

State Bar Court of California
Hearing Department
San Francisco

kwiktag ®

078 540 259



Counsel For The State Bar

Tammy M. Albertsen-Murray
180 Howard Street
San Francisco, CA 94105
(415) 538-2527

Bar # **154248**

In Pro Per Respondent

Timothy J. Evans
527 'J' Street
Marysville, CA 95901
(530) 742-7009

Bar # **42795**

In the Matter Of:
TIMOTHY J. EVANS

Bar # **42795**

A Member of the State Bar of California
(Respondent)

Case Number (s)

**08-C-12845; 08-C-12998-
LMA**

(for Court's use)

PUBLIC MATTER

FILED *LOS*

MAR 26 2009

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

Submitted to: **Settlement Judge**

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING

PUBLIC REPROVAL

☐ 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 **January 9, 1969**.
- (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 consists of **10** pages, not including 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".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Do not write above this line.)

- (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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - ☐ case ineligible for costs (private reproof)
 - ☐ 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)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ 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
 - (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.
- (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:

**** Respondent stipulated to the imposition of discipline, thus obviating the additional expenditure of trial.**

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 Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of
- (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 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.
- (4) ☒ Within thirty (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 30 (thirty) 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 the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (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 at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. 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 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 recommended. Reason: .
- (11) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input 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, Attachment to stipulation at pages 8-9.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: TIMOTHY J. EVANS

CASE NUMBERS: 08-C-12845; 08-C-12998-LMA

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes.

Facts. Case number 08-C-12998

On November 6, 2006 in Sutter, California, respondent was arrested for driving under the influence of alcohol in violation of Vehicle Code section 23152. Respondent was also cited for causing damage to another vehicle and failing to notify the owner of that vehicle in person or by written note left in a conspicuous place of the damage, in violation of Vehicle Code section 20002(a).

Investigation determined that respondent's blood alcohol level was .22 percent.

By way of criminal complaint, respondent was charged with violations of Vehicle Code sections 23152(a) [Count one]; 23152(b) [Count Two]; and 20002 (Count Three). The criminal complaint also alleged as an enhancement a violation of Vehicle Code section 23578.

At his arraignment on December 20, 2006 in Sutter County Superior Court (case number CRTR-06-2838), as a result of his plea of no contest, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) [driving under the influence with a blood alcohol of .08 percent or more]. Respondent also admitted a violation of Vehicle Code section 23578 [enhancement for blood alcohol level of .15% or more], which was found true. Counts One and Three were dismissed in view of the plea.

Respondent's sentence included the following: four (4) days in county jail; thirty-six (36) months summary probation; \$1,725 fine; \$100 restitution fine and collection fee; submit to chemical testing; attend nine (9) month program DUI school; and pay \$463 plus \$35 surcharge in restitution to the victim of his property damage.

Legal Conclusion. Case number 08-C-12998

By driving under the influence of alcohol in excess of the legal limit, respondent willfully violated Business and Professions Code section 6068(a) by way of Vehicle Code section 23152(b).

Facts. Case number 08-C-12845

On July 14, 2008 on a highway in the County of Sutter, California, respondent was arrested for driving under the influence of alcohol in violation of Vehicle Code section 23152.

Investigation determined that respondent's blood alcohol level was at least .22 percent.

By way of criminal complaint, respondent was charged with violations of Vehicle Code sections 23152(a) [Count one] and 23152(b) [Count Two]. The criminal complaint also alleged a violation of Vehicle Code section 23578. The criminal complaint further alleged a prior conviction of Vehicle Code section 23152(b).

On August 27, 2008 in Sutter County Superior Court (case number CRTR-08-1888), as a result of his plea of no contest, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) [driving under the influence with a blood alcohol of .08 percent or more]. Respondent also admitted additional allegations as enhancement, including a violation of Vehicle Code section 23578 [enhancement for blood alcohol level of .15% or more] and his prior conviction for a violation of Vehicle Code section 23152(b) [DUI]. Both allegations were found true.

Respondent's sentence included the following: twelve (12) days in county jail; sixty (60) months summary probation; \$2,250 fine; \$100 restitution fine and collection fee; submit to chemical testing; attend eighteen (18) month program/SB-38 school; and have his license suspended.

Legal Conclusion. Case number 08-C-12845

By driving under the influence of alcohol in excess of the legal limit, respondent willfully violated Business and Professions Code section 6068(a) by way of Vehicle Code section 23152(b).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was March 2, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 2, 2009, the prosecution costs in this matter are \$3,530.00. 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.

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.

1. 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.

