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<b>State Bar Court of California</b> Hearing Department Los Angeles		
Counsel For The State Bar  <b>Ashod Mooradian</b> Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004  Bar # 194283	Case Number (s) <b>09-C-12013-RAP</b>	(for Court's use)  <div style="text-align: center;"> <p><b>FILED</b></p> <p>DEC 01 2009 <i>AOC</i></p> <p>STATE BAR COURT                          CLERK'S OFFICE                          LOS ANGELES</p> </div>
In Pro Per Respondent  <b>Samuel William Bath</b> 590 Bruin Drive Riverside, CA 92507 (949) 613-1620  Bar # 217118	<p><b>PUBLIC MATTER</b></p>	
In the Matter Of: <b>SAMUEL WILLIAM BATH</b>  Bar # 217118  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <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 4, 2001**.
- (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 **16** 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."



- (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.
  - costs to be paid in equal amounts prior to February 1 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

**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. **Respondent's misconduct involved multiple acts of misconduct (i.e., brandishing a firearm and assault with a deadly weapon).**
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

None.

**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. **Respondent has no prior record of discipline, however the weight of this factor is diminished by the seriousness of his misconduct**
- (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. **Respondent has demonstrated spontaneous and extraordinary cooperation with the State Bar in its investigation and prosecution of this matter. First, Respondent has stipulated to facts, conclusions of law and level of discipline. Second, Respondent has provided important documentation from the underlying criminal prosecution as requested by the State Bar. Finally, Respondent has also assisted the State Bar in contacting several percipient witnesses to the underlying criminal misconduct.**
- (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. **Respondent recognizes his wrongdoing, was remorseful and has taken steps to atone for the consequences of his 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. **Respondent's criminal misconduct involved a situation where he discovered his wife with another man in their bedroom of their own home. Respondent's misconduct therefore took place in the context of the emotional difficulties that flowed from this extreme betrayal which ultimately led to the demise of their marriage.**
- (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. **Respondent has provided the State Bar with "good character" declarations from two attorneys who both state that they are aware of the facts and circumstances surrounding the Respondent's criminal convictions,**

**have known Respondent for a significant time, do not believe that Respondent would ever commit such misconduct again and would not hesitate to vouch for his good moral character and honesty.**

- (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**

None.

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **Two (2) years**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

The above-referenced suspension is stayed.

- (2)  **Probation:**

Respondent is placed on probation for a period of **eighteen (18) months**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

**E. Additional Conditions of Probation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  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.
- (4)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (5)  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 to the monitor 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 probation monitor.
- (6)  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 probation conditions.
- (7)  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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: **Misconduct not directly related to the practice of law.**
- (8)  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.
- (9)  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:

- (1)  **Multistate Professional Responsibility Examination:** 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. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason: **Misconduct not directly related to the practice of law.**
- (2)  **Other Conditions:**

#### MENTAL HEALTH CONDITION

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

1. Respondent has, with the assistance and approval of the Office of the Chief Trial Counsel, selected a mental health professional, duly licensed with the State of California ("Evaluator") for the purpose of submitting to a mental health evaluation ("Evaluation"). The Evaluator's name is Barbara Wright, Ph.D, and the Evaluator's address and telephone number are: 330 Park Avenue, Suite 7, Laguna Beach, CA 92651, (949) 497-2481.

2. Within sixty (60) days of the VSC Judge's signing of this stipulation, Respondent shall:
  - A) provide a complete copy of this stipulation to Evaluator; and
  - B) obtain in return from Evaluator an original, signed declaration acknowledging receipt of a complete copy of this stipulation ("Acknowledgment"); and
  - C) provide to the Office of Probation the originally signed Acknowledgment no later than seventy-five (75) days after the VSC Judge's signing of this stipulation.
  
3. Within ninety (90) days of the VSC Judge's signing of this stipulation, Respondent shall:
  - A) execute all necessary waiver(s) of confidentiality with Evaluator specifically authorizing the State Bar of California to receive all of Respondent's medical records, treatment records or any other type of records associated with the Evaluation; and
  - B) obtain in return from Evaluator an original, signed declaration acknowledging receipt of all necessary waivers of confidentiality ("Waiver"); and
  - C) provide to the Office of Probation the originally signed Waiver no later than one-hundred-five (105) days after the VSC Judge's signing of this stipulation.
  
