

**State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION**

Counsel For The State Bar

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Bar # 182660

Case Number(s):
11-C-13801
11-C-13277

PUBLIC MATTER

For Court use only

FILED *[Signature]*

OCT 05 2011

STATE BAR COURT CLERK'S OFFICE
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Counsel For Respondent

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Bar # 132699

Submitted to: **Settlement Judge**

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

ACTUAL SUSPENSION

 PREVIOUS STIPULATION REJECTED

In the Matter of:
Matthew Mellen

Bar # 233350

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 December 1, 2004.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, not including the order.



(Do not write above this line.)

- (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):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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.
- (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.

(Effective January 1, 2011)

(Do not write above this line.)

- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(Effective January 1, 2011)

Actual Suspension

- (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) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one 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:
- (b) The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent must be placed on probation for a period of one year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of sixty days.
- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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 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.

- (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 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.
- (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 probation conditions.
- (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) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions 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 during the period of actual suspension or within one year, whichever period is longer. **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 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Matthew Mellen Bar No. 233350

CASE NUMBER(S): 11-C-13801; 11-C-13277

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.

Statement of Facts: Case No. 11-C-13801 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On September 13, 2006, respondent was arrested for driving under the influence.
3. On October 10, 2006, respondent was charged with violations of Vehicle Code § 23152 (a) and (b) (driving under the influence); 16028(C) (failure to provide proof of financial responsibility) all misdemeanors.
4. On October 19, 2006, respondent appeared at his arraignment, and enter a *nolo contendere* plea to count 2, a violation of Vehicle Code § 23152(b) of the criminal complaint, the remaining counts were dismissed.
5. Respondent was sentenced to: three years probation; two days county jail; sheriff's work program; ordered to pay a fine of \$1,381.00; first offender program; a license restriction of 90 days; may not drive with any measurable amount of alcohol in system during the probation period.
6. On December 22, 2006, respondent's probation terms were modified with respect to the FOP program.
7. On July 14, 2011, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: for a hearing and decision recommending the discipline to be imposed in the event that the hearing department finds that the facts and circumstances surrounding the misdemeanor violation of vehicle code §23152(b) involved moral turpitude or other misconduct warranting discipline.

Conclusions of Law: Case No. 11-C-13801 (Conviction Proceedings)

8. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline, respondent's violation of Vehicle Code §23152(b), demonstrates a violation of Business and Professions Code §6068(a).

Statement of Facts: Case No. 11-C-13277 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

9. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

10. On July 12, 2010, respondent and Ms. Bell, (now respondent's wife) were drinking at home, when they ran out of beer. Respondent and Ms. Bell decided to go out to obtain more alcohol and some food. On the way home, respondent ran the vehicle into the median.

11. The vehicle was not drivable after the collision. Respondent and Ms. Bell left the scene of the collision.

12. Officer Beachdorff responded to the collision site, upon his arrival he witnessed the vehicle in the median and no driver or passenger in the vehicle. A witness, Mr. Martin, stated that he saw a white male, in his 30's exit the driver's side of the vehicle and a white woman also in her 30's exit the passenger side of the vehicle. Mr. Martin saw both individuals head eastbound on foot.

13. Officer Beachdorff headed in the same direction and located respondent and Ms. Bell standing in front of a gated apartment community. Officer Beachdorff approached respondent and Ms. Bell and inquired where they were coming from. At that point respondent admitted to Officer Beachdorff that the jeep was his and that he had been driving and that he hit the median because he did not see it. Respondent admitted that he was drunk. Respondent stated that he had 3 to 4 beers.

14. Officer Beachdorff took respondent back to the scene of the collision and advised him that he was not under arrest. Officer Beachdorff was trying to ascertain how the one vehicle collision had occurred. Respondent informed Officer Beachdorff that he was not wearing his corrective lenses and thus did not see the median.

15. Officer Beachdorff noticed the strong odor of alcohol and administered field sobriety tests and obtained two breath samples from respondent. Respondent's BAC on both samples came back at .12. Respondent was arrested for driving under the influence.

16. On July 27, 2010, respondent was charged with violations of Vehicle Code § 23152(a), 23152(b); and two sentence enhancements for the prior conviction of (9/13/06). Respondent chose to go to trial on the matter.

17. At trial respondent, proffered a defense that he was not behind the wheel of the vehicle, rather it was Ms. Bell who was behind the wheel. Ms. Bell took the stand and stated as much.

18. On April 29, 2011, the jury found respondent guilty of violations of Vehicle Code § 23152(a) and (b), with admission of the prior conviction.

