearned \$4,000 advance fee paid him, respondent failed to promptly refund promptly a fee paid in advance that had not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

31. By telling the court clerk on September 10, 2015, and again on October 16, 2015, that he had delivered all of Smith's documents to Smith when respondent knew he had not in fact done so, respondent committed acts involving moral turpitude in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Effective March 17, 2016, respondent was suspended for one year, execution stayed, and placed on probation for two years in *In re Charles Jeffrey Fletcher*, Supreme Court case no. S231087 (13-O-17115; 13-O-17297; 14-O-04354).

Multiple Acts of Wrongdoing (Std. 1.5(b)): In this one-client matter, respondent failed to obey a court order, failed to refund unearned fees, made two misrepresentations to a court, and failed to return a client file.

MITIGATING CIRCUMSTANCES.

Good Character: Respondent provided 18 character letters (including one from a married couple) to the State Bar attesting to his extraordinary good character by a wide range of references in the legal communities (two attorneys, one bail bondsman, one paralegal, a former client, three relatives of former clients, his pastor, a church elder, a chiropractor, a community activist, one teacher, and six friends). Almost all of the letter writers detailed respondent's involvement in church activities, including providing pro bono legal advice, presenting workshops, including one directed toward helping the homeless, and respondent's founding or co-founding of two men's groups in Sacramento, one particularly oriented toward young men. Many letter writers also attested to his commitment to mentoring young people. (*In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235 [good character shown through 11 witnesses, including wife, brother, several friends, and four attorneys, although several stated that they had little understanding about the discipline charges].)

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].)

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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 admits to committing four 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 2.11, which applies to respondent’s violation of Business and Professions Code, section 6106 by making misrepresentations to the court.

Standard 2.11 provides that “Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law.”

Standard 1.8(a) 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.”

Under standards 2.11 [disbarment or actual suspension for an act of dishonesty/misrepresentation] and 1.8(a) [greater discipline than prior unless remote in time and not serious], actual suspension or

disbarment is the appropriate level of discipline. Respondent's misconduct was directly within the practice of law, the prior discipline is not remote, and the prior misconduct was sufficiently serious to warrant a stayed suspension. Regarding the "magnitude" of the current misconduct, respondent made more than one misrepresentation to the court. Smith was a state prison inmate and he was allowed to be held locally while his resentencing proceedings were being heard. This is usually considered a benefit to the inmate. On the other hand, any consideration of his resentencing was delayed by respondent's lack of action on Smith's behalf. However, at the January 15, 2015 hearing, the sentencing judge suggested that delay helped Smith's position because of the change in the law and anticipated Supreme Court rulings.

Case law was also consulted for guidance on where on the range of actual suspension to disbarment this misconduct falls. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 is a case of extremely serious prosecutorial misconduct over several years and in several cases – including acts of moral turpitude by concealment of evidence from courts and violation of a court order -- which resulted in a four-year actual suspension – this represents the high end of discipline. The level of discipline stipulated to in respondent's *prior* discipline was supported by citation to *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, wherein an attorney who failed to file an opening brief with the California Supreme Court after many extensions of time to do so was placed on a six-month stayed suspension. In *Riordan*, the responsibility for the client's appeal was subsequently re-assigned by the Supreme Court to another attorney. In *Borré v. State Bar* (1991) 52 Cal.3d 1047, the attorney who had practiced law for 14 years with no discipline, failed to file an opening brief on behalf of an incarcerated client after receiving two extensions of time to do so. Both the Hearing Department and Review Department found that after a State Bar complaint was filed against him, Borré fabricated a back-dated letter to the client stating that he would not file an appeal in an attempt to mislead the State Bar. Borré was suspended for two years. In *Borré*, the client's criminal appeal was dismissed based on the failure to timely appeal. Thus, the harm to the client and administration of justice was greater in *Borré* than in *Riordan*. In *Bach v. State Bar* (1987) 43 Cal.3d 848, the attorney misled a second judge about what the original Superior Court judge had ordered in a family law case. Due to the intervention of the opposing counsel, the court was not in fact deceived. *Bach*, who had a prior public reproof, was suspended for 60 days.

As stated above, "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.)" Here, a 60-day actual suspension and restitution of the \$4,000 unearned fees, a resolution at the low end of standard 2.11, but also in compliance with the mandate of standard 1.8(a), is recommended. Balancing the aggravating circumstances (prior discipline and multiple acts) against mitigating circumstances (pretrial stipulation and good character evidence), a 60-day actual suspension and restitution with lengthy periods of stayed suspension and probation will serve to protect the public, the courts and the legal profession, maintain professional standards, and preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

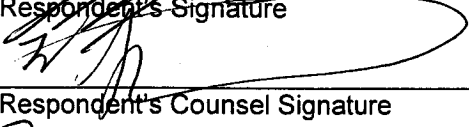
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 28, 2017, the discipline costs in this matter are \$6,119.05. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: CHARLES JEFFREY FLETCHER	Case number(s): 15-O-13458-LMA
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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.

<u>5/11/17</u> Date	 Respondent's Signature	<u>Charles J. Fletcher</u> Print Name
<u>MAY 11, 2017</u> Date	 Respondent's Counsel Signature	<u>Wayne J. Johnson</u> Print Name
<u>5/11/17</u> Date	 Senior Trial Counsel's Signature	<u>Sherrie B. McLetchie</u> Print Name

(Do not write above this line.)

In the Matter of: CHARLES JEFFREY FLETCHER	Case Number(s): 15-O-13458-LMA
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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.)**

Date June 9, 2017 Pat E. McElroy
PAT E. MCELROY
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 June 9, 2017, 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:

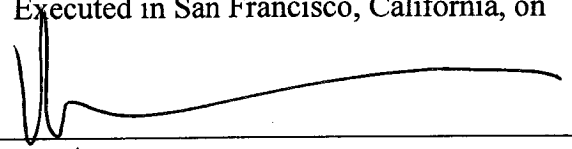
WAYNE JEROME JOHNSON
PO BOX 19157
OAKLAND, CA 94619

CHARLES J. FLETCHER
LAW OFC JEFFREY FLETCHER
980 NINTH ST 16FL
SACRAMENTO, CA 95814

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

Sherrie B. McLetchie, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 9, 2017.



Vincent Au
Case Administrator
State Bar Court