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| State Bar Court of California Hearing Department Los Angeles | | |
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| Counsel For The State Bar Ashod Mooradian Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004 | Case Number (s) 09-H-14476-RAP | (for Court's use) FILED AUG 05 2010 <i>KAC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES |
| Bar # 194283 In Pro Per Respondent Michael L. DeFrank Law Offices of Micheal DeFrank, APLC 35-325 Date Palm Dr., Suite 123 Cathedral City, CA 92234 | PUBLIC MATTER | |
| Bar # 187888 In the Matter Of: MICHAEL L. DeFRANK | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED | |
| Bar # 187888 A Member of the State Bar of California (Respondent) | | |

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 **May 27, 1997**.
- (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 **11** 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."



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- (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 **07-C-14860**
 - (b) Date prior discipline effective **December 10, 2008**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **See Stipulation Attachment, page 9, section "C", paragraph 1.**
 - (d) Degree of prior discipline **Public Reproval**
 - (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

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.
- (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. **See Stipulation Attachment, page 9, section "C", paragraph 2.**
- (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. **See Stipulation Attachment, page 9, section "C", paragraph 3.**
- (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 **one (1) year**.

- 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 **two (2) years**, 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.

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- (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: **Respondent attended Ethics School on October 8, 2009, and passed the test given at the end of the session.**
- (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: **Respondent took and passed the exam on March 10, 2010 in compliance with a disciplinary order. Therefore, the protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. See Matter of Respondent G (Review Dept.1992), 2 Cal. State Bar Ct. Rptr. 181.**
- (2) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL L. DeFRANK

CASE NUMBER(S): 09-H-14476-RAP

A. WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY:

The parties waive any variance between the Notice of Disciplinary Charges (“NDC”) filed on February 11, 2010, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

B. FACTS AND CONCLUSIONS OF LAW.

MICHAEL L. DeFRANK (“Respondent”) admits that the following facts are true and that he is culpable of violations of the specified *Rules of Professional Conduct*.

Facts Supporting Culpability:

1. On November 12, 2008, Respondent entered into a Stipulation re Facts, Conclusions of Law and Disposition (“Stipulation”) with the State Bar of California in Case No. 07-C-14860.

2. On November 19, 2008, the Stipulation was approved, as modified by the State Bar Court.

3. On November 19, 2008, the Hearing Department of the State Bar Court filed an Order approving the Stipulation and imposing on Respondent a Public Reproval with conditions (“Order”).

4. On November 19, 2008, the State Bar Court properly served the Order on Respondent at his official State Bar Membership Records address. Respondent received the Order.

5. The Order and Public Reproval became effective on December 10, 2008.

Attachment

6. Pursuant to the Order, Respondent was required to comply with certain terms and conditions attached to the Public Reprimand for the period of three (3) years from the effective date of the Order. The relevant terms and conditions attached to the Public Reprimand are quoted herein, as follows:

E. Conditions Attached to Reprimand:

....

- (5) Respondent must submit written quarterly reports to the Office of Probation each January 10, April 10, July 10, and October 10 of the condition period attached to the reprimand. 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 reprimand 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.

...

- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.

...

(11) Incorporated Substance Abuse Conditions.

...

- (b) Respondent must attend at least two meetings per month of: Alcoholics Anonymous
As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.
- (c) Respondent must select a license (sic) medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or

before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.

7. On or about December 4, 2008, a probation deputy with the Office of Probation of the State Bar of California ("Office of Probation") sent a letter to Respondent enclosing a copy of the conditions attached to the Public Repeval and outlining those conditions. Respondent received the probation deputy's letter.

8. Thereafter, Respondent did not comply or did not timely comply with the conditions of his Public Repeval in the following particulars:

- Respondent did not timely file his quarterly report due April 10, 2009, with the Office of Probation;
- Respondent did not timely select a licensed medical laboratory approved by the Office of Probation;
- Respondent did not timely cause a medical laboratory to provide the Office of Probation screening reports containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously on or before the 10th day of each month of the condition or reprovail period;
- Respondent did not comply on a timely basis, in conjunction with the submission of his quarterly report due April 10, 2009, to the Office of Probation, by submitting a declaration that he had complied with his criminal probation conditions in the underlying criminal matter;
- Respondent did not comply with substance abuse conditions reporting requirements, in that he did not timely provide to the Office of Probation satisfactory proof of attendance during each month on or before the 10th day of the following month, during the condition or reprovail period of attendance of at least two meetings per month of Alcoholics Anonymous during the reprovail period

