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State Bar Court of California Hearing Department Los Angeles		
Counsel For The State Bar Mia R. Ellis Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 213-765-1380 Bar # 228235	Case Number (s) 04-C-11040	(for Court's use) <div style="text-align: center; font-size: 24px; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center;"> <div style="font-size: 24px; font-weight: bold; margin-bottom: 5px;">FILED</div> <div style="font-size: 18px; margin-bottom: 5px;">NOV 09 2010</div> <div style="font-size: 12px; margin-bottom: 5px;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div> </div>
In Pro Per Respondent Theodore E. Millard 9190 Bay Meadows Drive Reno, NV 89523 Bar # 36068	Submitted to: 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: Theodore E. Millard Bar # 36068 A Member of the State Bar of California (Respondent)		

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 5, 1965.
- (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 10 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".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension



- (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):
- 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 in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

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.
- (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 [REDACTED]
- (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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Please see stip attachment
- (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. Please see stip attachment
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation. Please see stip attachment
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of one 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 as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of one year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of 90 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 as set forth in the Financial Conditions form attached to this stipulation.

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 must 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 must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) 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.

(4) 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.

- (5) 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.

- (6) 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.
- (7) 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.
- (8) 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 Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: Since Respondent lives in Nevada, if he chooses not to attend the required Ethics School in CA, within one (1) year of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of participatory Minimum Continuing Legal Education (MCLE) approved courses in legal ethics. The MCLE hours required by this stipulation are in addition to any MCLE hours required by statute.
- (9) 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.
- (10) The following conditions are attached hereto and incorporated:

- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> 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 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: August 10, 2005 - April 20, 2007 .
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Theodore E. Millard

CASE NUMBER: 04-C-11040

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Facts

1. On December 5, 2003, Respondent was driving and attempted to make a left turn into a gas station when he struck William Payne ("Payne"). Payne was injured. The City of Orange Police Department administered a blood test. Respondent's blood alcohol content was determined to be .112 percent.
2. Respondent was charged with violating California Vehicle Code section 23153(a), driving under the influence and causing bodily injury, and Vehicle Code section 23153(b), driving with a .08% blood alcohol or higher and causing bodily injury. Each count alleged that in commission of the offense, Respondent violated Vehicle Code section 21801, unlawfully failing to yield to another vehicle with the right of way as he turned left. The information also alleged that in committing each offense Respondent personally inflicted great bodily injury on Payne, in violation of Penal Code section 12022.7(a).
3. On or about May 26, 2004, Respondent and Payne entered into a settlement agreement for \$1,100,000.00.
4. On June 7, 2005, following a trial, Respondent was convicted of violating count one, Vehicle Code section 23153(a), driving under the influence and causing bodily injury, a felony, and found true the allegation that in committing that offense Respondent personally inflicted great bodily injury on Payne, in violation of Penal Code section 12022.7(a). Respondent was found not guilty of violating Vehicle Code section 23153(b), driving with a .08% blood alcohol or higher and causing bodily injury.
5. On July 25, 2005, Respondent was sentenced to three years informal probation on the condition that he serve 75 days in local custody and 5 1/2 months of electronic confinement.
6. As of July 25, 2008, Respondent fulfilled the conditions of probation.

Conclusions of Law

The parties stipulate that by violating California Vehicle Code section 23153 (a) (Driving Under the Influence and Causing Bodily Injury to Another Person), one count, a felony, Respondent did not commit acts involving moral turpitude; however, Respondent committed other misconduct warranting discipline.

The parties further stipulate that by violating California Vehicle Code section 23153 (a) (Driving Under the Influence and Causing Bodily Injury to Another Person), one count, a felony, Respondent violated California Business and Professions Code section 6068, subdivision (a), which imposes a duty upon Respondent to support the Constitution and laws of the United States and of this state.