4. Within thirty (30) days of the effective date of this discipline, Respondent shall undergo an Evaluation with Evaluator consisting of no more than two (2) personal office visits of a length solely within the discretion of Evaluator. During said office visits Respondent may undergo individual therapy, psychological testing or any other treatment methodology deemed necessary by Evaluator. After the completion of these visits, Evaluator shall prepare for the Office of Probation a written report. Evaluator shall determine the format and content of the written report. However, in addition to any content Evaluator deems necessary to include, the written report shall include:
  - (A) an assessment whether or not Respondent has any mental health condition(s) that may have flowed from the facts and circumstances involved in and leading up to Respondent's arrest and conviction or his subsequent incarceration or his pending dissolution of marriage that will:
    - (1) affect his judgment, competence or ability to undertake his professional duties as an attorney;
    - (2) affect his ability to personally manage stress;
    - (3) affect his ability to personally control anger;
    - (4) affect Respondent's mental health in any other significant manner; and
  - (B) a recommendation whether or not Respondent must undergo further treatment as a result of the Evaluation, specifying the terms and conditions of any such treatment as well as any prognosis for recovery.
  
5. Respondent must fully cooperate with Evaluator in this Evaluation, including but not limited to providing true responses to all questions posed to him and providing any and all requested documentation regarding Respondent's arrest, criminal conviction, incarceration, house arrest, criminal probation and dissolution proceedings. If the Evaluator requires additional information in order to propose treatment conditions, including, but not limited to, interviewing third parties, Respondent will make good faith efforts to provide timely the additional information. Respondent will provide proof of such good faith efforts to the Office of Probation within ten (10) days of any request. Respondent further understands that his failure to fully cooperate with Evaluator is a violation of his probation terms and conditions.
  
6. Respondent shall bear all costs of the Evaluation, the resulting report, and any treatment recommended by the Evaluator. If Evaluator recommends further treatment, Respondent agrees to undergo all recommended treatment for the period of time and frequency recommended. Respondent understands that his treatment conditions may change if Evaluator deems it necessary, and that he is to bear the cost of such treatment changes, which in some cases could include in-patient treatment. Respondent further understands that (a) the treatment conditions, if any, shall become part of his probation requirements, (b) he must provide the Office of Probation with any proof of treatment compliance or waiver requested by the Office of Probation, and (c) any violation of the treatment conditions is a violation of his probation terms and conditions.

7. **Within sixty (60) days of the effective date of this discipline, Respondent is to provide a copy of the Evaluator's written report (as specified in paragraph 4 above) to the Office of Probation.**
8. **If Respondent is undergoing further treatment, Respondent shall report compliance with the treatment conditions by statement under penalty of perjury in each written quarterly report to the Office of Probation required pursuant to the discipline in this matter.**
9. **If Respondent is undergoing further treatment, Respondent shall have his Evaluator submit to the Office of Probation an original, signed declaration that Respondent is in compliance with the treatment of conditions by each January 10, April 10, July 10, and October 10 covered by this discipline. Respondent understands that the declarations and reports may be shared with the Office of the Chief Trial Counsel and the State Bar Court.**
10. **Respondent understands that treatment conditions associated with other issues or entities, such as a criminal probation, may not satisfy treatment conditions required by this section. The Office of Probation shall maintain sole discretion, in consultation with Evaluator, to determine whether or not such treatment conditions satisfy treatment conditions required by this section.**
11. **If Respondent is undergoing further treatment, within ten (10) days of any change in treatment condition, Respondent is to provide written notice to the Office of Probation specifically setting forth the changes. With that written notice, Respondent is to provide an original, signed declaration from the Evaluator acknowledging receipt of the written notice and agreement with its accuracy.**
12. **If Respondent is undergoing further treatment and treatment providers are added or changed, Respondent must notify the Office of Probation of the name, address, and telephone number of all such treatment providers within ten (10) days of the retaining of each one. Within thirty (30) days of retaining each such treatment provider, Respondent must provide to the Office of Probation an original signed declaration from the treatment provider stating that it received a complete copy of this stipulation. Also within thirty (30) days of retaining each such treatment provider, Respondent must provide to the Office of Probation an executed waiver of confidentiality as well as an original, signed declaration from the treatment providers acknowledging receipt of the waiver.**
13. **Respondent has been informed of the existence and nature of the State Bar's Lawyer Assistance Program and of the State Bar Court's Alternative Discipline Program, and Respondent has specifically declined to seek entry into either.**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

**IN THE MATTER OF:** SAMUEL WILLIAM BATH, Bar #217118

**CASE NUMBER(S):** 09-C-12013-RAP

**A. PARTIES ARE BOUND BY THE STIPULATED FACTS, CONCLUSIONS OF LAW AND DISPOSITION.**

The parties intend to be and are hereby bound by the stipulated facts, conclusions of law, and disposition contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law and/or stipulated disposition set forth herein are rejected or changed in any manner whatsoever by the Hearing Department or the Review Department of the State Bar Court, or by the California Supreme Court.