19. On May 13, 2011, respondent was sentenced as follows: 4 year probation term; 90 days county jail; no driving with any measurable amount of alcohol; attend SB 38 program within 72 hours from date of release from custody.

20. On August 3, 2011, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: for a hearing and decision recommending the discipline to be imposed in the event that the hearing department finds that the facts and circumstances surrounding the misdemeanor violation of vehicle code §23152(a) and (b) involved moral turpitude or other misconduct warranting discipline.

Conclusions of Law: Case No. 11-C-13277 (Conviction Proceedings)

21. The facts and circumstances involved in the driving under the influence charges did not involve moral turpitude but did involve other misconduct warranting discipline, respondent's violation of Vehicle Code §23152(a) and (b), demonstrates a violation of Business and Professions Code §6068(a).

22. The facts and circumstances involved in proffering a defense, by suggesting that it was Ms. Bell who was behind the wheel in the DUI trial, respondent violated Business and Professions Code §6106 by acting in a manner that was grossly negligent.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was September 28, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.3 states in pertinent part “culpability of a member of an act of moral turpitude, fraud, intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

Standard 2.6 states in pertinent part “culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

“Moral turpitude determinations are a matter of law.” (*In re Higbie* (1972) 6 Cal 3d 562, 569.) Moral turpitude is not a concept that fits a precise definition (*Chadwick v. State Bar* (1989) 49 Cal. 3d 103, 110), but has been consistently described as an “act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*In re Craig* (1938) 12 Cal. 2d 93, 97) The Court has characterized the moral turpitude prohibition as a flexible “commonsense” standard (*In re Mostman* (1989) 47 Cal. 3d 725, 738) with its purpose not the punishment of attorneys, but the protection of the public and legal community against unsuitable practitioners.

The Supreme Court has held that convictions for driving under the influence do not per se establish moral turpitude, however, such convictions can constitute “other misconduct warranting discipline”. *In re Anna Lou Kelley*, (1990) 52 Cal 3d. 487, 494. The court in Kelley reasoned that when the circumstances surrounding convictions for driving under the influence (DUI) indicate a substance abuse problem which affects the member’s private life, the court can not merely wait until the effects of the substance abuse problem permeate into the member’s practice of law. *Id.* at pg. 495. The court iterated that its task in disciplinary cases is preventative, protective and remedial, not punitive, as such it has a duty to impose discipline in order to protect the public from potential or actual harm. Furthermore, the court stated that it could impose discipline on a member without having to prove the existence of an adverse effect on the member’s practice. *Id.* at pg. 496.

COSTS OF DISCIPLINARY PROCEEDINGS.


Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 28, 2011, the prosecution costs in this matter are \$4971.13. 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.

(Do not write above this line.)

In the Matter of: Matthew Mellen, Bar No. 233350	Case number(s): 11-C-13277; 11-c-13801
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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, Conclusions of Law, and Disposition.

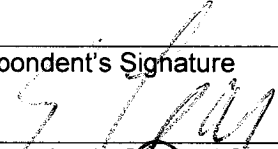
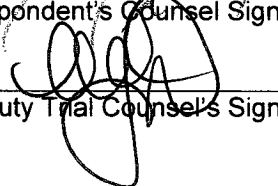
<u>Sept 29, 11</u>	<u></u>	<u>Matthew Mellen</u>
Date	Respondent's Signature	Print Name
_____	_____	<u>Edward O. Lear</u>
Date	Respondent's Counsel Signature	Print Name
_____	_____	<u>Maria J. Oropeza</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: Matthew Mellen, Bar No. 233350	Case number(s): 11-C-13277; 11-c-13801
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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, Conclusions of Law, and Disposition.

Date	Respondent's Signature	Matthew Mellen
9/29/11		Print Name
Date	Respondent's Counsel Signature	Edward O. Lear
9/30/11		Print Name
Date	Deputy Trial Counsel's Signature	Maria J. Oropeza
		Print Name

(Do not write above this line.)

In the Matter of: MATTHEW MELLEN, State Bar No. 233350	Case Number(s): 11-C-13277; 11-C-13801
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ACTUAL SUSPENSION 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.

1. On page 6 of the stipulation, the "X" in the box next to paragraph F.(3) is deleted.

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 5.58(E) & (F), 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.)**

Oct 5 2011
Date


LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On October 5, 2011, I deposited a true copy of the following document(s):

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

in a sealed envelope for collection and mailing on that date as follows:

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

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

MARIA OROPEZA , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 5, 2011.



Laretta Cramer
Case Administrator
State Bar Court