



Counsel for the State Bar Tammy M. Albertsen-Murray 180 Howard Street San Francisco, CA 94105	Case number(s) 01-C-01747-PEM <div style="text-align: center;">kwiktag® 035 115 321 </div>	(for Court's use) PUBLIC MATTER FILED  JAN 08 2004 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent Jerome Fishkin 369 Pine Street, Suite 627 San Francisco, CA 94104	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> 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 JOHN F. HENNING, III Bar # 188416 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 5, 1997 (date)
- (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 and order consist of 9 pages.
- (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."
- (6) 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.
- (7) 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 284, Rules of Procedure.
 - ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth under "Partial Waiver of Costs"
 - ☐ costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).] Facts supporting aggravating circumstances are required.

(1) ☒ Prior record of discipline [see standard 1.2(f)]

(a) ☒ State Bar Court case # of prior case 99-C-12659

(b) ☒ date prior discipline effective October 1, 2002

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: B&P Section 6068(a) by way of
Penal Code section 242 (battery)

(d) ☒ degree of prior discipline Private reproof

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

- (2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e).] Facts supporting mitigating circumstances are required.

- (1) ☐ No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ Candor/Cooperation: Respondent displayed spontaneous candor and cooperation ~~to the victims of his/her misconduct and~~ to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ Good Faith: Respondent acted in good faith.
- (8) ☐ Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (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 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:

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of one (1) year

- ☐ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- ☐ iii. and until Respondent does the following: _____

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of eighteen (18) months, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

A. Respondent shall be actually suspended from the practice of law in the State of California for a period of sixty (60) days

- ☐ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- ☐ 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 shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, 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) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. If the first report would cover less than 30 days, that report shall 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 shall be assigned a probation monitor. Respondent shall 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 shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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 shall provide to the Probation Unit 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. Respondent completed ethics school on August 21, 2003, in conjunction with case number 99-C-12659
- (8) ☒ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (9) ☒ The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (10) ☒ Other conditions negotiated by the parties: **Please see stipulation attachment, page 8, regarding proof of attendance at anger management counseling course.**
- ☒ Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel 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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- ☐ No MPRE recommended.
- ☐ Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- ☐ Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- ☐ Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

In the Matter of

JOHN F. HENNING, III

A Member of the State Bar

Case Number(s):

01-C-01747-PEM

Medical Conditions

- a. ☒ Respondent shall obtain ~~psychiatric or psychological help/treatment~~ ^{anger management counseling} from a duly licensed professional ~~psychiatrist, psychologist, or clinical social worker~~ at respondent's own expense a minimum of 1 times ~~per month~~ ^{per week} and shall furnish evidence to the Probation Unit that respondent is so complying with each quarterly report. ~~Help/treatment~~ ^{Counseling} should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment shall continue for days or months or 1 years ~~or~~, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating ~~psychiatrist, psychologist, or clinical social worker~~ ^{professional} determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the ~~psychiatrist, psychologist, or clinical social worker~~ ^{treating professional} by affidavit or under penalty of perjury, in support of the proposed modification.

- b. ☒ Upon the request of the Probation Unit, respondent shall provide the Probation Unit with medical waivers and access to all of respondent's medical records ^{from the treating professional}. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Probation Unit shall be confidential and no information concerning them or their contents shall be given anyone except members of the Office of the Chief Trial Counsel, including the Probation Unit, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOHN F. HENNING, III

CASE NUMBER: 01-C-01747-PEM

FACTS AND CONCLUSIONS OF LAW.

Facts.

On April 28, 2001, respondent was involved in a physical altercation with Michael Medvedev ("Medvedev") and Bentzion Pil ("Pil" or "Rabbi Pil").

Medvedev and Pil were on the sidewalk at 339 26th Avenue in San Francisco in front of Rabbi Pil's residence, which also sometimes serves as a location at which religious services are held. Medvedev is a member of Rabbi Pil's congregation. Respondent exchanged invective with Medvedev and Pil. Following the exchange of words, respondent unlawfully struck Medvedev and Rabbi Pil. Medvedev sustained various injuries which were treated at the scene. Rabbi Pil sustained minor injuries and his eye glasses were broken.