**B. 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 finality of his convictions and consents to the State Bar Court's acceptance of this Stipulation as to facts, conclusions of law and discipline in all respects as if the convictions 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 convictions 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 California 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 convictions underlying any recommendation of and/or actual imposition of discipline by the State Bar Court or the California Supreme Court.



### C. FACTS AND CONCLUSIONS OF LAW.

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*.

#### Facts:

1. Samuel William Bath ("Respondent") was admitted to practice law in California on December 4, 2001, was practicing law at all relevant times involved in this matter and continues to practice law up to the current time.

2. In August 2008, Respondent, his wife ("Mrs. Bath") and a tenant all lived together in a three-story condominium in Irvine, California. Also, at that time, Respondent and his wife had been in a relationship for about six years and married for the last two years.

3. Prior to August 1, 2008, Respondent told Mrs. Bath that he planned to go to Riverside to meet with two of his friends from college who were in town to attend the wedding of an unrelated third party. Respondent also told Mrs. Bath that he planned to stay overnight in Riverside because he anticipated that he would be drinking into the early morning hours and did not want to drive home when possibly intoxicated.

4. Mrs. Bath then told Respondent that she was going to invite over some girlfriends to watch movies and spend the night with her at their home during his absence. However, Mrs. Bath did not invite her friends as she stated but instead invited over her lover to spend time with her at the home in Respondent's absence.

5. On August 1, 2008, at approximately 6:00 p.m., Respondent drove directly from his office in Laguna Niguel to Riverside and met with his friends as previously planned. However, despite his initial plans, Respondent, at around 2:00 a.m., decided to return home. It was approximately 3:00 a.m. when Respondent arrived at his residence. There is no evidence in this matter that Respondent was intoxicated when he arrived at his residence.

6. According to Respondent when he entered the home he did not find his wife and her friends watching movies or asleep throughout the house, but instead the first floor of the house was empty. Then, Respondent says he proceeded to the second floor which was also empty. At this point, Respondent took hold of a loaded 9mm handgun that was there in a wall cabinet. Respondent then proceeded to the third floor where the bedrooms were located.

7. Once on the third floor, Respondent walks up to his bedroom, enters and finds Mrs. Bath naked with her partially undressed lover in bed. Over the next 3-5 minutes Respondent holds his gun on his wife's lover while he interrogates him and Mrs. Bath about what was going on. During this intense interrogation, Respondent slides the gun mechanism back ejecting a live round and tosses it at his wife's lover. Also, during this interrogation Mrs. Bath tries to persuade Respondent to let her lover leave the home unharmed and twice tries to take the handgun away from Respondent resulting in Respondent pushing her to the ground before she ceases her efforts.

8. Respondent then calls out to his tenant for assistance. Eventually, this tenant, who is a United States Air Marshall, comes out of his room with his duty weapon drawn because in hearing all of the yelling he believed that there was a threat in the home. However, when the tenant sees what is going on he recognizes that the man who Respondent is pointing a gun at is the same man who has been in the home all night with Mrs. Bath. The tenant understands that this man is the wife's lover and not a threat. Then, the tenant persuades Respondent to allow the lover to leave.

9. Respondent then asks the lover to leave, but when the lover reaches the stairs that lead down and out of the house he says that he forgot his keys and phone on the night-stand. Respondent, however, does not allow the lover to go back in to retrieve these items and tells him to get out, insisting that the lover leave the home immediately.

10. Ultimately, the lover leaves the home and persuades a neighbor to allow him to call 911 reporting that he feared for Mrs. Bath's safety. Back in the home, the tenant was able to persuade Respondent to give him his handgun and the tenant secured it until the arrival of the police about 10-15 minutes later. Respondent and Mrs. Bath continued to argue as Respondent is gathered his things to leave the home.

11. After the police take statements from Respondent, Mrs. Bath, the tenant and the wife's lover, Respondent is arrested.

