State Bar Court of the State Bar of California
Hearing Department Los Angeles ☒ San Francisco

Counsel for the State Bar	Case number(s)	(for Court's use)
THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL Charles A. Murray No. 146069 Brooke A. Schafer No. 194824 1149 South Hill Street Los Angeles, California 90015-2299 Telephone: (213) 765-1209	02-C-15502 NOT FOR PUBLICATION kwiktag® 022 602 906	PUBLIC MATTER FILED APR 2 0 2004 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent Susan Lynn Margolis Margolis & Margolis LLP 2000 Riverside Dr. Los Angeles, CA 90039-3758		
In the Matter of Theodore Smith Bar # 79420 A Member of the State Bar of California (Respondent)	Submitted to ☐ assigned judge ☐ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL ☒ PRIVATE ☐ PUBLIC ☐ PREVIOUS STIPULATION REJECTED	

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted March 20, 1978 (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):

☐ costs added to membership fee for calendar year following effective date of discipline (public reproval)
☒ case ineligible for costs (private reproval)
☐ costs to be paid in equal amounts 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."

(8) The parties understand that:

(a) A private reproval imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquires and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.

(b) A private reproval imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

(c) A public reproval imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 _____

(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 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) ☒ Private reproval (check applicable conditions, if any, below)

(a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).

(b) ☒ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

(2) ☐ Public reproval (check applicable conditions, if any, below)

E. Conditions Attached to Reproval:

(1) ☒ Respondent shall comply with the conditions attached to the reproval for a period of two (2) years.

(2) ☒ During the condition period attached to the reproval, 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 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 condition period attached to the reproval. 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 the reproval during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following 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 condition period and no later than the last day of the condition period.

(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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the 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 conditions attached to the reproval.

(7) ☒ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.

☐ No Ethics School ordered.

(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 required to be filed with the Probation Unit.

(9) ☐ 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 within one year of the effective date of the reproval.

☒ No MPRE ordered.

(10) ☒ The following conditions are attached hereto and incorporated:

☒ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

(11) ☐ Other conditions negotiated by the parties:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: **THEADORE M. SMITH**("Respondent"), #79420

CASE NUMBER: **02-C-15502**

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was March 23, 2004.

PARTIES ARE BOUND BY THE STIPULATED FACTS:

The parties intend to be and are hereby bound by the stipulated facts contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law and/or stipulated disposition set forth herein are rejected or changed in any manner whatsoever by the Hearing Department or the Review Department of the State Bar Court, or by the California Supreme Court.

WAIVER OF FINALITY OF CONVICTION (rule 607):

Pursuant to the Rules of Procedure of the State Bar of California, rule 607 the parties stipulate that the Court may decide the issues as to the discipline to be imposed even if the criminal convictions discussed herein are not final.

Respondent waives finality of his conviction and consents to the State Bar Court's acceptance of this Stipulation as to facts, conclusions of law and discipline in all respects as if the conviction was final, including the entry of findings consistent with this Stipulation, imposition of discipline, or entry of a recommendation as to the degree of the discipline to be imposed.

Respondent waives any right to challenge on the basis of a lack of finality of his conviction the State Bar Court's recommendation of discipline, if any, and the actual imposition of discipline, if any, by the State Bar Court or the California Supreme Court.

Respondent further waives any right he may have to seek review of reconsideration on the basis of any relief he may receive as a result of any appeal of, or petition regarding, the criminal conviction underlying any recommendation of and/or actual imposition of discipline by the State Bar Court or the California Supreme Court.

PROCEDURAL BACKGROUND.

This is a proceeding pursuant to Business and Professions code sections 6101 and 6102 and Rule 951 of the California Rules of Court.

July 28, 2003, Respondent was convicted of a misdemeanor violation of California Vehicle Code section 23152(a), driving a vehicle while under the influence of alcohol.

On September 16, 2003, the Review Department of the State Bar Court issued an order

referring this matter to the Hearing Department for a hearing and decision limited to whether the facts and circumstances surrounding the offense of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

On November 26, 2003, the Review Department of the State Bar Court issued an augmented order directing the Hearing Department to include a hearing and decision recommending discipline to be imposed in the event the hearing Department finds that the facts and circumstances surrounding the offense of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statues and/or Rules of Professional Conduct, or has otherwise committed acts of misconduct warranting discipline:

FACTS:

First DUI:

On September 7, 2002, Respondent was operating a vehicle and approaching an intersection when the traffic control light phased to red. When he tried to stop, he lost control of his vehicle and caused an accident in which parked cars and other property were damaged. When police arrived they noticed that Respondent exhibited objective signs of intoxication; he was ultimately arrested and charged with DUI. His blood alcohol level tested at .15%

On July 28, 2003, Respondent was convicted of a misdemeanor violation of Vehicle Code section 23152(a), driving under the influence of alcohol. He was given a suspended sentence of 180 days in jail and summary probation with conditions that included an order that he complete a First Conviction alcohol program.

