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**State Bar Court of California  
Hearing Department  
Los Angeles  
STAYED SUSPENSION**

**ORIGINAL**

<p>Counsel For The State Bar</p> <p><b>Ross Viselman</b> Senior Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1295</p> <p>Bar # 204979</p>	<p>Case Number(s): <b>17-O-02155</b></p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> ✓ <b>APR 23 2018</b> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p><b>Jerry S. Milliken</b> 1875 Century Park East, #1770 Los Angeles, CA 90067 (310) 273-7222</p> <p>Bar # 45638</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>JERRY S. MILLIKEN</b></p> <p>Bar # 45638</p> <p>A Member of the State Bar of California (Respondent)</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 **January 15, 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 **12** 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):
- Costs are added to membership fee for calendar year following effective date of discipline.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **two billing cycles following the effective date of the Supreme Court Order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

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

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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..
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.

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- (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 page 10.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

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- (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 subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

**No prior record of discipline, See page 10.**

**Prefiling stipulation, See page 10.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **two years**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

The above-referenced suspension is stayed.

- (2)  **Probation:**

Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

**E. Additional Conditions of Probation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  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.

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- (4)  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.

- (5)  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.
- (6)  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.

- (7)  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 State Bar Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason:

- (8)  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.

- (9)  The following conditions are attached hereto and incorporated:

Substance Abuse Conditions                       Law Office Management Conditions  
 Medical Conditions                                       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 within one year. **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)  **Other Conditions:**



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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.





4. On January 5, 2018, respondent closed his client trust account.

#### CONCLUSIONS OF LAW:

5. By depositing non-client funds into his CTA and by withdrawing funds from his CTA to pay business expenses, respondent commingled funds belonging to respondent in a client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** By paying personal expenses on at least eleven occasions with funds in his client trust account, respondent's misconduct evidences multiple acts of wrongdoing.

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted on January 15, 1970 and has no prior record of discipline. This is "highly significant." (*Friedman v. State Bar* (1990) 51 Cal.3d 235, 245.)

**Pre-filing 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).)

Here, respondent commingled personal funds in his client trust account and paid non-client expenses from his client trust account from March 1, 2017 until April 30, 2017, in violation of Rules of Professional Conduct, rule 4-100(A). The applicable sanction for commingling is found in Standard 2.2(a), which presumes actual suspension of a minimum of three months. However, mitigating and aggravating factors must also be considered.

In this case, deviation from the Standard is warranted even though respondent's misconduct is aggravated by the fact that he improperly paid funds from his client trust account for non-client expenses on multiple occasions. Respondent has practiced discipline-free for over 40 years. Respondent readily admitted to the misconduct and agreed to stipulate to discipline at the earliest opportunity to do so. Although respondent commingled funds, none of the funds were client funds. In late 2016/early 2017, respondent was winding down his law practice. During this time, he continued to use his client trust account instead of closing it as he should have done. He received cash from family members and deposited the cash into his client trust account to pay for operational expenses, including payroll and overhead. On January 5, 2018, respondent closed his client trust account. For these reasons, stayed suspension is appropriate discipline for the protection of the public and the purposes of discipline.

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

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of March 26, 2018 the discipline costs in this matter are \$3,215.00. 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**

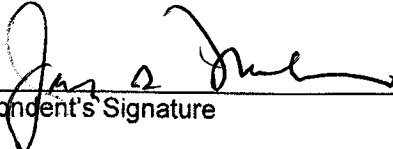
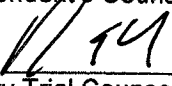
Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: <b>JERRY S. MILLIKEN</b>	Case number(s): <b>17-O-02155</b>
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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.

Date	<u>3-28-18</u>		<b>JERRY S. MILLIKEN</b>
		Respondent's Signature	Print Name
Date		Respondent's Counsel Signature	Print Name
Date	<u>3-29-19</u>		<b>ROSS E. VISELMAN</b>
		Deputy Trial Counsel's Signature	Print Name

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In the Matter of:  
JERRY S. MILLIKEN

Case Number(s):  
17-O-02155

### STAYED 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

4/23/18

  
DONALD F. MILES  
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 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 Los Angeles, on April 23, 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 Los Angeles, California, addressed as follows:

JERRY S. MILLIKEN  
1875 CENTURY PARK E #1770  
LOS ANGELES, CA 90067 - 2507

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

ROSS E. VISELMAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 23, 2018.

  
\_\_\_\_\_  
Mazie Yip  
Court Specialist  
State Bar Court