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State Bar Court of California
Hearing Department
Los Angeles

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<p>Counsel For The State Bar</p> <p>Melanie J. Lawrence 1149 S. Hill St. Los Angeles, CA 90015 (213)765-1066</p> <p>Bar # 230102</p>	<p>Case Number (s) 10-O-09304</p>	<p>(for Court's use)</p> <p align="center">FILED NOV 22 2010 <i>YSC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p align="center">PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Benjamin E. Herron 12555 High Bluff Dr., Ste. 270 San Diego, CA 92130</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>Bar # 249172</p> <p>In the Matter Of: Benjamin E. Herron 12555 High Bluff Dr., Ste. 270 San Diego, CA 92130</p> <p>Bar # 249172</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 June 1, 2007.
- (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."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - ☐ case ineligible for costs (private reproof)
 - ☒ costs to be paid in equal amounts for the following membership years: two billing cycles following the effective date of the Order.
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs entirely waived
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See Attachment.
- (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. See Attachment.
- (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:

D. Discipline:

- (1) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of one year.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover

less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproof.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☒ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproof.

☒ No MPRE recommended. Reason: The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. See In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181.

- (11) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

During the effective period of this reproof, Respondent must continually participate and comply with all provisions and conditions of either his Participation Plan During Evaluation or his Participation Agreement/Plan with the Lawyer Assistance Program ("LAP"), whichever is in effect. Withdrawal or termination from the LAP, whether voluntary or involuntary, is a violation of this condition.

Within thirty (30) days of the effective date of this reproof, Respondent shall provide the Office of Probation with a copy of an appropriate written waiver authorizing the LAP to provide the Office of Probation with information regarding the terms and conditions of his effective participation plan, and any

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subsequent modifications as they may occur during the effective period of this reprobation. Respondent must report any revocation of the written waiver for release of LAP information is a violation of this condition.

Respondent shall report any incident of non-compliance with the terms and conditions of his effective LAP participation plan to the Office of Probation within five (5) days of its occurrence.

Respondent shall report his compliance and non-compliance with the terms and conditions of his effective LAP participation plan to the satisfaction of the Office of Probation in each written report to the Office of Probation required by this reprobation.

Respondent shall authorize the LAP to provide written reports regarding his compliance/non-compliance with the terms and conditions of his effective LAP participation plan to the Office of Probation in a manner and on a schedule to be determined by the LAP and Office of Probation.

All incidents of participation with the LAP shall be at Respondent's sole expense.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Benjamin E. Herron

CASE NUMBER(S): ET AL. 10-O-09304

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. On November 20, 2008, an on duty law enforcement officer noticed an eastbound vehicle accelerating in speed while traveling on San Diego Mission Road in San Diego, California. While he followed, the officer noticed the vehicle drift across the lane line and that its left tail lamp was not functioning. The officer performed a traffic stop.
2. The officer noticed that the driver – later identified as Respondent – display objective symptoms of being under the influence of alcohol. After being questioned, Respondent stated that he was going home after drinking at a local bar.
3. Based on Respondent's performance on field sobriety tests, the officer arrested Respondent for operating a motor vehicle while under the influence of alcohol. Respondent submitted a blood specimen that showed his blood/alcohol content as .18%.
4. On December 17, 2008, a complaint was filed in San Diego Superior Court, case no. M066465, entitled *The People of the State of California v. Benjamin Emil Herron*, consisting of two misdemeanor offenses: Vehicle Code sections 23152(a) (driving a vehicle while under the influence of alcohol) count one, and 23152(b) (driving while having 0.08 percent or more blood alcohol) count two. The complaint further alleged under both counts that Respondent had incurred a previous conviction for violating Vehicle Code section 23103(a) (alcohol related reckless driving) on September 21, 2005.
5. On August 7, 2009, Respondent pled guilty to violating count one, Vehicle Code section 23152(a) (driving a vehicle while under the influence of alcohol). Respondent also admitted to the prior conviction. Upon entry of the plea, count two was dismissed. Sentencing was suspended and Respondent was placed on summary probation for five (5) years on conditions that included compliance with standard alcohol conditions, enrollment and completion of a multiple DUI conviction program, and attendance at a meeting of MADD.
6. Based on Respondent's conviction, the State Bar and Respondent entered into a Stipulation as to Facts and Agreement in Lieu of Discipline Pursuant to Business and Professions Code Sections 6068(l) and 6092.5(i) (hereinafter the "ALD") with the State Bar of California. The ALD became effective on or about April 27, 2010.