As a result of the incident, respondent was arrested and criminally charged in San Francisco Superior Court, case number 1982426.

On September 30, 2002, respondent pled *nolo contendere* to two counts of misdemeanor battery (one for each victim), in violation of California Penal Code section 242, resulting in his conviction being entered on that date. Respondent was sentenced to three years probation with conditions, including 90 days in County Jail (which was served through the SWAP work program), anger management counseling, restitution to the victims and stay away/no contact orders for the victims.

Conclusion of Law.

The facts and circumstances surrounding respondent's violation of California Penal Code section 242 (battery), do not involve moral turpitude but do constitute other misconduct warranting discipline, by virtue of and pursuant to Business and Professions Code section

6068(a).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was December 18, 2003. There are no additional pending proceedings against respondent.

AUTHORITIES SUPPORTING DISCIPLINE.

- Standard 2.10, Rules of Procedure of the State Bar of California; and
- *In the Matter of Stewart* (1990) 3 Cal. State Bar Ct. Rptr. 52.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Respondent has provided proof of completion of the anger management course ordered in conjunction with probation in underlying criminal matter.

COMPLIANCE WITH CONDITIONS OF PROBATION/PAROLE IN UNDERLYING CRIMINAL MATTER.

Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.

12/17/03
Date


Respondent's signature

John F. Henning, III
print name

12/17/03
Date


Respondent's Counsel's signature

Jerome Fishkin
print name

12/18/03
Date


Deputy Trial Counsel's signature

Tammy M. Albertsen-Murray
print name

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.

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 135(b), 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 953(a), California Rules of Court.)

1/8/04
Date


Judge of the State Bar Court

City and County of San Francisco**OFFICE OF THE SHERIFF****Mike Hennesey
SHERIFF****(415) 554-7225**

San Francisco County Sheriff's Office
Sheriff's Work Alternative Program
930 Bryant Street
San Francisco, CA 94103

October 20, 2003

RE : HENNING, JOHN F**COURT#: 1982426**

Please be informed that the San Francisco Sheriff's Work Alternative Program (SWAP) has taken the following action regarding the individual name above:

STATUS: COMPLETED**SWAP Days Served: 88**

BY:

A handwritten signature in black ink, appearing to read "Lt. Jimacher", with a stylized flourish at the end.

Lt. Jimacher
SF Sheriff's Alternative Programs
930 Bryant Street
San Francisco, CA 94103
Voice Mail (415) 575-6450
FAX (415) 575-6452



MEN OVERCOMING VIOLENCE 1385 Mission Street, Suite 300, San Francisco CA 94103 Telephone: (415) 626-6683
www.menovercomingviolence.org email: mov@slip.net Fax: (415) 626-6704

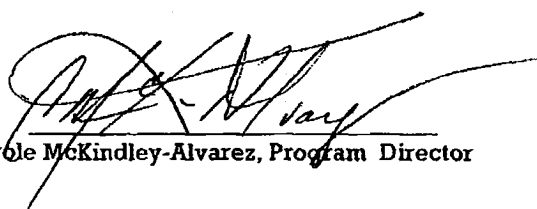
Certificate of Completion

This certifies that John Henning

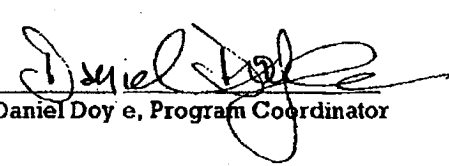
Has successfully completed the twelve session training in

ANGER MANAGEMENT

September 12, 2001



Carole McKindley-Alvarez, Program Director



Daniel Doye, Program Coordinator

COMMUNITY TRAINING & ORGANIZING / COUNSELING FOR MEN AND BOYS WHO BATTER

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 January 8, 2004, 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:

JEROME FISHKIN
369 PINE ST #627
SAN FRANCISCO CA 94104

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

TAMMY ALBERTSEN-MURRAY, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 8, 2004.**


George Hue
Case Administrator
State Bar Court