



ORIGINAL

(Do not write above this line.)

State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar BROOKE A. SCHAFER Deputy Trial Counsel 1149 South Hill Street, 9 th Floor Los Angeles, CA 90015-2299 Telephone: (213) 765-1051 Bar # 194824	Case number(s) 05-C-03649-RAH	(for Court's use) <div style="text-align: center;"> FILED MAY 24 2006 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent KEVIN P. GERRY 433 N. Camden Dive, 4th Floor Beverly Hills, California 90210 Telephone: (310) 275-1620 Bar # 129690	PUBLIC MATTER NOT FOR PUBLICATION	
In the Matter of JEFFREY CHARLES BOGERT Bar # 132778 A Member of the State Bar of California (Respondent)	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input checked="" type="checkbox"/> PRIVATE <input type="checkbox"/> PUBLIC <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 December 11, 1987
(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 12 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.

(Do not write above this line.)

(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 (public reproof)
- (b) ☒ case ineligible for costs (private reproof)
- (c) ☐ costs to be paid in equal amounts for the following membership years:

(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e) ☐ costs entirely waived

(9) The parties understand that:

- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) ☒ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) ☐ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 _____

(Do not write above this line.)

- (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.
- (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.

(Do not write above this line.)

- (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:

(Do not write above this line.)

D. Discipline:

- (1) ☒ Private reproof (check applicable conditions, if any, below)
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☒ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

OR

- (2) ☐ Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of
Three (3) years
- (2) ☒ During the condition period attached to the reproof, 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 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 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 condition period attached to the reproof. 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 the reproof 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 thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (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 conditions attached to the reprobation.
- (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 of the Ethics School and passage of the test given at the end of that session.
- ☐ No Ethics School ordered. Reason: _____
- (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 required to be filed with the Office of Probation.
- (10) ☐ 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 of the effective date of the reprobation.
- ☒ No MPRE ordered. Reason: Due to nature of misconduct, MPRE is not necessary for client and public protection.
- (11) ☒ The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| <input checked="" 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:

See additional requirement re: evaluation and treatment conditions.

(Do not write above this line.)

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Substance Abuse Conditions

- a. ☐ Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. ☐ Respondent must attend at least _____ meetings per month of:
- ☐ Alcoholics Anonymous
 - ☐ Narcotics Anonymous
 - ☐ The Other Bar
 - ☐ Other program _____

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. ☒ Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously. (This section (c.) shall only be in effect should Respondent's treatment conditions include abstention from alcohol and/or drugs.
- d. ☒ Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to respondent that the Office of Probation requires an additional screening report.
- e. ☒ Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.
- f. ☒ Respondent's evaluation and treatment conditions are continued in the Attachment section hereto.

(Substance Abuse Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004.)

ATTACHMENT TO STIPULATION

IN THE MATTER OF: JEFFREY BOGERT, member no. 132778

CASE NUMBER: 05-C-3649-RAP

I. PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A(6), was April 26, 2006.

II. PARTIES ARE BOUND BY THE STIPULATED FACTS

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. The parties understand they are bound by the stipulated facts contained in this stipulation. This stipulation as to facts shall independently survive even if the conclusions of law are rejected or changed in any manner by the Hearing Department or the Review Department of the State Bar Court, or by the Supreme Court.

III. WAIVER OF FINALITY OF CONVICTION (rule 607)

Pursuant to the Rules of Procedure of the State Bar of California, rule 607, the parties stipulate that the Court may decide the issues as to the discipline to be imposed even if the criminal convictions discussed herein are not final.

Respondent waives any requirement as to finality of conviction and consents to the State Bar Court's acceptance of this Stipulation as to Facts and Conclusions of Law as if the conviction were final, including the entry of findings consistent with this Stipulation, imposition of discipline, or entry of a recommendation as to the degree of the discipline to be imposed.

Respondent waives any right to challenge, on the basis of a lack of finality of his conviction, the State Bar Court's recommendation of discipline, if any, and the actual imposition of discipline, if any, by the State Bar Court or the Supreme Court.

Respondent further waives any right he may have to seek review or reconsideration on the basis of any relief he may receive as a result of any appeal of, or petition regarding, the criminal conviction underlying any recommendation of and/or actual imposition of discipline by the State Bar Court or the California Supreme Court.

IV. STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW

Respondent was admitted to the practice of law in the State of California on December 11, 1987, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California. The State Bar Court has jurisdiction over this matter.

Facts

Respondent was stopped for a traffic infraction by Los Angeles police officers in May 2005. The officers noticed signs of intoxication on Respondent's person, and asked him to perform field sobriety tests. Based on observations, admission to drinking and his performance on the FSTs, police

arrested Respondent on suspicion of Driving Under the Influence, a criminal misdemeanor.

