

# PUBLIC MATTER



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State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar  <b>Cydney Batchelor</b> Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204  Bar # 114637	Case Number(s)  03-C-3823-PEM 04-C-10561 04-O-15823 04-C-15875 04-C-15903 04-C-15871 06-O-10118	(for Court use)  <del>CONFIDENTIAL</del>  <b>LODGED</b> OCT 02 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per  <b>Michael T. Morrissey</b> Attorney at Law 1110 N. First St. San Jose, CA 95112 Tele: 408/280-7011  Bar # 62195	FILED SEP 14 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	
In the Matter of  <b>MICHAEL T. MORRISSEY</b>  Bar # 62195 A Member of the State Bar of California (Respondent)	Submitted to Program Judge <b>FIRST AMENDED</b>  <b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 12/18/1974  
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (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, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of 11 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."

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- (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 and will pay timely any disciplinary costs imposed in this proceeding.

**B. Aggravating Circumstances [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)]** See attached
  - (a)  State Bar Court Case # of prior case \_\_\_\_\_
  - (b)  Date prior discipline effective \_\_\_\_\_
  - (c)  Rules of Professional Conduct/State Bar Action 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" (above)
- (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. See attached
- (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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct. See attached
- (8)  **No aggravating circumstances are involved.**

**Additional aggravating circumstances:**

None

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**C. Mitigating Circumstances [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. **See attached**
- (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 of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.  
**See attached**
- (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.  
**See attached**
- (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.  
**See attached**
- (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.  
**See attached**
- (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:**

**See attached**

**ATTACHMENT TO**  
**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

IN THE MATTER OF:       **MICHAEL T. MORRISSEY**

CASE NUMBER(S):       **03-C-3823-PEM, et al.**

**DISMISSALS.**

Upon Respondent's enrollment in the State Bar Court's Alternative Discipline Program, the State Bar will request the Court to dismiss cases no. 04-O-15823 and 04-C-15903, both without prejudice.

**FACTS AND CONCLUSIONS OF LAW.**

**Case No. 03-C-3823**

Procedural Background: This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court. On May 19, 2004, Respondent was convicted of a misdemeanor violation of Vehicle Code section 20001(a) [hit and run]. On May 19, 2004, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

Facts: On July 31, 2003, Respondent was in a traffic collision, and left the scene of the accident without exchanging driving license and insurance information with the other driver. Respondent's license tag number was provided to the California Highway Patrol by a witness, and the CHP located Respondent at his home based on that identification. On September 11, 2003, Respondent was charged with misdemeanor violations of Vehicle Code section 20001(a), Vehicle Code section 14601 [driving on a suspended license]; and Vehicle Code section 31 [giving false information to a peace officer]. On May 19, 2004, Respondent pled *nolo contendere* to a misdemeanor violation of Vehicle Code section 20001(a). Respondent was placed on 3 years court probation, with a condition that he serve 40 days in custody.

Legal Conclusions: The facts and circumstances surrounding Respondent's misdemeanor conviction of violating Vehicle Code section 20001(a) do not involve moral turpitude, but do involve other misconduct warranting discipline, in violation of Business and Professions Code section 6068(a) and 6106.

**Case No. 04-C-10561**

**Procedural Background:** This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court. On May 24, 2004, Respondent was convicted of a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence of drugs]. On February 16, 2005, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

**Facts:** A few hours after the hit and run described in case no. 03-C-3823 above, Respondent was arrested by the CHP for driving under the influence of alcohol and/or drugs. On October 14, 2003, Respondent was charged with misdemeanor violations of Vehicle Code section 23152(a) [driving under the influence of drugs], with two prior convictions on July 12, 2002 and September 10, 2002, and Vehicle Code section 14601 [driving on a suspended driver's license]. In the same criminal complaint, he was also charged with a misdemeanor violation of Penal Code section 647(f) [public intoxication], for an incident on July 31, 2003. On May 24, 2004, Respondent pled *nolo contendere* to a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence of drugs], and the other charges were dismissed. Respondent was sentenced to three years probation, with the condition that he serve 4 days in custody.

**Legal Conclusions:** The facts and circumstances surrounding Respondent's misdemeanor conviction for violating Vehicle Code section 23152(a) do not involve moral turpitude, but do involve other misconduct warranting discipline, in violation of Business and Professions Code section 6068(a).