2. Regarding State Bar case number 08-C-12998: On December 20, 2006, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) [driving under the influence with a blood alcohol of .08 percent or more] and enhanced by a blood alcohol level in excess of .15%.

3. On October 24, 2008, 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 violation of Vehicle Code section 23152, subdivision (b) involved moral turpitude or other misconduct warranting discipline.

4. Regarding State Bar case number 08-C-12845: On date of August 27, 2008, respondent was convicted of violating Vehicle Code Section 23152(b) with a prior conviction and enhanced by blood alcohol level in excess of .15%.

5. On October 24, 2008, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and report as to whether there is probable cause to believe that the facts and circumstances surrounding the offenses involved moral turpitude. Further, the Review Department's order stated that the Hearing Department is to conduct a hearing and file a decision as to whether the facts and circumstances surrounding the violations involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed or recommended.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

1. Respondent shall abstain from any use of alcoholic beverages and may neither use nor possess any narcotics, controlled substances, marijuana or associated paraphernalia, except with a valid prescription issued by a physician who has been provided with a copy of this stipulation and resulting Supreme Court order. Respondent further acknowledges that he will bear the burden of proving that any physician under this condition has been provided with a copy of this stipulation and Supreme Court order.

2. ATTENDANCE AT SUBSTANCE ABUSE GROUP/INDIVIDUAL PROGRAM:

Respondent shall attend a substance abuse support group. Respondent currently participates in the Pathways program at a frequency of no less than one meeting per week. Any change to the particular program and/or frequency of meetings must be first approved by the Probation Department. Other programs may be acceptable if they include: (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See, *O'Conner v. Calif.* (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program].)

Respondent shall furnish to the Probation Unit of the State Bar proof of attendance at the meetings set forth in this Condition.

3. Respondent shall furnish to a licensed medical laboratory of his choice upon request of the Probation Unit such blood and/or urine samples as may be required to show that

respondent has abstained from the use of alcohol and other drugs. Said samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen identification and integrity. Upon the Probation Unit's request, respondent shall cause the laboratory to provide the Probation Unit at respondent's expense a screening report based on said samples.

4. Respondent shall at all times maintain with the Probation Unit a current address and a current telephone number at which he can be reached. Respondent must personally return within twelve (12) hours any telephone call from the Probation Unit concerning blood and /or urine testing. The Probation Unit may require respondent to deliver his blood and/or urine to a laboratory no later than **six (6) hours** after telephone notice to respondent at the number provided by respondent. The parties acknowledge that any requirement by the Probation Unit for respondent to submit a blood and/or urine sample within six (6) hours shall be made by the Probation Unit no later than **10:00 a.m.** of the day the test is being required.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 3.4, Rules of Procedure of the State Bar of California;
In re Kelley (1990) 52 Cal.3d 487.

COMPLIANCE WITH CONDITIONS OF PROBATION IN UNDERLYING CRIMINAL MATTER.

Respondent shall comply with all conditions of probation 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 Office of Probation.

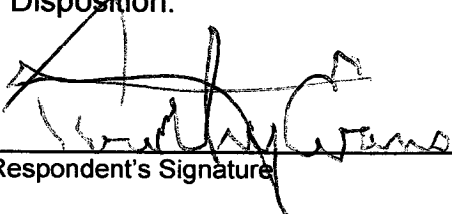
(Do not write above this line.)

| | |
|---|--|
| In the Matter of TIMOTHY J. EVANS | Case number(s): 08-C-12845; 08-C-12998-LMA |
|---|--|

SIGNATURE OF THE PARTIES

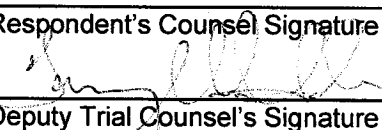
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

3/3/09
Date


Respondent's Signature

Timothy J. Evans
Print Name

3/9/09
Date


Respondent's Counsel Signature
Deputy Trial Counsel's Signature

Print Name
Tammy M. Albertsen-Murray
Print Name

(Do not write above this line.)

In the Matter Of
TIMOTHY J. EVANS

Case Number(s):
08-C-12845; 08-C-12998-LMA

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

March 25, 2009
Date

[Signature]
Judge of the State Bar Court
LUCY ARMENDARIZ

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 26, 2009, 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:

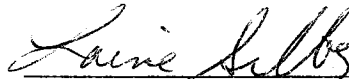
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

TIMOTHY J. EVANS
TIMOTHY J EVANS ATTORNEY AT LAW
527 J ST
MARYSVILLE, CA 95901

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

Tammy M. Albertsen-Murray, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 26, 2009.



Laine Silber
Case Administrator
State Bar Court