

FILED

AUG 07 2015

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5 Attorneys for Brian J. McMonagle
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8 THE STATE BAR COURT
9 HEARING DEPARTMENT – SAN FRANCISCO
10

11 In the Matter of:
BRIAN J. McMONAGLE
12
13 Member No.: 141866
A Member of the State Bar
14

Case Nos.: 03-C-04395; 15-C-11006

RESPONSE TO NOTICES OF HEARING
ON CONVICTION

15 BRIAN J. McMONAGLE (“Respondent”) responds to the Notices of Hearing on Conviction in
16 case numbers 03-C-04395 and 15-C-11006 as follows:

17 1. The address to which all further notices to Respondent in relation to these proceedings
18 may be sent is as follows: c/o James J. Banks, Banks & Watson, 901 “F” Street, Suite 200, Sacramento,
19 CA 95814.

20 2. Respondent admits that he pled *nolo contendere* to violating California Vehicle Code
21 section 23103 (reckless driving) in 2003. Other than said admission, he denies any other charge
22 advanced in case no. 03-C-04395 and specifically denies that he acted with or displayed any moral
23 turpitude in connection with the 2003 incident.

24 3. Respondent admits that he was convicted of violating California Vehicle Code section
25 23152, subdivision (a) (driving under the influence) in 2008. Other than that admission, he denies any
26 and all other charge(s) advanced in case no. 15-C-11006 and specifically denies that the conviction is
27 final and that he acted with or displayed any moral turpitude in connection with the 2008 incident.
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1 **MITIGATING CIRCUMSTANCES**

2 Respondent respectfully submits the following facts in mitigation:

3 Mitigation Fact No. 1

4 Respondent has no prior record of discipline over his many years of practice.

5 Mitigation Fact No. 2

6 Respondent completed two rigorous substance abuse treatment programs; namely the Lawyers
7 Assistance Program and Kaiser’s Chemical Dependency Rehabilitation Program, demonstrating prompt
8 objective steps, spontaneous remorse and recognition of the wrongdoing and timely atonement.

9 Mitigation Fact No. 3

10 Respondent has not been arrested or charged or involved in any alcohol-related incidents since
11 2008.

12 Mitigation Fact No. 4

13 Respondent is unlikely to engage in harmful conduct or engage in alcohol-related misconduct in
14 the future.

15 Mitigation Fact No. 5

16 There was no harm to the client, the public, or the administration of justice as a result of
17 Respondent’s conduct.

18 Mitigation Fact No. 6

19 Respondent has demonstrated candor and cooperation with the State Bar.

20 Mitigation Fact No. 7

21 There is significant remoteness in time of the misconduct (2003 and 2008) and subsequent
22 rehabilitation.

23 Mitigation Fact No. 8

24 The State Bar has displayed excessive delay in conducting disciplinary proceedings, causing
25 prejudice to the Respondent.

26 WHEREFORE, Respondent prays that this Court find as follows:

- 27 1. That the 2003 and 2008 incidents did not involve moral turpitude;
- 28 2. That the 2003 and 2008 incidents do not constitute misconduct warranting any discipline.

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DATED: August 6, 2015

Respectfully submitted,
BANKS & WATSON

By: 

JAMES J. BANKS
Attorneys for Respondent
BRIAN J. McMONAGLE

1 **BANKS & WATSON**
2 **CASE NAME:** *In the Matter of Brian J. McMonagle, Member No. 141866*
3 **COURT:** **State Bar Court of California**
4 **CASE NOS:** **03-C-04395; 15-C-11006**

5 **PROOF OF SERVICE**

6 STATE OF CALIFORNIA)
7) ss.
8 COUNTY OF SACRAMENTO)

9 At the time of service, I was over 18 years of age and not a party to this action. My business
10 address is 901 F Street, Suite 200, Sacramento, California 95814.

11 On August 6, 2015, I served the within copy of:

12 **RESPONSE TO NOTICES OF HEARING ON CONVICTION**

13 on the person(s) below, as follows:

14 Mr. Jonathan W. Bertz
15 Deputy Trial Counsel
16 The State Bar of California
17 Office of the Chief Trial Counsel
18 180 Howard Street
19 San Francisco, CA 94105-2183

20 Mr. George Hue
21 Case Administrator
22 State Bar Court of California
23 180 Howard Street, 6th Floor
24 San Francisco, CA 94105-1639
25 Phone: (415) 538-2082

26 (✓) **BY OVERNIGHT DELIVERY** – I enclosed the document in an envelope or package provided
27 by an overnight delivery carrier and addressed to the person(s) listed above. I placed the envelope
28 or package for collection and overnight delivery at an office or a regularly utilized drop box of the
overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct. Executed on August 6, 2015, at Sacramento, California.

Mary Ellen Beverly