Conclusion of Law:

1. By not timely filing his quarterly report due April 10, 2009, with the Office of Probation; by not timely selecting a licensed medical laboratory approved by the Office of Probation; by not timely causing the medical laboratory to provide the Office of Probation screening reports containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously on or before the 10th day of each month of the condition or reprovail period; by not, in conjunction with the submission of his quarterly report due April 10, 2009, to the Office of Probation, submitting a declaration that he had complied with his criminal probation conditions in the underlying criminal matter; and by not providing to the Office of Probation satisfactory proof of attendance during each month, on or before the 10th day of the following month, during the condition or reprovail period, of attendance of at least two meetings per month of Alcoholics Anonymous during the reprovail period, Respondent wilfully failed to comply with all conditions attached to his Public Repeval in violation of rule 1-110 of the Rules of Professional Conduct.

Attachment

C. FACTS SUPPORTING MITIGATION.

1. On November 12, 2008, in State Bar case number 07-C-14860, Respondent stipulated that the facts and circumstances surrounding his criminal conviction for California Vehicle Code section 23152(b) [Driving with a blood alcohol level of .08% or more] did not involve moral turpitude, but did involve other misconduct warranting discipline.

2. Respondent cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline.

3. Respondent's good character has been attested to by one attorney who has practiced law for fifteen years and two other non-attorneys. All three references state that they are aware of the full extent of Respondent's misconduct and that they have known him for at least five years.

D. AUTHORITIES SUPPORTING DISCIPLINE.

Applicable Standards:

Standard 1.7(a) provides that if a respondent has a prior record of discipline, the discipline in the present proceedings shall be greater than that imposed in the prior proceeding "...unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

Standard 2.9 provides that culpability "...of a member of a wilful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension."

Aggravating & Mitigating Circumstances:

Standard 1.2(b) provides for a greater degree of sanction set forth in the standards where aggravating circumstances exist. First, pursuant to Standard 1.2(b)(i), Respondent has one prior record of discipline. On November 12, 2008, in State Bar case number 07-C-14860, Respondent stipulated that the facts and circumstances surrounding his criminal conviction for California Vehicle Code section 23152(b) [Driving with a blood alcohol level of .08% or more] did not involve moral turpitude, but did involve other misconduct warranting discipline.

Standard 1.2(e) provides for a more lenient degree of sanction than set forth in the standards where mitigating circumstances exist. In this case, pursuant to Standard 1.2(e)(v), Respondent cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline. Also, pursuant to Standard 1.2(e)(vi), Respondent's good character has been attested to by one attorney who has practiced law for fifteen years and two other non-attorneys. All three references state that they are aware of the full extent of Respondent's misconduct and that they have known him for at least five years.

Caselaw:

In *Matter of Posthuma*,¹ the attorney was found culpable for his failure to comply with the conditions attached to a private reproof by failing to take and pass the California Professional Responsibility Examination by a date certain.² In *Posthuma* there was one aggravating circumstance³ (a prior record of discipline) and there were no mitigating circumstances.⁴ The Court imposed a public reproof.

E. PENDING PROCEEDINGS.

The disclosure date referred to on page two, paragraph A. (7) was July 19, 2010.

F. COSTS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of July 19, 2010, the estimated prosecution costs in this matter are approximately \$4,097.31. 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 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.

¹ (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.

² *Id.* at p. 820.

³ *Id.* at p. 820.

⁴ *Id.* at p. 821.

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| In the Matter Of MICHAEL L. DeFRANK | Case Number(s): 09-H-14476-RAP |
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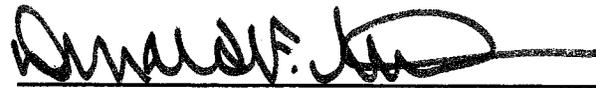
ORDER

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 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.)**

8/4/10
Date



Judge of the State Bar Court
DONALD F. MILES

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 August 5, 2010, 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:

MICHAEL E DEFRANK
LAW OFC MICHAEL L DEFRANK
35-325 DATE PALM DRIVE STE 123
CATHEDRAL CITY CA 92234

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:

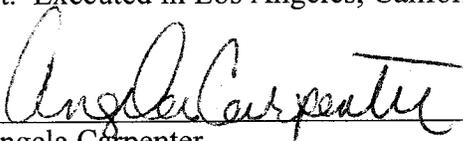
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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 August 5, 2010.



Angela Carpenter
Case Administrator
State Bar Court