Once at the police station Respondent submitted to a test of his breath alcohol. The results of that test registered .12%, in excess of the .08% BAC limit in California. He was charged with DUI. Ultimately the charge was plead down to an alcohol-related, or "wet," Reckless Driving, still a criminal misdemeanor. (Vehicle Code sec. 23103). Among other things, Respondent was sentenced to community service, a fine and AA meetings.

This is Respondent's second DUI-type conviction. He has a prior DUI from 2001.

Conclusion of law

The facts and circumstances surrounding Respondent's conviction for an alcohol-related Reckless Driving (Vehicle Code section 23103), does not involve moral turpitude but does involve other misconduct warranting discipline and constitute a wilful violation of Business and Professions Code section 6068(a).

V. ASAM EVALUATION AND TREATMENT CONDITION

Respondent specifically understands and agrees to the following evaluation and treatment conditions:

1. Respondent shall, with assistance and approval of the Office of Probation, select a medical doctor certified by the American Society of Addiction Medicine (ASAM) for the purpose of submitting to a substance abuse evaluation (the "Evaluation"). The Evaluation shall take place within sixty (60) days of the effective date of this reproval. Prior to the Evaluation Respondent shall deliver a complete copy of this stipulation to the doctor performing the evaluation.

2. The Evaluation will be for the purposes of (a) determining whether Respondent has a substance abuse or addiction problem (including but not limited to alcohol), (b) if so, setting treatment conditions Respondent is to undertake as a result of the Evaluation, and (c) obtaining a written report from the evaluating physician.

3. Respondent shall bear the cost of the Evaluation, the resulting report and of any treatment conditions recommended by the evaluator. Respondent understands that his treatment conditions may change if his treatment providers deem it necessary, and that he is willing to bear the cost of such treatment, and in some cases could even include in-patient treatment.

4. Respondent shall execute all necessary waivers of confidentiality as part of his Evaluation, and direct the evaluating physician to deliver a copy of his/her written report (with any treatment conditions) upon: the Office of Probation, the Deputy Trial Counsel whose name appears below, and the judge whose name appears below.

5. Respondent's treatment conditions, if any, shall become part of his probation requirements. Respondent agrees to comply with his treatment conditions. Respondent shall execute all necessary waivers to any treatment agencies or providers, and he shall provide the Office of Probation with any proof of treatment compliance as they require. Respondent understands that the Office of Probation shall monitor his treatment and any violation of treatment may be considered a probation violation.

6. Respondent shall direct all treatment providers to prepare periodic written reports to the Office of Probation on his progress and compliance ("Reports"). These Reports shall be provided a minimum of every ninety (90) days, or more often upon request by the Office of Probation. Respondent understands that the Reports may be shared with the Office of Chief Trial Counsel and with the State Bar Court.

7. Respondent understands that the treatment conditions associated with his criminal probation may or may not satisfy treatment conditions he may be required to do in association with the above Evaluation.

VI. MITIGATING CIRCUMSTANCES, cont'd

Candor and Cooperation: Respondent has been cooperative with the State Bar throughout the pre-trial settlement of this matter. Moreover, he plead guilty in the underlying action and took responsibility rather than proceed to trial.

VII. STANDARDS & DECISIONAL AUTHORITY

Standard 3.4 and *In re Kelley* (1990) 52 Cal.3d 487, both apply to this pre-trial settlement.

===== End of Attachment =====

(Do not write above this line.)

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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.

5-10-06
Date


Respondent's signature

JEFFREY C. BOGERT
Print name

5-12-06
Date


Respondent's Counsel's signature

KEVIN P. GERRY
Print name

5.15.06
Date


Deputy Trial Counsel's signature

BROOKE A. SCHAFER
Print name

(Do not write above this line.)

In the Matter of JEFFREY CHARLES BOGERT Member #: 132778	Case number(s): 05-C-03649
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ 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. (See rule 125(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

5/24/06
Date


RICHARD A. HONN

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 May 24, 2006, 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:

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

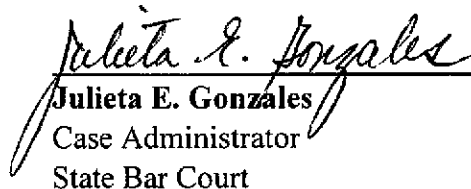
**KEVIN P GERRY ESQ
433 N CAMDEN DRIVE 4TH FLOOR
BEVERLY HILLS, CA 90210**

**KEVIN P GERRY ESQ
1001 OLIVE ST
SANTA BARBARA, CA 93103**

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

Brooke A. Schafer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **May 24, 2006**.



Julieta E. Gonzales
Case Administrator
State Bar Court