12. On August 8, 2008, the Orange County District Attorney filed a complaint against Respondent in Orange County Superior Court charging him with two felony counts of *Penal Code* section 245(a)(2) [Assault with a Firearm] with enhancement of *Penal Code* section 12022.5(a) [Personal use of firearm in commission or attempted commission of felony] and two misdemeanor counts of *Penal Code*, section 417(a)(2)(B) [Brandishing].

13. On August 15, 2008, Respondent and his counsel appeared in Court for arraignment. Respondent pled not guilty to all counts. After a Preliminary Hearing on December 19, 2008, Respondent is held to answer on one felony count of *Penal Code* section 245(a)(2) [the other count being dismissed] and two misdemeanor counts of *Penal Code*, section 417(a)(2)(B) and a jury trial is set for February 23, 2009.

14. On January 30, 2009, Respondent changes his plea and pleads guilty to all remaining counts. The Court, on its own motion, reduced the felony count of *Penal Code* section 245(a)(2) to a misdemeanor at the time of entering the plea pursuant to *Penal Code* section 17(b). The factual basis for the pleas was that on August 2, 2008, Respondent willfully and unlawfully committed an assault with a firearm upon his wife's lover and brandished a firearm to Mrs. Bath and his wife's lover.

15. Ultimately Respondent is sentenced to 180 days. Respondent served 35 days in jail and the remaining 135 days were served by home confinement, which completed on October 22, 2009. In addition, at the time of sentencing Respondent was ordered, among other things, to take and complete a ten (10) week anger management which he has since completed.

Conclusions of Law:

16. The facts and circumstances surrounding Respondent's conviction for violation of *Penal Code* section 245(a)(2) [Assault with a Firearm], a misdemeanor, involved other misconduct warranting discipline pursuant to *Business and Professions Code*, sections 6101 and 6102.

17. The facts and circumstances surrounding Respondent's conviction for violation of *Penal Code*, section 417(a)(2)(B) [Brandishing], a misdemeanor, involved moral turpitude pursuant to *Business and Professions Code*, sections 6101 and 6102.

**D. AUTHORITIES SUPPORTING DISCIPLINE.**

Applicable Standards:

In *In re Silverton*<sup>1</sup>, the California Supreme Court held that the *Standards For Attorney Sanctions For Professional Misconduct* ("Standard" or "Standards") are entitled to "great weight" and the Court will "not reject a recommendation arising from the *Standards* unless [it has] grave doubts as to the propriety of the recommended discipline." The *Standards* are not binding but "they promote the consistent and uniform application of disciplinary measures."<sup>2</sup> The "presumptively appropriate level of discipline" for any misconduct is as set forth in the standards.<sup>3</sup>

The primary purposes of disciplinary proceedings are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession.<sup>4</sup> Pursuant to the *Standards*, Respondent's misconduct warrants significant discipline.

Further, based on the discussion above, the applicable standard is *Standard 3.4*. *Standard 3.4* states that the final "...conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve either misconduct warranting discipline shall result in a sanction as prescribed under part B of these *Standards* appropriate to the nature and extent of the misconduct found to have been committed by the member." Here, *Standard 2.6* is the applicable *Standard* given the conclusion that Respondent's misconduct involved "other misconduct warranting discipline" and thus violated *Business and Professions Code*, section 6068(a).

Aggravating Circumstances:

An aggravating circumstance "...is an event or factor established clearly and convincingly by the State Bar as having surrounded a member's professional misconduct and

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<sup>1</sup> (2005) 36 Cal. 4th 81, 92.

<sup>2</sup> *Id.*

<sup>3</sup> See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.

<sup>4</sup> See *Standard 1.3*.

which demonstrates that a greater degree of sanction than set forth in these standards<sup>5</sup> for the particular act of professional misconduct found or acknowledged is needed to adequately protect the public, courts and legal profession.”<sup>6</sup> *Standard 1.2(b)* provides for a greater degree of sanction than set forth in the standards where aggravating circumstances exist. Also, in proving mitigating circumstances, the State Bar bears the burden of proof.<sup>7</sup>

In this matter, there is one aggravating circumstance. Specifically, Respondent’s misconduct involved multiple acts of misconduct (i.e., brandishing and assault).<sup>8</sup>

Mitigating Circumstances:

A mitigating circumstance “...is an event or factor established clearly and convincingly by the member subject to a disciplinary proceeding as having caused or underlain the member’s professional misconduct and which demonstrates that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged.”<sup>9</sup> *Standard 1.2(e)* provides for a lesser degree of sanction than set forth in the standards where mitigating circumstances exist. Also, in proving mitigating circumstances, the Respondent bears the burden of proof.<sup>10</sup> In this matter, the following six circumstances should be considered mitigating.

