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| <b>State Bar Court of California<br/>Hearing Department<br/>San Francisco<br/>ACTUAL SUSPENSION</b>   |  |   |
|---|--|---|
| <b>Counsel For The State Bar</b><br><br><b>Danielle Adoración Lee</b><br><b>Senior Trial Counsel</b><br><b>180 Howard Street</b><br><b>San Francisco, CA 94105</b><br><b>(415) 538-2218</b><br><br>Bar # 223675 | <b>Case Number(s):</b><br>15-O-15715   | <b>For Court use only</b><br><br><b>PUBLIC MATTER</b><br><br><b>FILED</b><br><br>MAR 21 2018 <i>WJ</i><br><br>STATE BAR COURT CLERK'S OFFICE<br>SAN FRANCISCO |
| <b>Counsel For Respondent</b><br><br><b>Megan E. Zavieh</b><br><b>12460 Crabapple Road, Suite 202-272</b><br><b>Alpharetta, Georgia 30004</b><br><b>(510) 936-2534</b><br><br>Bar # 206446                      | <b>Submitted to: Settlement Judge</b><br><br>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br>DISPOSITION AND ORDER APPROVING<br><br><b>ACTUAL SUSPENSION</b><br><br><input type="checkbox"/> PREVIOUS STIPULATION REJECTED |   |
| <b>In the Matter of:</b><br><b>PATRICK ARTHUR SIZEMORE</b><br><br>Bar # 62803<br><br>A Member of the State Bar of California<br>(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 18, 1974**
- (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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective July 1, 2015)



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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
  - (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.
- (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. Sizemore failed to respond to his client's reasonable inquiries, failed to provide an accounting, constructively terminated the attorney-client relationship, and misappropriated \$13,500. See Attachment to Stipulation at page 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:**

**Pre-filing Stipulation, see page 12.**  
**No prior record of discipline, see page 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 **90 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: .
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:

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

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

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: \_\_\_\_\_
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: \_\_\_\_\_
- (5)  **Other Conditions: See attachment.**

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| In the Matter of:<br><b>Patrick Arthur Sizemore</b> | Case Number(s):<br>15-O-15715 |
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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 |
|-------|------------------|-----------------------|
|       |                  |                       |
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- 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 |
|---------------------------|------------------------|-------------------|
|                           |                        |                   |
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- 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.



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**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:                      PATRICK ARTHUR SIZEMORE

CASE NUMBER:                            15-O-15715

**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-15715 (Complainant: Gary Forkes)**

**FACTS:**

1. Gary D. Forkes is the trustee for his family's trust. Mr. Forkes hired respondent in June 2012 to represent him in that capacity. There was no written fee contract. In 2012, Mr. Forkes paid respondent \$1,500 for attorney's fees. In February 2013, Mr. Forkes paid respondent \$1,500 for fees.

2. On April 5, 2014, in response to respondent's request for fees, Mr. Forkes wrote a Redwood Credit Union Trust Account check to respondent. Mr. Forkes wrote out the numeric amount "\$1500" but inadvertently wrote out the words "fifteen thousand." The item was negotiated by the bank for \$15,000.

3. On or about April 30, 2014, Mr. Forkes received his Redwood Credit Union Trust checking account statement. In reviewing the statement, Mr. Forkes discovered respondent had taken the sum of \$15,000 from the trust checking account and not \$1,500.

4. Subsequent to Mr. Forkes' reading his Redwood Credit Union Trust checking account statement on or about April 30, 2014, Mr. Forkes called respondent and requested the return of the \$13,500 overpayment. Respondent assured Mr. Forkes that the overpayment would be returned by depositing it back into the Redwood Credit Union Trust checking account, but respondent failed to return the overpayment.

5. On June 23, 2014, Mr. Forkes sent an email to respondent requesting to meet about the trust and about the \$13,500 overpayment. On July 24, 2014, respondent sent an email in reply to Mr. Forkes' email, in which he said that, "I will have the final accounting paperwork ready for your signature and bring a check." Respondent then failed to provide an accounting of fees, failed to bring a check, and failed to attend the meeting.