**Case No. 04-C-15871**

**Procedural Background:** This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court. On December 2, 2002, Respondent pled *nolo contendere* to a misdemeanor violation of Vehicle Code Section 23152(b) [driving under the influence with a blood alcohol level over .08%]. On February 2, 2005, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

**Facts:** On July 12, 2002, Respondent was arrested in Santa Clara County for driving under the influence of alcohol. Although requested by the State Bar, the police report has not been provided by the Santa Clara County criminal court. On August 19, 2002, Respondent was charged with misdemeanors violations of Vehicle Code sections 23152(a) [driving under the influence of alcohol] and 23152(b) [driving under the influence of alcohol with blood alcohol level over .08%]. On December 2, 2002, Respondent pled *nolo contendere* to a misdemeanor violation of Vehicle Code section

23152(b). Respondent was sentenced to three years court probation, on the condition that he serve 6 days in custody.

Legal Conclusions: The facts and circumstances surrounding Respondent's misdemeanor conviction for violating Vehicle Code section 23152(b) do not involve moral turpitude, but do involve other misconduct warranting discipline, in violation of Business and Professions Code section 6068(a).

**Case No. 04-C-15875**

Procedural Background: This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court. On October 12, 2004, Respondent pled *nolo contendere* to a misdemeanor violation of Vehicle Code Section 14601 [driving while license suspended for too many points against license]. On February 16, 2005, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

Facts: Although requested from the superior court on two occasions, the State Bar has never been provided with the underlying citation on this case. The criminal complaint shows that, on December 1, 2003, Respondent drove a vehicle in Santa Clara County while his driver's license had been suspended. On March 1, 2004, Respondent was charged with a misdemeanor violation of Vehicle Code section 14601 [driving while license suspended for too many points against license]. On October 12, 2004, Respondent pled *nolo contendere* to a misdemeanor violation of Vehicle Code section 14601 [driving on a suspended license], and the other charges were dismissed. Respondent was sentenced to two years court probation, on the condition that he serve 10 days in custody.

Legal Conclusions: The facts and circumstances surrounding Respondent's misdemeanor conviction for violating Vehicle Code section 14601 do not involve moral turpitude, but do involve other misconduct warranting discipline, in violation of Business and Professions Code section 6068(a).

**06-0-10118 (Unpaid Sanctions)**

Roulette case: From at least February 1, 2004 until October 1, 2004, respondent was counsel of record for the plaintiffs in *Roulette, et al. v. Ferrari of North America, Inc.*, United States District Court for the Northern District of California Docket No. C-99-20215-JF. On February 27, 2004, United States Magistrate Judge Brazil issued an order which imposed sanctions against respondent personally in the case, in favor of defendant, in the amount of \$3840.00 ("the first *Roulette* sanctions order"). The first *Roulette* sanctions order became final; respondent had notice of the order, but failed to pay the sanctions. On March 1, 2004, United States Magistrate Judge Infante issued an order which imposed sanctions on respondent personally in the case, in favor of the defendant, in the amount of \$3500.00 ("the second *Roulette* sanctions order"). The

second *Roulette* sanctions order became final; respondent had notice of the order, and paid the sanctions in July 2004. On September 8, 2004, United States District Judge Fogel issued an order which imposed sanctions on respondent personally in the case, in favor of the defendant, in the amount of \$20,000.00 ("the third *Roulette* sanctions order"). The third *Roulette* sanctions order became final; respondent had notice of the order, but failed to pay the sanctions.

*Schneider case*: From at least May 1, 2004 to May 30, 2004, respondent was counsel of record for defendants Charles Tuttle and Laura Reneau and cross-complainant Charles Tuttle in *Schneider v. Tuttle and Reneau*, Humboldt County Superior Court Docket No. DR010473. On May 6, 2004, Judge Feeney issued an order which imposed sanctions against respondent personally, in favor of plaintiff Karen Schneider, in the total amount of \$2406.30 ("the first *Schneider* sanctions order"). The first *Schneider* sanctions order became final; respondent had notice of the order, but failed to pay the sanctions. On May 14, 2004, Judge Feeney issued another order which imposed sanctions against respondent personally, in favor of cross-defendants Carl Schneider, Edward O'Meara and Coastal Auto Mart, Inc., in the total amount of \$2736.30, to be paid to Victor M. Ferro ("the second *Schneider* sanctions order"). The second *Schneider* sanctions order became final; respondent had notice of the order, but failed to pay the sanctions.

Conclusions of Law: By failing to comply with the courts' first and third *Roulette* sanctions orders and the first and second *Schneider* sanctions orders, in failing to pay the sanctions ordered therein, respondent failed to comply with court orders, in violation of Business and Professions Code section 6103.