First, Respondent has no prior record of discipline, however the weight of this factor is diminished by the seriousness of his misconduct in this matter. Second, extreme emotional difficulties were suffered by the member at the time of the act of misconduct. Respondent’s criminal misconduct involved a situation where he discovered Mrs. Bath with another man in their bedroom of their own home. Respondent’s misconduct therefore took place in the context of the emotional difficulties that flowed from Mrs. Bath’s extreme betrayal which ultimately led to the demise of their marriage. Third, Respondent has demonstrated significant levels of cooperation. For instance, Respondent has voluntarily spoken with the State Bar a number of times regarding the facts, answered all questions and always made himself available to discuss the matter for as long as necessary. In addition, Respondent has provided the State Bar with many documents including getting his criminal defense lawyer to provide the State Bar with a certified copy of the transcript of the Preliminary Hearing and a CD recording of the relevant 911 call. Fourth, Respondent provided the State Bar with “good character” declarations from two attorneys who both state that they are aware of the facts and circumstances surrounding the Respondent’s criminal convictions, have known Respondent for a significant time, do not believe that Respondent would ever commit such misconduct again and would not hesitate to vouch for his good moral character and honesty. Fifth, Respondent recognized his wrongdoing, was remorseful and has taken steps to atone for the consequences of his misconduct. Sixth, in addition to his time in prison and under house arrest, Respondent has also submitted a certificate

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<sup>5</sup> *Standards for Attorney Sanctions for Professional Misconduct*. Hereinafter “Standard” or “Standards”.

<sup>6</sup> *Standard 1.2(b)*.

<sup>7</sup> *Id.*

<sup>8</sup> See *Standard 1.2(b)(ii)*.

<sup>9</sup> *Standard 1.2(e)*.

<sup>10</sup> *Id.*

showing that he completed his court-ordered ten (10) week course in anger management and is therefore some evidence of subsequent rehabilitation.

However, Respondent was not legally privileged to resort to deadly force in confronting the situation. Respondent's handling of the situation showed poor judgment. It was purely fortuitous that this incident did not result in the loss of life Mrs. Bath, her lover or Respondent. Further, Respondent's continued pointing of his gun at Mr. Windsor and his unnecessary escalation of the situation (e.g., ejecting and tossing the "live" round to Mr. Windsor) caused the risk of injury and death to significantly rise for all involved. Consequently, Respondent's actions demean the integrity of the legal profession and constitute a breach of his responsibility to society.

Respondent, in his status as a duly licensed attorney is held to higher standard of behavior in the mind of the general public. Respondent, due to the mandates of the rules and statutes that delineate the standards of professional conduct for an attorney in California is legally obligated to conform himself to this elevated standard of conduct. When an attorney resorts to lawless action, such as Respondent did when he employed deadly force in confronting his wife's lover, the public loses confidence in that attorney's commitment to the law. Consequently, this act demeans the integrity of the legal profession as a whole. The employing of deadly force during this incident constituted a breach of Respondent's duty and responsibility to society to not engage in self-help violence as a remedy. Respondent instead was required to enlist the aid of law enforcement or should have undertaken other criminal justice or civil remedies, if any, applicable to his situation. A lawyer above all, must always seek the protection of law and not simply resort to self-help.

Therefore, given the nature and scope of Respondent's misconduct, including aggravation and mitigation evidence, the appropriate level of discipline under the *Standards* is stayed or actual suspension.

#### Caselaw:

In fashioning the appropriate level of discipline, the Standards are the starting point. Nevertheless, the Court must also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the California Supreme Court and the Review Department of the State Bar Court.<sup>11</sup>

Past disciplinary cases involving attorneys convicted of assaultive crimes have generally resulted in actual suspensions of varying lengths.<sup>12</sup> First, *In re Larkin*<sup>13</sup> involved an attorney convicted of misdemeanor assault with a deadly weapon and conspiracy to commit it. Larkin conspired with a client to cause the boyfriend of his estranged wife to be assaulted. In furtherance of the conspiracy, Larkin provided the client with personal information about the boyfriend that Larkin had obtained through his contacts with county law enforcement agencies and through a subpoena duces tecum that Larkin issued under false pretences. Thereafter, the

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<sup>11</sup> *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.