6. On September 5, 2014, respondent wrote to Mr. Forkes indicating in part, "I am sending you a promissory note that I have prepared and signed regarding the extra amount that went into my account by error. I have added a clause regarding interest from the date of deposit. I realistically expect to fully repay the loan within 30-60 days. In the meantime the trust will receive income from the loan." Respondent did not return the \$13,500, and did not pay any interest.

7. Subsequent to September 5, 2014, respondent failed to communicate with Mr. Forkes. Mr. Forkes left several telephone messages asking for an update on the matter, as well as sending several emails requesting the same information. Respondent received the communications, but did not reply. On March 17, 2015, Mr. Forkes received an email regarding respondent's change of address to 122 Calistoga Rd #328 Santa Rosa, CA. Subsequent to the March 17, 2015 email, Mr. Forkes visited respondent's new address but found that the location was a postal box center, and discovered a note at the postal box center indicating that respondent's address was 120 Stony Point Rd., Ste 120 Santa Rosa, CA. A short period of time thereafter, Mr. Forkes went to that location several times during business hours to try and meet with respondent, however the doors were always locked and no one was present.

8. As of September 6, 2014, respondent constructively abandoned the client. Respondent did not inform Mr. Forkes, nor did he take steps to protect the client.

9. On March 25, 2015, Mr. Forkes sent another email to respondent requesting that respondent contact him to discuss subjects that needed to be finished in the trust. Respondent received the email shortly after it was sent, but did not reply.

10. On October 21, 2015, attorney R. James Fisher sent a written communication to respondent informing respondent that Mr. Fisher had been retained by Mr. Forkes, and demanded the return of the funds and an accounting. Respondent received the communication shortly after it was sent, but did not provide either the funds or the accounting.

11. On November 6, 2015, Mr. Fisher sent respondent another written communication demanding an accounting and a return of the client funds. Respondent received the communication shortly after it was sent, but did not provide either the funds or the accounting.

12. On August 11, 2017, Gary D. Forkes, acting as trustee on behalf of the Donald S. Forkes and Mary S. Forkes Trust, was paid full restitution from respondent.

#### CONCLUSIONS OF LAW:

13. By failing to return the \$13,500 to Gary D. Forkes, acting as trustee on behalf of the Donald S. Forkes and Mary S. Forkes Trust, respondent failed to return advanced fees in willful violation Rules of Professional Conduct, rule 3-700(D)(2).

14. By failing to respond to several emails and telephone messages from Mr. Forkes requesting status updates between September 5, 2014, and March 25, 2015, respondent failed to respond promptly to reasonable status inquiries made by respondent's client, Gary D. Forkes, acting as trustee on behalf of the Donald S. Forkes and Mary S. Forkes Trust, that respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

15. By failing to provide an accounting to the new counsel of Gary D. Forkes, acting as trustee on behalf of the Donald S. Forkes and Mary S. Forkes Trust, following the termination of respondent's employment, after the client's new counsel sent written requests on October 21, 2015 and November 6, 2015, that included requests for such an accounting, respondent failed to render an appropriate accounting to the client regarding entrusted funds, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

16. By failing to take any action on the client's behalf after respondent's last email communication to respondent's client on September 5, 2014, even though respondent's client sent respondent a written communication on March 25, 2015, informing respondent that there were outstanding issues and requesting that respondent address those issues, and thereafter failing to inform the client that respondent was withdrawing from employment, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to respondent's client, Gary D. Forkes, acting as trustee on behalf of the Donald S. Forkes and Mary S. Forkes Trust, by constructively terminating respondent's employment, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

#### **AGGRAVATING CIRCUMSTANCES.**

**Multiple Acts (Std. 1.5(b)):** Respondent failed to respond to his client's reasonable inquiries, failed to provide an accounting, constructively terminated the attorney-client relationship, and failed to return unearned fees.

