

State Bar Court of California
Hearing Department
San Francisco

~~CONFIDENTIAL~~

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

<p>Counsel For The State Bar</p> <p>Cydney Batchelor Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 TeleL: 415/538-2204</p>	<p>Case Number (s)</p> <p>04-C-14475-PEM 05-C-01805-PEM</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>APR 12 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court's use)</p> <p>LODGED</p> <p>DEC 11 2006</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Bar # 114637</p> <p>In Pro Per Respondent</p> <p>Michael I. Burton, Esq. 862 Sir Francis Drake Blvd, #248 San Anselmo, CA 94960 Tele: 415/320-0862</p>	<p>Submitted to: Assigned Judge</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>
<p>Bar # 83380</p> <p>In the Matter Of:</p> <p>MICHAEL I. BURTON</p> <p>Bar # 83380</p> <p>A Member of the State Bar of California (Respondent)</p>		

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, 1978**.
- (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 the 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 consists of **7** pages, excluding 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".



(Do not write above this line.)

- (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 [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. **See attached**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

(Stipulation form approved by SBC Executive Committee 9/18/2002. Rev. 12/16/2004.)

Program

- (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) **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:

See attached.

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **MICHAEL I. BURTON**
CASE NUMBERS: **04-C-14475-PEM; 05-C-01805-PEM**

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 04-C-14475-PEM:

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 18, 2004, Respondent pled guilty to two misdemeanor violations of Vehicle Code section 23152(b), driving while having an .08% or higher blood alcohol content. On May 13, 2005, the Review Department of the State Bar issued an order referring the matter to the Hearing Department for a hearing and decision recommending the decision to be imposed in the event that the facts and circumstances surrounding the convictions involved moral turpitude or other misconduct warranting discipline.

Facts: On August 21, 2004, respondent was arrested for driving under the influence of alcohol; his blood alcohol level at the time was determined to be .27/.29/.30. On September 16, 2004, respondent was again arrested for driving under the influence; his blood alcohol level on that occasion was determined to be .36/.35. On September 27, 2004, Respondent was charged with two misdemeanor violations of Vehicle Code sections 23152(a) and two misdemeanor violations of Vehicle Code section 23152(b), with the further allegation of a misdemeanor violation of Vehicle Code Section 23578 for the two separate offenses. On October 18, 2004, Respondent pled guilty to two misdemeanor violations of Vehicle Code section 23152(b), driving while having an .08% or higher blood alcohol. The remaining counts were dismissed on motion of the district attorney. The same day, Respondent was placed on probation for three years.

Conclusions of Law: The facts and circumstances surrounding Respondent's violations of California Vehicle Code section 23152(b) do not involve moral turpitude, but do involve other conduct warranting discipline. The Respondent acknowledges that by the conduct described herein, he willfully violated Business and Professions Code section 6068(a).

Case No. 05-C-01805:

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 March 27, 2006, Respondent pled guilty to a misdemeanor violation of one count of Vehicle Code section 23152(b), driving while having a .08% or higher blood alcohol, with two admitted priors with the further allegation that defendant had a blood alcohol level of .22 percent/.22 percent within the meaning of Vehicle Code section 23758, one count, and Vehicle Code section 14601.2(a), driving when privilege suspended or revoked, one count. On August 2, 2006, the Review Department of the State Bar issued an order referring the matter to the Hearing Department for a hearing and decision recommending the decision to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

Facts: On January 2, 2005, Respondent was arrested for driving under the influence. Respondent's blood alcohol level was determined to be .22/.22. On January 3, 2005, Respondent was charged with misdemeanor violations of Vehicle Code sections 23152(a) and 23152(b), with two prior convictions, with the further allegation that he had also committed misdemeanor violations of Vehicle Code sections 23578, and 14601.2(a) (driving on suspended/revoked California driver's license) and 14601.5(a) (driving with California driver's license suspended/revoked for refusing chemical test or driving with excessive blood alcohol level). On March 27, 2006, Respondent pled guilty to misdemeanor violations of Vehicle Code sections 23152(b) (driving while having an .08% or higher blood alcohol), and 14601.2(a) (driving on suspended/revoked California driver's license), and admitted the prior convictions. The remaining counts were dismissed on motion of the district attorney.

Conclusions of Law: The facts and circumstances surrounding Respondent's violation of California Vehicle Code sections 23152(b) and 14601.2(a) do not involve moral turpitude, but do involve other conduct warranting discipline. The Respondent acknowledges that by the conduct described herein, he willfully violated Business and Professions Code section 6068(a).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was October 23, 2006.

AGGRAVATING CIRCUMSTANCES.

Facts Supporting Aggravating Circumstances:

Multiple Acts of Misconduct: By incurring three driving under the influence convictions, Respondent engaged in multiple acts of misconduct.

Additional Aggravating Factors:

Violation of Criminal Probation:

Respondent was still on criminal probation for the first two DUI convictions when he was rearrested for his third DUI occurrence.

MITIGATING CIRCUMSTANCES.

Candor and Cooperation: Respondent has been completely candid and cooperative with the State Bar during the resolution of these cases.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Participation in Lawyer's Assistance Program: On July 8, 2005, respondent voluntarily contacted the State Bar Lawyer Assistance Program to address his mental health condition. On July 27, 2005, respondent voluntarily signed a pre-enrollment evaluation plan with LAP. On October 12, 2005, respondent entered into a long-term participation agreement with LAP.

Residential Treatment for Alcohol: After incurring his third DUI conviction, respondent voluntarily enrolled in and completed residential treatment for his alcohol dependency at the request of the State Bar Lawyer Assistance Program.

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In the Matter of MICHAEL I. BURTON	Case number(s): 04-C-14475-PEM; 05-C-1805-PEM;
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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 Fact, Conclusions of Law and Disposition.

10/31/06

Date



Respondent's Signature

Michael I. Burton

Print Name

Date

11/3/06

Date

Respondent's Counsel Signature



Deputy Trial Counsel's Signature

N/A

Print Name

Cydney Batchelor

Print Name

(Do not write above this line.)

In the Matter of Michael I. Burton	Case number(s): 04-C-14475-PEM 05-C-01805-PEM
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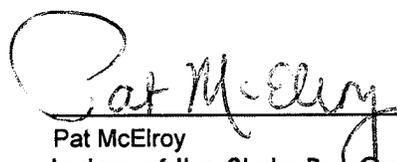
ORDER

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 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(d), Rules of Procedure.)

Dec 11, 2006
Date


Pat McElroy
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 December 11, 2006 , I deposited a true copy of the following document(s):

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND
ORDERS (Rules Proc. of State Bar, rule 803 (a))**

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR
COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

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

by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

MICHAEL IRA BURTON, ESQ.
CYDNEY BATCHELOR, ESQ.

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on
December 11, 2006



Laretta Cramer
Case Administrator
State Bar Court