<sup>12</sup> *Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 60-61.

<sup>13</sup> (1989) 48 Cal.3d 236.

client and another person struck the boyfriend on the chin with a metal flashlight, causing him to bleed. Compelling mitigating circumstances were found, including lack of prior discipline. However, the Court found that the misconduct was serious, and it adopted the State Bar's recommended discipline of three years stayed suspension, three years probation, and one year actual suspension. Second, *In re Hickey*<sup>14</sup> involved an attorney committing repeated acts of violence toward wife and others coupled with failure properly to withdraw from legal representation in another matter, no prior record, conduct arose from repeated abuse of alcohol. The attorney's discipline was three years stayed suspension, three years' probation, and 30 days actual suspension. Third, *In re Otto*<sup>15</sup> involved a felony conviction for serious assault and corporal injury on a cohabitant of the opposite sex. The attorney's discipline was two years stayed suspension, two years' probation, and six months actual suspension. Fourth, *In re Mostman*<sup>16</sup> involved a felony conviction for solicitation to commit a serious assault on a former client which was found to involve moral turpitude. The attorney's discipline was five years stayed suspension, five years probation, two years actual suspension. Finally, in *Matter of Burns* an attorney who was charged with assault with a deadly weapon received two years stayed, two years probation and other terms.

As the court can see the discipline imposed varies from stayed suspension to two years actual. However all the reported cases describe arguably more serious criminal violations than Respondent's. The similarities are in the issues such as, creating great risk of injury or death and whether or not there were multiple victims or repetitions of the criminal conduct. The State Bar contends that in Respondent's case, both of these factors are present.

Therefore, for the misconduct described herein, a stayed suspension is the level of discipline consistent with the applicable standards and caselaw.

#### **E. PENDING PROCEEDINGS.**

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to *Rules of Procedure of the State Bar of California*, rule 133(12), on November 2, 2009.

#### **F. COSTS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of November 2, 2009, the estimated prosecution costs in this matter are approximately \$1,636.00. Respondent acknowledges that this figure is an estimate only. 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.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6068.10, subdivision (c), the remaining

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<sup>14</sup> (1990) 50 Cal.3d 571.

<sup>15</sup> (1989) 48 Cal.3d 970.

<sup>16</sup> (1989) 47 Cal.3d 725.

balance of the costs is due and payable immediately and enforceable both as provided in *Business and Professions Code*, section 6140.7 and as a money judgment unless relief has been granted under rule 286 of the *Rules of Procedure of the State Bar of California*.


(Do not write above this line.)

In the Matter of <b>SAMUEL WILLIAM BATH</b>	Case number(s): <b>09-C-12013-RAP</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 Fact, Conclusions of Law and Disposition.

11/14/09  
Date

  
Respondent's Signature

Samuel William Bath  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent's Counsel Signature

\_\_\_\_\_  
Print Name

11/18/09  
Date

  
Deputy Trial Counsel's Signature

Ashod Mooradian  
Print Name



(Do not write above this line.)

In the Matter Of  
**SAMUEL WILLIAM BATH**

Case Number(s):  
**09-C-12013-RAP**

**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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- 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. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

12-1-09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court

**RICHARD A. HONN**

**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 December 1, 2009, I deposited a true copy of the following document(s):

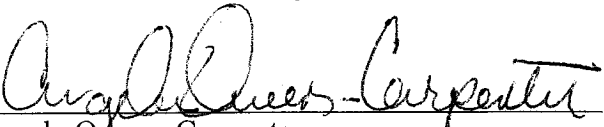
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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 Los Angeles, California, addressed as follows:  
  
SAMUEL WILLIAM BATH  
590 BRUIN DRIVE  
RIVERSIDE CA 92507
- by certified mail, No. \_\_\_\_\_, with return receipt requested, through the United States Postal Service at \_\_\_\_\_, California, addressed as follows:
- by overnight mail at \_\_\_\_\_, California, addressed as follows:
- by fax transmission, at fax number \_\_\_\_\_. No error was reported by the fax machine that I used.
- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ASHOD MOORADIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 1, 2009.

  
Angela Owens-Carpenter  
Case Administrator  
State Bar Court