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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL KIMBERLY G. ANDERSON 1149 SOUTH HILL STREET LOS ANGELES, CALIFORNIA 90015 TELEPHONE: 213.765.1083 Bar # 150359	Case number(s) 04-C-11101-RAP <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div>	(for Court's use) <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">JUN 28 2005</div> <div style="text-align: center; font-size: 0.8em; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent DAVID LAURENCE GERNSBACHER 8444 WILSHIRE BOULEVARD, 6 TH FLOOR BEVERLY HILLS, CALIFORNIA 90211 3200 TELEPHONE: 310 550 0125 Bar # 89596	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge <div style="text-align: center; font-weight: bold;">STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION</div> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of DAVID LAURENCE GERNSBACHER Bar # 89596 A Member of the State Bar of California (Respondent)	(This area is shared with the previous row and contains the submission type and stipulation text.)	

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 November 29, 1979
(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 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."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (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.

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- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- (a) costs added to membership fee for calendar year following effective date of discipline
 - (b) costs to be paid in equal amounts prior to February 1 for the following membership years:
2006, 2007, 2008
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - (c) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - (d) 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 or a separate attachment entitled "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.

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- (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 with 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) **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.

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- (10) **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.
- (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 must be suspended from the practice of law for a period of 1 (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 is placed on probation for a period of 3 (three) years, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

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E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) Within 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.
- (4) 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 in each report 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.
- (5) 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.
- (6) 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.
- (7) 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: _____
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions Financial Conditions

(Do not write above this line.)

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 within one year. 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. Reason: _____

- (2) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: David L. Gernsbacher

CASE NUMBER(S): 04-C-11101-RAP

FACTS AND CONCLUSIONS OF LAW.

1. On or about October 16, 2002, Respondent was involved in a traffic collision with Marvin Wolf ("Wolf"), an 83 year old man.

2. The traffic collision occurred at or near the intersection of Orlando and Maryland in the City and County of Los Angeles. The traffic collision caused property damage to the victim's vehicle, which was a 1998 Olds Aurora. Wolf provided the police with an estimate from an auto repair shop in the amount of \$3,033.51 and with polaroids of the vehicle.

3. Following the accident, the Respondent exited his vehicle, approached Wolf, and assaulted Wolf. Respondent then left the scene of the accident in his Jeep Cherokee, bearing license plate number 4TLC574 without providing the victim with the identification information required by Vehicle Code, section 20002(a).

4. On or about March 2, 2004, the Los Angeles City Attorney's Office filed a misdemeanor complaint against Respondent in the case entitled *People of the State of California v. David L. Gernsbacher*, Los Angeles Superior Court Case No. 4MT00849, alleging that Respondent committed the following violations: Vehicle Code, section 20002(a), Vehicle Code, section 14601.1(a), Vehicle Code, section 16025(a), and Penal Code, section 242.

5. On July 21, 2004, Respondent entered into a plea bargain with the prosecutor and pled no contest to violations of Penal Code, section 240 and Vehicle Code, section 20002(a). The remaining counts were dismissed in the interests of justice as part of the plea bargain. Respondent was placed upon 36 months summary probation, ordered to pay a \$961 fine and serve 10 days county jail, or in the alternative to perform 10 days Cal Trans. Respondent was also ordered to refrain from annoying, harassing or molesting anyone involved in the case, and to refrain from threatening anyone or using force against anyone. Respondent was also ordered to attend a 6 month anger management program.

6. The facts and circumstances surrounding the offenses for which Respondent was convicted constitutes misconduct warranting discipline.

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Page #

Attachment Page 1

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was June 17, 2005.

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.

1. 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.
2. On July 21, 2004, respondent was convicted of violating Penal Code, section 240 and Vehicle Code, section 20002(a). The convictions are final.
3. On October 13, 2004, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: whether the facts and circumstances surrounding the convictions involved moral turpitude or other misconduct warranting discipline, and if so, determining the appropriate level of discipline.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 3.4 provides,

“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 which does involve either misconduct warranting discipline shall result in a sanction as prescribed under part B of these Standards appropriate to the nature and extent of the misconduct found to have been committed by the member.”

Standard 2.6 is the applicable Standard to be applied as Respondent’s misconduct is violative of Business and Professions Code, section 6068(a). Standard 2.6 provides for disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline as set forth in Standard 1.3.

In *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, the respondent attorney was convicted by a jury of a misdemeanor violation of Penal Code, section 243(c). The Review Department concluded a 2 year stayed suspension, 60 days actual suspension and 2 years probation was the appropriate disposition. In that case, the respondent had been separated from his wife, and the police were called when he refused to leave the apartment without his son.

Respondent had some alcohol in his system. As the police officer tried to escort respondent out of the apartment, respondent grabbed the officer's upper body in a "bear hug." The respondent and the police officer both sustained cuts and bruises and the officer's uniform shirt was torn. The criminal court suspended imposition of sentence, and placed respondent on two years probation with a condition that he attend 30 AA meetings.

In *Stewart*, supra. at p. 61, the Review Department stated, "Past disciplinary conviction referral cases in which assaultive behavior was the principal offense have generally resulted in suspension of varying degrees."

The Respondent's conduct warrants less discipline than the attorney in *Stewart* because the Respondent admitted his conduct by way of a plea bargain prior to trial, and because Respondent was convicted of assault, rather than battery.

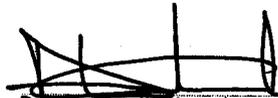
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In the Matter of David Laurence Gernsbacher	Case number(s): 04-C-11101-RAP
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SIGNATURE OF THE PARTIES

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, Conclusions of Law and Disposition.

6/19/05
Date


Respondent's signature

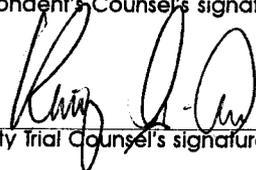
David Laurence Gernsbacher
Print name

Date

Respondent's Counsel's signature

Print name

6/27/05
Date


Deputy Trial Counsel's signature

Kimberly G. Anderson
Print name

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In the Matter of DAVID LAURENCE GERNSBACHER	Case number(s): 04-C-11101-RAP
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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 953(a), California Rules of Court.)**

06-28-05
Date



 RICHARD A. PLATEL
 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 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 June 28, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed June 28, 2005**

in a sealed envelope for collection and mailing on that date as follows:

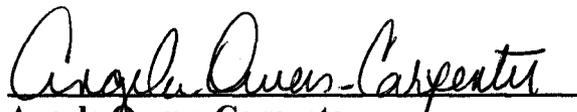
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID LAURENCE GERNSBACHER ESQ
GERNSBACHER & ASSOCIATES
8444 WILSHIRE BLVD 6TH FL
BEVERLY HILLS CA 90211 3200**

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

KIMBERLY ANDERSON A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 28, 2005.**



Angela Owens-Carpenter
Case Administrator
State Bar Court