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State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM



<p>Counsel For The State Bar</p> <p>Monique T. Miller Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015-2299 Tel: 213-765-1486</p> <p>Bar # 212469</p>	<p>Case Number (s) 09-C-13658 09-C-13659</p>	<p>(for Court's use)</p> <p>FILED</p> <p>NOV 22 2010 <i>hrc</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Michael Galen Gerner, Esq. 425 S Beverly Drive Suite 210 Beverly Hills Ca 90212 Tel: 310-556-1300</p> <p>Bar # 65906</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Michael L. Challgren</p> <p>Bar # 137072</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 7, 1988.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 7 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (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:
Respondent has 3 priors. See page 6
- (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. See page 6.
- (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:

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: MICHAEL L. CHALLGREN, #137072

CASE NUMBER(S): 09-C-13658 & 09-C-13659

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), is June 30, 2010.

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 conviction 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 conviction was 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 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 conviction underlying any recommendation of and/or actual imposition of discipline by the State Bar Court or the California Supreme Court.

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, or has otherwise committed acts of misconduct warranting discipline, as follows:

CASE NO. 09-C-13659

FACTS

1. On September 30, 2003, Respondent was convicted of a violation of Penal Code section 415 (disturbing the peace), an infraction, pled down from misdemeanor charges under Penal Code sections 148(a)(1) (obstruction) and 647(f) (public intoxication).

2. On August 23, 2008, an officer responded to a call of a possible drunk driver. A second officer on routine patrol also heard the call and soon thereafter noticed a vehicle traveling with an inoperable headlight. The vehicle drifted across several lanes causing the officer to initiate a traffic stop.
3. Respondent was identified as the driver. The officer observed Respondent display objective symptoms of being under the influence of alcohol, including an odor of alcohol emanating from Respondent's breath and bloodshot and watery eyes.
4. When the first officer arrived to assist, he too observed the same symptoms of intoxication. Respondent admitted he had been drinking beers earlier. Respondent was very lethargic and failed several field sobriety tests. He was arrested for driving under the influence of alcohol. At the Gardena Police Department, he submitted to a breath test. Respondent's blood/alcohol content tested at .20%.
5. On November 21, 2008, a misdemeanor complaint was filed against Respondent in Los Angeles Superior Court case no. 8SY10070, entitled *People v. Challgren*, consisting of three counts: Vehicle Code sections 23152(a) (driving under the influence of alcohol or drugs), 23152(b) (driving while having a 0.08% or higher blood alcohol) and 14601.1(a) (driving when privilege suspended or revoked).
6. On November 26, 2008, Respondent pled nolo contendere and was convicted on count two, Vehicle Code section 23152(b) (driving while having a 0.08% or higher blood alcohol), a misdemeanor. The remaining counts were dismissed.
7. On November 26, 2008, Respondent admitted to a prior misdemeanor conviction for violation of Vehicle Code section 23103(a) (reckless driving – alcohol related, aka a “wet reckless”),
8. On the same day, Respondent was sentenced to three (3) years summary probation on conditions, including standard alcohol probation conditions, and ordered not to drive a vehicle without a valid California Driver's License in his possession.

CONCLUSIONS OF LAW

9. The facts and circumstances surrounding Respondent's misdemeanor conviction involving Vehicle Code section 23152(b) (driving while having a 0.08% or higher blood alcohol), a misdemeanor, does not involve moral turpitude, but does constitute other misconduct warranting discipline pursuant to Business and Professions Code section 6101 and 6102.

CASE NO. 09-C-13658

FACTS

10. On December 5, 2008, nine days after being ordered by the court in his DUI matter that he not drive without a valid California Driver's License in his possession, Respondent was stopped by a police officer for failing to stop at an intersection stop sign and talking on a cell phone while driving. Respondent was cited for a violation of Vehicle Code section 14601.2(a) (knowingly driving when privilege suspended or revoked for a DUI).

11. On May 22, 2009, Respondent was convicted of a violation of Vehicle Code section 14601.2(a) (knowingly driving when privilege suspended or revoked for a DUI), a misdemeanor.

CONCLUSIONS OF LAW

12. The facts and circumstances surrounding Respondent's misdemeanor conviction involving Vehicle Code section 14601.2(a), (knowingly driving when privilege suspended or revoked for a DUI), a misdemeanor, does not involve moral turpitude, but does constitute other misconduct warranting discipline pursuant to Business and Professions Code section 6101 and 6102.
13. By knowingly driving without a valid California Driver's License on December 5, 2008, after specifically being ordered by the court in his drunk driving matter nine days earlier (November 26, 2008) not to do so, Respondent willfully violated Business and Professions code section 6103.

AGGRAVATING CIRCUMSTANCES.

Prior Discipline.

Case No. 00-O-12191: Effective October 21, 2001.

Violations: Rules of Professional Conduct, rule 4-100(a), two counts, (failing to deposit client funds) and (commingling and/or depositing personal funds in a client trust account) and Vehicle Code section 23103 (a) (reckless driving) in violation of Business and Professions Code section 6068(a) (failing to comply with laws).

Discipline: One (1) year Private Reproval with conditions. State Bar Ethics School within one year.

Case No. 04-O-14361 (S142428): Effective July 13, 2006.

Violations: Rules of Professional Conduct, rule 3-110(a) (recklessly or repeatedly failing to perform legal services with competence) and Business and Professions Code section 6068(m), two counts, (failing to keep a client reasonably informed of significant developments) and (failing to respond to a client's reasonable status inquiries).

Discipline: Three (3) years probation with conditions; six (6) months suspension stayed. MPRE within one (1) year and costs.

Case No. 06-O-14155 et al. (S162993): Effective July 26, 2008 to October 24, 2008.

Violations: Business and Professions Code section 6106 (moral turpitude – issuing checks against insufficient funds) and 6068(i) (failing to cooperate in a disciplinary investigation).

Discipline: One (1) year suspension stayed, three (3) years probation with conditions. Ninety (90) day actual suspension. Comply with rule 9.20, and costs.

Indifference:

Respondent knowingly drove with a suspended driver's license, nine days after being ordered by the court not to do so, as a result of a DUI.

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In the Matter of MICHAEL L. CHALLGREN	Case number(s): 09-C-13658; 09-C-13659
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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.

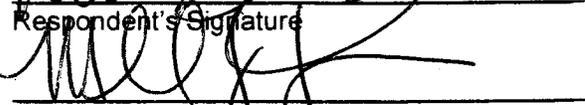
If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

7/9/10
Date


Respondent's Signature

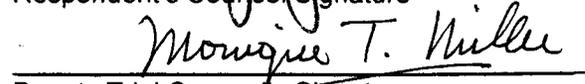
MICHAEL CHALLGREN
Print Name

7-9-10
Date


Respondent's Counsel Signature

MICHAEL G. GERNER
Print Name

July 12, 2010
Date


Deputy Trial Counsel's Signature

MONIQUE T. MILLER
Print Name

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In the Matter Of MICHAEL L. CHALLGREN	Case Number(s): 09-C-13658; 09-C-13659
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ORDER

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

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

11/22/10
Date



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 November 22, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

**MICHAEL GALEN GERNER
MICHAEL G GERNER, A PROF LAW CORP
425 S BEVERLY DR STE 210
BEVERLY HILLS, CA 90212**

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

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 22, 2010.



Tammy Cleaver
Case Administrator
State Bar Court