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<b>State Bar Court of California</b> <b>Hearing Department</b> ALTERNATIVE DISCIPLINE PROGRAM <b>PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES</b>		
Counsel For The State Bar  <b>Manuel Jimenez</b> State Bar of California 180 Howard Street San Francisco, CA 94105 (415) 538-2288  Bar # 218234	Case Number (s) <b>08-C-10958</b>	(for Court's use) <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold; margin-top: 10px;">FILED </div> <div style="text-align: center; margin-top: 10px;">MAR 30 2009</div> <div style="text-align: center; margin-top: 10px;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel For Respondent  <b>EDWARD O. LEAR</b> 5200 West Century Boulevard, Suite 345 Los Angeles, CA 90045 (310) 642-6900  Bar # 132699	Submitted to: Program Judge  <b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>	
In the Matter Of: <b>MICHAEL J. EARS!</b>  Bar # 159970  A Member of the State Bar of California (Respondent)	<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 **October 29, 1992**. except as otherwise provided in rule 804.5(c) of the Rules of Procedure,
- (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, <sup>↑</sup>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. Alternative Discipline Program
- (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 6 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".



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- (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.
- (8)  No aggravating circumstances are involved.

Additional aggravating circumstances:

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

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- (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:**

ATTACHMENT TO  
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: MICHAEL J. BARSI

CASE NUMBER(S): 08-C-10958

**FACTS.**

Respondent admits that the following facts are true.

1. On January 23, 2008, between 3:40 p.m. and 4:45 p.m., in front of 9011 Soquel Drive, Aptos, California, respondent pushed the victim (respondent's wife with whom he was separated), causing her to stumble and fall. Respondent grabbed the victim's cellular telephone and threw it.

. Respondent prevented the victim from entering her car.

2. The victim fled, running into 9011 Soquel Drive and attempted to enter the office MF  
Respondent followed the victim, grabbed her from behind, wrapped his arms around her and pulled her away from FS door. MF as exited his office. Respondent swung the victim around until she hit the wall, causing her to break a plastic mail slot.  
respondent off the victim. MF separated

3. On January 24, 2008, the District Attorney's Office for the County of Santa Cruz filed a criminal complaint, case number W13772, charging respondent with the following crimes:

- Count 1: Violation of Penal Code Section 273.5(a), Corporal Injury to Spouse/Cohabitant/Child's Parent.
- Count 2: Violation of Penal Code Section 591.5, Interference with a Wireless - Communication Device.
- Count 3: Violation of Penal Code Section 236, False Imprisonment.
- Count 4: Violation of Penal Code Section 243(e)(1), Battery (relationship).

4. On February 14, 2008, respondent plead *nolo contendere* to counts 3 and 4, both misdemeanors.

**CONCLUSIONS OF LAW**

The facts and circumstances surrounding the violations of sections 236 and 243(e)(1) of the California Penal Code did not involve moral turpitude, but did involve other misconduct warranting discipline.

**PENDING PROCEEDINGS.**

As of August 4, 2008, there are no pending proceedings against respondent not covered by this stipulation.

**COMPLIANCE WITH CONDITIONS OF PROBATION/PAROLE IN UNDERLING**

**CRIMINAL MATTER.**

Respondent shall comply with all conditions of her probation/parole, if any, imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit of the State Bar of California

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<b>In the Matter of</b> <b>Michael J. Barsi</b>	<b>Case number(s):</b> <b>08-C-10958</b>
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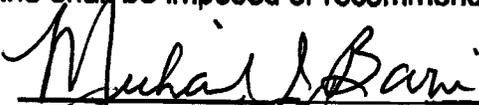
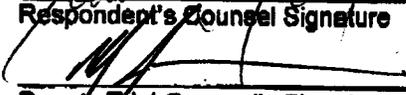
**SIGNATURE OF THE PARTIES**

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

<u>9/4/08</u> Date	 Respondent's Signature	<u>Michael J. Barsi</u> Print Name
<u>9/15/08</u> Date	 Respondent's Counsel Signature	<u>Edward O. Lear</u> Print Name
<u>9/15/08</u> Date	 Deputy Trial Counsel's Signature	<u>Manuel Jimenez</u> Print Name

(Stipulation form approved by SBC Executive Committee 9/18/02. Revised 12/16/2004.)



**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 San Francisco, on March 30, 2009, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

By personal service addressed as follows:

MICHAEL J. BARSÌ  
180 HOWARD ST, 6<sup>TH</sup> FL  
SAN FRANCISCO, CA 94105

MANUEL JIMENEZ  
180 HOWARD ST., 6<sup>TH</sup> FL  
SAN FRANCISCO, CA 94105

EDWARD O. LEAR  
180 HOWARD ST, 6<sup>TH</sup> FL  
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 30, 2009.



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Bernadette Molina  
Case Administrator  
State Bar Court