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On June 7, 2005, Respondent was convicted of violating Vehicle Code section 23153 (a) (Driving Under the Influence and Causing Bodily Injury to Another Person), one count, a felony.
3. On July 7, 2005, the Review Department of the State Bar Court issued an order placing Respondent on interim suspension, effective August 10, 2005, pending final disposition of the proceeding.
4. On August 9, 2005, Respondent filed a Notice of Appeal of his criminal conviction and a post-judgment order awarding restitution to Payne.
5. On June 30, 2006, the trial court for the County of Orange entered an Order of Restitution requiring Respondent to pay Payne \$386,164 in victim restitution pursuant to Penal Code section 1202.4.
6. On April 20, 2007, the Review Department of the State Bar Court filed an order terminating the interim suspension. The Review Department deferred referring the matter to the Hearing Department pending receipt of evidence of finality of conviction.
7. On June 22, 2009, the Court of Appeal issued its Opinion affirming the judgment of conviction following the jury trial; affirming in part the post judgment order of restitution to the victim; reversing the post judgment order of restitution to the extent that it awarded attorney's fees and costs; and remanding the matter to the trial court for further proceedings consistent with the opinion.
8. On April 16, 2010, Respondent, the California Attorney General's office, and Bill Payne reached a stipulation for final restitution and civil judgment which required Respondent to pay Payne \$175,000. The court rescinded the June 30, 2006 order.
9. On April 27, 2010, Payne filed an acknowledgment of full satisfaction of judgment.
10. On May 5, 2010, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: for a hearing and decision recommending the discipline to be imposed in the event that the hearing department finds that the facts and circumstances surrounding the violation of Vehicle Code section 23153, subdivision (a)(driving under the influence causing bodily injury), of which Respondent was convicted, involved moral turpitude or other misconduct warranting discipline.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was October 18, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 18, 2010, the prosecution costs in this matter are \$1,636. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 3.4 provides that the final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of the standards. According to the California Supreme Court, the discipline suggested under standard 3.4 "is that discipline 'appropriate to the nature and extent of the misconduct.'"

Under Part B, the appropriate standard is 2.6 – the standard applicable to violations of Business and Professions Code section 6068(a).

MITIGATING CIRCUMSTANCES.

Although the misconduct is serious, Respondent has no prior record of discipline in his forty years of practice. Moreover, over five years has passed since Respondent's conviction followed by convincing proof of subsequent rehabilitation which supports the stipulation that extensive probation with conditions is not necessary for public protection.

Respondent cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline.

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 misconduct. The character letters remain in the State Bar file.

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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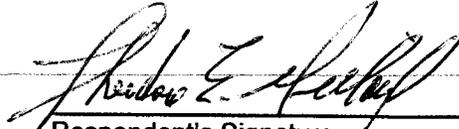
In the Matter of
THEODORE E. MILLARD

Case number(s):
04-C-11040

SIGNATURE OF THE PARTIES

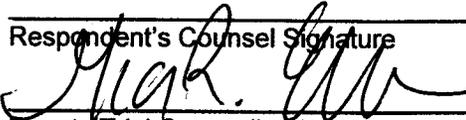
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

10/18/2010
Date


Respondent's Signature

THEODORE E. MILLARD
Print Name

10/21/10
Date


Respondent's Counsel Signature
Deputy Trial Counsel's Signature

MIA R. ELLIS
Print Name

(Do not write above this line.)

In the Matter Of THEODORE E. MILLARD	Case Number(s): 04-C-11040
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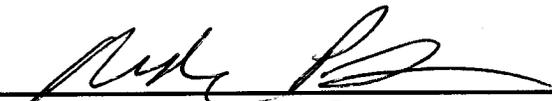
ORDER

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 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 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 9.18(a), California Rules of Court.)**

11-04-10
Date


Judge of the State Bar Court

RICHARD A. PLATEL

CERTIFICATE OF SERVICE

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

I am a Case Administrator 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 November 9, 2010, 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:

THEODORE E. MILLARD
9190 BAY MEADOWS DR
RENO, NV 89523

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

MIA ELLIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 9, 2010.



Rose Luthi
Case Administrator
State Bar Court