

(Do not write above this line.)

**State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM**

Counsel For The State Bar Jonathan Ceseña Deputy Trial Counsel 180 Howard Street San Francisco CA 94105 (415) 538-2183 Bar # 289721	Case Number (s) 05-C-03278-LMA 13-C-17029	(for Court's use) PUBLIC MATTER FILED  JAN 26 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Daniel Mark Bornstein 100 Larkspur Landing Suite 110 Larkspur, CA 94939 (415) 385-1186 Bar # 152191	Submitted to: Program Judge	
In the Matter Of: DANIEL MARK BORNSTEIN Bar # 181711 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS AND CONCLUSIONS OF LAW <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 **February 26, 1996**.
- (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, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline 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 [see Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (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 intentional, 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 Attachment page 6.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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:

**No Prior Discipline. See Attachment page 7.
Pre-trial Stipulation. See Attachment page 7.**

FACTS:

7. On June 18, 2005, at approximately 12:05 a.m., respondent was stopped by the California Highway Patrol ("CHP") after respondent was observed drifting from one lane into the next, straddling the lane marker, and continuing to simultaneously drive in both lanes.

8. Officer Glace from the CHP spoke with respondent. Respondent immediately admitted to driving 70 mph in a 55mph zone. Respondent was not aware that he was straddling the lane markers. Officer Glace noted respondent smelled of alcohol and after getting out of the vehicle respondent was unsteady on his feet. Respondent first told Officer Glace that he had consumed two beers, then respondent changed his story admitting he had consumed two glasses of red wine. Officer Glace spoke with respondent's passenger who stated respondent consumed a couple of glasses of wine with dinner and a cocktail of vodka and soda.

9. Officer Glace requested that respondent perform a series of field sobriety tests, which respondent failed to perform as instructed. Respondent was given two breath alcohol tests which both yielded blood alcohol content results of .117%.

10. Respondent was arrested for driving while under the influence of alcohol.

CONCLUSIONS OF LAW:

11. The facts and circumstances surrounding the above-described violation did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 13-C-17029 (Conviction Proceeding)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

12. 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.

13. On October 13, 2013, respondent was arrested for violating California Vehicle Code section 23152(a), [Driving Under the Influence of Alcohol or Drugs], for violating California Vehicle Code section 23152(b), [Driving While Having a Blood Alcohol Content of .08% or Higher], for violating Vehicle Code section 23578 [Excessive Blood Alcohol], for violating Vehicle Code section 23540 [Second Offense within 10 Years], and for violating Vehicle Code section 23222(b) [Possession of Marijuana While Driving].

14. On October 21, 2013, the Marin County District Attorney filed a criminal complaint in Marin County Superior Court case number CR186549 charging respondent with Count One, violating Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, Count Two, violating Vehicle Code section 23152(b) [Driving with a BAC of .08% or higher], a misdemeanor, violating Vehicle Code section 23578 [Excessive Blood Alcohol], violating Vehicle Code section 23540 [Second Offense within 10 Years], and Count Three, violating Vehicle Code 23222(b) [Possession of Marijuana While Driving].

15. On December 16, 2013, the Marin County Superior Court entered respondent's plea of guilty to Count 2 of the complaint filed in Marin County Superior Court, case no. CR186549, which charged Respondent with a violation of California Vehicle Code section 23152(b), [Driving While Having a Blood Alcohol Content of .08% or higher]. Counts One and Three were dismissed on motion of the District Attorney as part of the plea agreement

16. On December 16, 2013, the court sentenced respondent to three years' probation and 20 days in the custody of the Marin County Sheriff.

17. On March 20, 2014, 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 Hearing Department finds that the facts and circumstances surrounding the offenses for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

18. On October 13, 2013, at approximately 11:05 a.m., respondent was involved in a single car accident when he tried to exit highway 101 onto Lucas Valley road and lost control of the vehicle, took out a pedestrian guard rail, and stopped in a grassy field. Respondent's car had tire and suspension damage as a result of the accident and was incapable of being driven.

19. Officer Fitzgerald from the CHP spoke with respondent. He noted respondent's eyes were red and watery and he smelled of alcohol. Fitzgerald asked respondent if he had any alcoholic beverages. Respondent responded that he had drunk two beers. Officer Fitzgerald requested that respondent perform a series of field sobriety tests, which respondent failed to perform as instructed. Respondent's vehicle was searched and a Schedule One controlled substance, marijuana, was found in the center console next to the driver's seat.

20. At 11:40 a.m., respondent was given two breath alcohol tests which yielded blood alcohol content results of .248% and .245%, respectively.

21. At approximately 11:43 a.m., respondent was placed under arrest for driving under the influence of alcohol. Respondent was transported to Marin County Jail where two more breath alcohol tests were performed at 12:52 p.m. Respondent's BAC was .19% and .20%, respectively

CONCLUSIONS OF LAW:

22. The facts and circumstances surrounding the above-described violations did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (standard 1.5(b)): Respondent committed two separate acts of misconduct. Respondent was convicted of two DUIs eight years apart. This demonstrates multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent practiced law for nine years without discipline before the first instance of misconduct herein occurred. Respondent is entitled to mitigating credit for no prior discipline even where the underlying conduct is found to be serious or significant. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn.13; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pre-trial Stipulation: Respondent is also entitled to mitigation for entering into this stipulation. In doing so, respondent has acknowledged his misconduct and saved the State Bar Court both time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 11, 2014, the prosecution costs in this matter are \$3,402. 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.

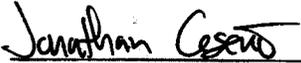
(Do not write above this line.)

In the Matter of: DANIEL MARK BORNSTEIN	Case number(s): 05-C-03278; 13-C-17029
---	--

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.

7/31/14  Daniel Mark Bornstein
Date Respondent's Signature Print Name

8.4.14  Jonathan Ceseña
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: DANIEL MARK BORNSTEIN	Case Number(s): 05-C-03278; 13-C-17029
--	---

ALTERNATIVE DISCIPLINE PROGRAM ORDER

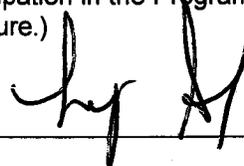
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Jan 26, 2015

Date



Judge of the State Bar Court

LUCY ARMENDARIZ

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 San Francisco, on January 26, 2015, I deposited a true copy of the following document(s):

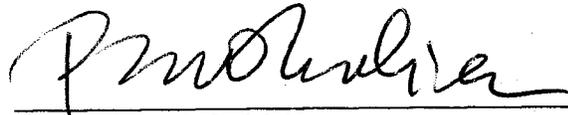
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

By personally delivering a copy of said document(s) to:

DANIEL M. BORNSTEIN
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

~~JONATHAN R. CESENA~~ **SUSAN CHAN**
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 26, 2015.



Bernadette C.O. Molina
Case Administrator
State Bar Court