#### **MITIGATING CIRCUMSTANCES.**

**No prior record of discipline:** Respondent is entitled to significant mitigation for his discipline free practice of over 40 years. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [20 years of discipline free practice highly significant])

**Prefiling 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 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 2.2(a), which applies to respondent's violation of rule 4-100(B)(3) and rule 3-700(D)(2). Standard 2.2(a) provides that actual suspension of three months is the presumed sanction for failure to promptly pay out entrusted funds.

Case law also supports a 90 day actual suspension. Constructive termination of the attorney client relationship and failure to return unearned fees is serious misconduct: "[w]e have considered abandonment of clients and retention of unearned fees as serious misconduct warranting periods of actual suspension and in cases of habitual misconduct, disbarment. (See *Martin v. State Bar* (1978) 20 Cal.3d 717 [six instances of abandonment, one-year actual suspension]; *Lester v. State Bar* (1976) 17 Cal.3d 547 [four instances of abandonment, six months' actual suspension]; *Farnham v. State Bar* (1988) 47 Cal.3d 429 [seven instances of misconduct, with prior discipline, disbarment].)

In this case, respondent is entitled to significant mitigating credit for his more than 40 years of discipline free practice, and to mitigating credit for entering into a prefiling stipulation, thereby saving the State Bar time and resources. Additionally, respondent has now paid restitution. However, respondent committed multiple acts of misconduct, including failing to respond to reasonable inquires, failing to render an accounting of entrusted funds, constructively terminating the attorney-client relationship, and failing to return unearned fees to the client for three years. As such, 90 days of actual suspension is still warranted, and follows the guidance found in standard 2.2(a).

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

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 21, 2017, the discipline costs in this matter are \$3,215. 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**

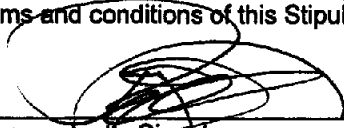

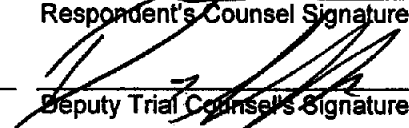
Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

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|---|--------------------------------------|
| In the Matter of:<br><b>Patrick Arthur Sizemore</b> | Case number(s):<br><b>15-O-15715</b> |
|---|--------------------------------------|

**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>2-19-18</u><br>Date | <br>Respondent's Signature           | <u>Patrick Arthur Sizemore</u><br>Print Name |
| <u>3-1-18</u><br>Date  | <br>Respondent's Counsel Signature   | <u>Megan E. Zavieh</u><br>Print Name         |
| <u>3-6-18</u><br>Date  | <br>Deputy Trial Counsel's Signature | <u>Danielle Adoración Lee</u><br>Print Name  |

(Do not write above this line.)

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| In the Matter of:<br>Patrick Arthur Sizemore | Case Number(s):<br>15-O-15715 |
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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

March 21, 2018

  
LUCY ARMENDARIZ  
Judge of the State Bar Court

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**DECLARATION OF SERVICE BY MAIL**

**RE:           SIZEMORE**  
**CASE NO:   15-O-15715**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit. That in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING**

in a sealed envelope placed for collection and mailing at San Francisco, on the date shown below, addressed to:

**Megan Elizabeth Zavieh**  
**12460 Crabapple Rd., Ste 202-272**  
**Alpharetta, GA 30004**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: March 6, 2018

SIGNED:   
Dawn Williams  
Declarant



**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 March 21, 2018, 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:

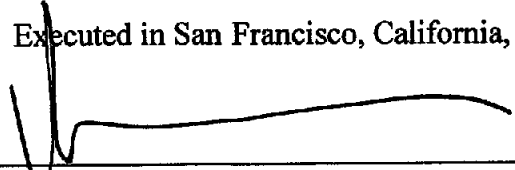
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**MEGAN E. ZAVIEH  
12460 CRABAPPLE RD STE 202-272  
ALPHARETTA, GA 30004**

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

**Danielle A. Lee, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 21, 2018.

  
\_\_\_\_\_  
Vincent Au  
Court Specialist  
State Bar Court