## **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was June 15, 2006.

## **AGGRAVATING CIRCUMSTANCES.**

### **Facts Supporting Aggravating Circumstances:**

Prior Records of Discipline: Respondent has 3 prior records of discipline, as follows: **S059441** (State Bar Cases No. 94-O-17568, 94-O-17827, 95-C-16342, and 95-O-16540) effective 7/9/1998, 6 months stayed suspension, 1 year probation, for violations of Rules of Professional Conduct 3-110(A) [3 counts], 3-700(A)(2) [3 counts], 3-700(D)(1) [2 counts], 3-700(D)(2) [2 counts], 4-100(A) [2 counts], and 4-100(B)(3) [2 counts], and Business and Professions Code section 6068(m) [4 counts]; **S096353** (State Bar Case No. 00-O-13182) effective 7/1/2001, 2 years stayed suspension; 45 days actual suspension, 2 years probation, for a violation of Business and Professions Code section 6068(k); **S103208** (State Bar Case No. 00-O-15438) effective 4/17/2002, 2 years stayed suspension, 60 days actual suspension, 2 years probation, for violations of Rules of Professional Conduct 3-110(A) and 3-700(A)(2).

Multiple Acts of Misconduct: The misconduct stipulated to herein involves multiple acts of misconduct.

Misconduct surrounded by dishonesty and concealment: In case number 03-C-3823, when questioned about the collision by the California Highway Patrol, respondent misrepresented to the CHP that his client, and not he, had been driving at the time of the collision. In fact, respondent was the driver involved in the collision.

## MITIGATING CIRCUMSTANCES.

### **Facts Supporting Mitigating Circumstance:**

Candor and cooperation: Respondent has been candid and cooperative with the State Bar during its resolution of this case.

Marital Difficulties: During the period of time encompassed by the misconduct stipulated to herein, Respondent experienced extreme marital and post-marital difficulties, including ongoing safety and custody issues regarding his minor daughter. Respondent's former wife was an attorney licensed to practice in California, who was disbarred in June 2005.

Financial Difficulties: In connection with his marital problems, respondent suffered financial reverses that resulted in his having to close his law office, terminate his office staff, and start his practice over again.

Physical Difficulties: During the time of the misconduct stipulated to herein, Respondent suffered from severe disc problems in his back.

Good Character: Respondent has provided the State Bar with seven letters from a wide range of references, all of whom were provided a copy of this stipulation and who attested to respondent's good character after being fully informed about the misconduct herein.

## ADDITIONAL MITIGATING CIRCUMSTANCES.

Participation in Lawyer's Assistance Program. On September 29, 2005, Respondent contacted the State Bar Lawyer Assistance Program ("LAP") and completed the intake process. On October 3, 2005, Respondent signed a pre-enrollment assessment agreement with LAP. Respondent was then assessed and monitored for a period for time by the LAP. At the conclusion of the process, Respondent signed the long-term participation plan on June 3, 2005.

Residential Treatment: At the suggestion of LAP, Respondent entered and completed residential treatment for his chemical dependency.



**RESTITUTION.**

Respondent waives any objection to immediate payment by the State Bar Client Security Fund upon a claim or claims for the principal amounts of restitution set forth below.

In accordance with the timetable set forth in the in the State Bar Court Alternative Discipline Program contract to be executed between the State Bar Court and respondent on the captioned cases, respondent must make restitution as follows:

Ferrari of North America, Inc., or the Client Security Fund, if it has paid, in the principal amount of \$23,840.00, plus interest at the rate of 10% per annum from October 1, 2004, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court and to the State Bar Probation Unit.

Diana Schneider, or the Client Security Fund, if it has paid, in the principal amount of \$2406.30, plus interest at the rate of 10% per annum from June 1, 2004, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court and to the State Bar Probation Unit.

Victor M. Ferro, or the Client Security Fund, if it has paid, in the principal amount of \$2736.30, plus interest at the rate of 10% per annum from June 1, 2004, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court and to the State Bar Probation Unit.

(Do not write above this line.)

In the Matter of  <b>Michael T. Morrissey</b>	Case number(s):  <b>03-C-3823-PEM, et al.</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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date 6/15/06      Respondent's signature *Michael T. Morrissey*      **MICHAEL T. MORRISSEY**  
 Print name

Date \_\_\_\_\_      Respondent's Counsel's signature \_\_\_\_\_      Print name \_\_\_\_\_

Date 6/16/06      Respondent's Counsel's signature *Cydney Hatchelor*      **CYDNEY HATCHELOR**  
 Print name

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In the Matter of  MICHAEL T. MORRISSEY	Case number(s):  03-C-3823-PEM, et al.
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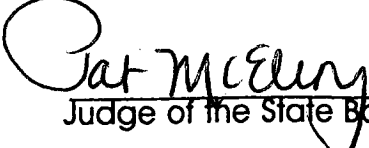
### ORDER

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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

October 2, 2006  
Date

  
Judge of the State Bar Court