7. In the ALD, Respondent agreed to be subject to the ALD for a period of one year and to perform certain conditions including, among others, the following:

- 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 during which the ALD is in effect. Under penalty of perjury, Respondent must whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of the ALD during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, Respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) calendar days before the last day of the period during which the ALD is in effect and no later than the last day of that period.
- During the effective period of this ALD, Respondent must continually participate and comply with all provisions and conditions of either his Participation Plan During Evaluation or his Participation Agreement/Plan with the Lawyer Assistance Program ("LAP"), whichever is in effect. Withdrawal or termination from the LAP, whether voluntary or involuntary, is a violation of this condition.
- Within thirty (30) days of the effective date of this ALD, Respondent shall provide the Office of Probation with a copy of an appropriate written waiver authorizing the LAP to provide the Office of Probation with information regarding the terms and conditions of his effective participation plan, and any subsequent modifications as they may occur during the effective period of this ALD. Respondent must report any revocation of the written waiver for release of LAP information is a violation of this condition.
- Respondent shall comply with all conditions of probation imposed upon him in the underlying criminal matter.

8. Respondent failed to file the quarterly report due July 10, 2010, with the Office of Probation.

9. Respondent failed to provide the Office of Probation with a copy of an appropriate written waiver authorizing the LAP to provide the Office of Probation with information regarding the terms and conditions of his effective participation plan, and any subsequent modifications as they may occur during the effective period of this ALD.

10. Respondent has failed to continually participate and comply with all provisions and conditions of either his Participation Plan During Evaluation or his Participation Agreement/Plan with LAP.

11. Respondent failed to timely comply with certain conditions of his criminal probation.

CONCLUSIONS OF LAW:

The facts and circumstances surrounding Respondent's misdemeanor conviction for violation of Vehicle Code §23152(a) involved other misconduct warranting discipline.

By failing to comply with the conditions of the Agreement in Lieu of Discipline, Respondent willfully violated California Business and Professions Code section 6068(l).

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.6(a) states that where two or more acts of professional misconduct are charged and different sanctions are prescribed by the standards for the acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

Standard 1.6(b)(ii) states that the appropriate sanction shall be imposed unless mitigating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those mitigating circumstances, by themselves and in balance with any aggravating circumstances found, demonstrates that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a lesser degree of sanction is imposed. In that case, a lesser degree of sanction than the appropriate sanction shall be imposed or is recommended.

Standard 2.6(a) provides for suspension or disbarment for violations of B&PC § 6068, depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

Standard 3.4 states that final conviction of a crime involving other misconduct warranting discipline shall result in a sanction as prescribed under part B of the standards appropriate to the nature and extent of the misconduct found to have been committed.

MITIGATING CIRCUMSTANCES.

The mitigating circumstances acknowledged herein demonstrate that the purposes of imposing sanctions will be properly fulfilled if a lesser degree of sanction is imposed. Those circumstances are:

Respondent fully cooperated with the State Bar very early in the proceedings to resolve this matter. (Standard 1.2(e)(v).)

Respondent realized, without prompting from the State Bar, that he was out of compliance with his ALD conditions and promptly contacted the State Bar to determine how to bring himself into compliance. At that time he also self-reported that he had not timely complied with the terms of his criminal probation and had appeared in court and received extensions of time to comply. (Standard 1.2(e)(vii).)

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was November 8, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

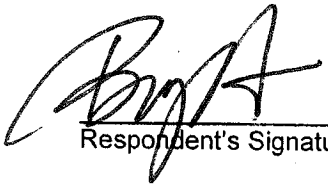
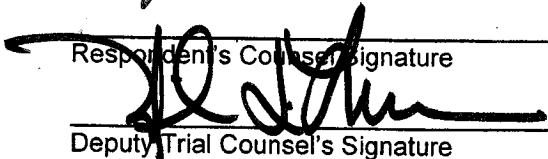
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 8, 2010, the prosecution costs in this matter are \$1,983. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of Benjamin E. Herron	Case number(s): 10-O-09304
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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.

<u>11/8/10</u> Date	 Respondent's Signature	<u>Benjamin Emil Herron</u> Print Name
<u>11/15/10</u> Date	 Deputy Trial Counsel's Signature	<u>Melanie J. Lawrence</u> Print Name

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In the Matter Of Benjamin E. Herron	Case Number(s): 10-O-09304
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

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, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL

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:

**BENJAMIN E. HERRON
WILSON GETTY LLP
12555 HIGH BLUFF DR STE 270
SAN DIEGO, CA 92130**

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

MELANIE LAWRENCE, 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