Second DUI:

On November 16, 2002, police observed Respondent's erratic driving and pulled him over. Respondent displayed objective signs of intoxication, and performed poorly on field sobriety tests. Respondent was placed under arrest, and a BAC test revealed a blood alcohol level of .20%

On April 16, 2003, Respondent was convicted of misdemeanor violations of Vehicle Code section 23152(a) (driving under the influence of alcohol), and of Vehicle code section 12500(a) (operating a vehicle without a valid license). He was given a suspended sentence of 180 days in jail and 3 years summary probation (until April 2006) with conditions that included an order that he complete a Multiple Conviction alcohol program

CONCLUSIONS OF LAW:

The facts and circumstances surrounding Respondent's two DUI convictions as outlined above do not involve moral turpitude but do involve other misconduct warranting discipline and

constitute a wilful violation of Business and Professions Code section 6068(a).

MITIGATION, cont'd from section C, pages 3 and 4.

Respondent reports that he feels remorseful about driving while under the influence and he realizes his actions potentially put others, as well as himself, at risk of great harm. In addition, he has timely completed his first-time conviction alcohol program and is in compliance with his repeat offender alcohol program in connection with his criminal probation.

AUTHORITIES SUPPORTING DISCIPLINE:

Standards 1.2, 1.3, 1.4(b), 1.5, 1.6, and 3.4 of the Standards of Attorney Sanctions for Professional Misconduct, Title IV, of the Rules of Procedure of the State Bar of California.

In re Kelly (1990) 52 Cal.3d 487. Attorney convicted of second DUI found culpable of other misconduct warranting discipline. No finding of moral turpitude. Discipline recommended by the Review Department of the State Bar Court and affirmed by the Supreme Court was a public reproval for 3 years with conditions which included a referral to the State Bar's then existing Program on Alcohol Abuse on the condition that the attorney comply with all terms of that program.

SUBSTANCE ABUSE AND MENTAL HEALTH CONDITIONS:

Abstinence-Based Support Meetings:

During the first twelve (12) months of this reproval period, Respondent shall attend at least one (1) meeting per week of any acceptable sobriety maintenance program.

Respondent has been advised that he may choose one of any acceptable sobriety maintenance program, including any self-help maintenance programs which includes (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. Appropriate 12-step groups are acceptable. Examples of acceptable programs include, without limitation, Alcoholics Anonymous ("AA"), Narcotics Anonymous ("NA"), Rational Recovery ("RR"), Self Management and Recovery Training ("SMART"), Secular Organization for Sobriety ("SOS"); LifeRing; and Right On Programs.

Reporting of Meeting Attendance to the Office of Probation:

With each written quarterly report or final report required as a condition of this reproval, Respondent shall provide to the Office of Probation satisfactory proof of attendance at the above-described meetings. Proof of attendance shall include submission of a writing which clearly provides for each meeting he attends - the date and time of the meeting, name of the meeting, location of the meeting, and which bears the signature of the secretary of the meeting verifying Respondent's attendance at that meeting.

// End of Attachment //

4/2/04 Date	Respondent's signature	Theodore M. Smith print name
4/5/04 Date	Respondent's Counsel's signature	Susan L. Margolis print name
April 7, 2004 Date	Deputy Trial Counsel's signature	Brooke A. Schafer print name Charles Murray Brooke A. Schafer

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.

☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

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.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

4-15-04 Date	Judge of the State Bar Court

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 April 20, 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:

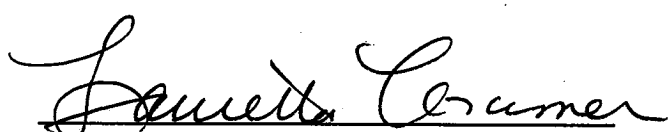
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

BRAD A. THORNTON
LAW OFC BRAD THORNTON
268 W DRYDEN ST #118
GLENDALE CA 91202

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

CHARLES MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **April 20, 2004**.



Lauretta Cramer
Case Administrator
State Bar Court

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 April 22, 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:

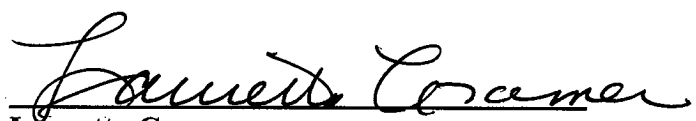
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

SUSAN LYNN MARGOLIS
2000 RIVERSIDE DR
LOS ANGELES CA 90039 3758

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

CHARLES MURRAY , Enforcement, Los Angeles
BROOKE SCHAFER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **April 22, 2004**.



Lauretta Cramer
Case Administrator
State Bar Court