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State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105-1639 (415) 538-2357 Bar # 243691	Case Number(s): 11-C-13895-LMA [13-O-12481; 13-C-12066; 13-C-12403]	For Court use only PUBLIC MATTER FILED  JAN 06 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Richard Bernard Beauchesne Box 286 1346 The Alameda Ste 7 San Jose, CA 95126 (510) 410-0393 Bar # 53134	Submitted to: Settlement Judge AMENDED STIPULATION RE FACTS AND CONCLUSIONS OF LAW ALTERNATIVE DISCIPLINE PROGRAM <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: RICHARD BERNARD BEAUCHESNE Bar # 53134 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 13, 1972.
- (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 5.386(D)(2) 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 11 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



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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 11-H-18534
 - (b) Date prior discipline effective September 8, 2012.
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 1-110(A) – failing to comply with conditions of a reproof. See "Aggravating Circumstances" at page 9.
 - (d) Degree of prior discipline: 2-year stayed suspension
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
See "Aggravating Circumstances" at page 9.
- (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. See "Aggravating Circumstances" at page 10.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

(Do not write above this line.)

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:

struggle over the dog's leash ensued, and Respondent grabbed his former spouse's right arm and twisted it in an effort to break her grasp of the leash. Respondent then released the leash and grabbed the dog. Respondent then called his former spouse derogatory names, struck her in the right arm with an open palm and pushed her away. Respondent fled the scene with the dog.

7. San Jose police officers responded to the scene. Respondent was confrontational and uncooperative with the police. Respondent waived his hands and arms at the police officers. Fearing that Respondent may become violent, the police officers placed Respondent in handcuffs and secured him in the backseat of the patrol car.

8. Respondent was taken to Santa Clara County Jail and booked for PC 211 Strong Armed Robbery and PC 243(e)(1) Domestic Violence.

CONCLUSIONS OF LAW:

9. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

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.

Case No. 13-O-12481 (Probation Violation)

FACTS:

10. On March 8, 2012, Respondent signed a stipulation in State Bar case number 11-H-18534 in which he agreed to receive a two-year stayed suspension conditioned on a two-year probation. By signing the stipulation, Respondent promised to comply with the probation conditions set forth in the stipulation.

11. On March 27, 2012, the stipulation and order approving were filed with the State Bar Court Clerk's office.

12. On August 9, 2012, the Supreme Court of California issued Order No. S202870 in which the Court suspended Respondent from the practice of law for two years, stayed, and placed Respondent on probation for a period of two years subject to compliance "with the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on March 27, 2012[.]" Soon thereafter, Respondent received the Supreme Court order, and was aware of its contents.

13. The Supreme Court's Order No. S202870 became effective on or about September 8, 2012.

14. CONTACT OFFICE OF PROBATION

a) One of the conditions of probation required Respondent to contact the Office of Probation as follows:

“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. Under 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.”

b) Respondent violated this condition by failing to contact the Office of Probation and schedule a meeting by October 8, 2012.

15. QUARTERLY REPORTING CONDITION

a) Another one of the conditions of probation required Respondent to submit reports as follows:

“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.”

b) Respondent violated this condition by failing to timely submit the quarterly reports that were due no later than January 10, 2013 and April 10, 2013.

16. REPORT COMPLIANCE WITH UNDERLYING CRIMINAL PROBATION

a) Another probation condition required Respondent to report compliance with all conditions of probation imposed in the criminal matter underlying State Bar Case No. 08-C-13019 as follows:

“Respondent must comply with all conditions of probation imposed in the criminal matter underlying State Bar case no. 08-C-13019, and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

b) Respondent violated this condition by failing to report compliance with all conditions of probation imposed in the criminal matter underlying State Bar case no. 08-C-13019 in his quarterly reports that were due no later than January 10, 2013 and April 10, 2013.

CONCLUSIONS OF LAW:

17. By failing to timely submit quarterly reports that were due no later than January 10, 2013 and April 10, 2013, by failing to timely contact the Office of Probation to schedule a meeting within 30 days from the effective date of discipline, and by failing to report compliance with all conditions of probation imposed in the criminal matter underlying State Bar case no. 08-C-13019 in his quarterly reports that

were due no later than January 10, 2013 and April 10, 2013, Respondent failed to comply with all conditions attached to any disciplinary probation in wilful violation of Business and Professions Code, section 6068(k).

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

Case No. 13-C-12403 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

18. 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.

19. On June 21, 2005, the Santa Clara County District Attorney filed a criminal complaint in Santa Clara County Superior Court, case no. CC595660, charging Respondent with one count of violation of Vehicle Code section 23152(a) [Driving Under the Influence of Alcohol], a misdemeanor, and one count of violation of Vehicle Code section 23152(b) [Driving With a Blood Alcohol Level of 0.08 or More], a misdemeanor.

20. On September 15, 2005, the court entered Respondent's plea of nolo contendere to the violation of Vehicle Code section 23152(b) [Driving With a Blood Alcohol Level of 0.08 or More], a misdemeanor, and based thereon, the court found Respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count of violation of Vehicle Code section 23152(a) [Driving Under the Influence of Alcohol].

21. On September 15, 2005, the court imposed a sentence of 6 days in county jail, stayed, and placed Respondent on court probation for a period of three years. The court ordered that Respondent's driver's license be restricted for a period of 90 days, Respondent complete a First Offender Program, and Respondent pay fines and fees in the amount of \$1,650.

22. On October 17, 2013, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department 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 offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

23. On May 19, 2005, at approximately 11:44p.m., San Jose Police responded to a reported vehicle accident at 134 E. Reed Street in San Jose involving Respondent hitting a legally parked trailer, which was attached to a van, while driving.

24. At the scene of the accident, while interviewing Respondent, the responding officer observed a strong odor of alcohol emitting from Respondent, that Respondent had bloodshot and watery eyes, and an unsteady gait. Respondent admitted to the officer that he had consumed a glass of wine during a seminar at the Fairmont Hotel.

25. At the scene of the accident, Respondent performed field sobriety exercises. Respondent failed to pass the finger dexterity exercise, the leg raise exercise, and the line walk exercise.

26. At the scene of the accident, a PAS test was performed on Respondent. At approximately 11:59p.m., Respondent's blood alcohol content was measured at .131%. Respondent was then arrested for driving while under the influence of alcohol.

27. At the police station, Respondent completed a breathalyzer test. At approximately 1:03a.m., Respondent's blood alcohol content was measured at .12%, and at 1:05a.m., his blood alcohol content was measured at .12%. Respondent was taken to Santa Clara County Jail and booked for violating Vehicle Code Sections 23152(a) and (b).

CONCLUSIONS OF LAW:

28. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

Case No. 13-C-12066 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

29. 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.

30. On November 27, 2012, the Santa Clara County District Attorney filed a criminal complaint in Santa Clara County Superior Court, case no. C1245519, charging Respondent with one count of violation of Vehicle Code section 23153(a) [Driving Under the Influence of Alcohol and Drugs and Causing Injury], a misdemeanor, with an enhancement for a prior conviction for driving under the influence, and one count of violation of Vehicle Code 23153(b) [Driving Under the Influence of Alcohol With a Blood Alcohol Level of 0.08 or More and Causing Injury], a misdemeanor, with an enhancement for a prior conviction for driving under the influence.

31. On April 10, 2013, the court entered Respondent's plea of nolo contendere to the violation of Vehicle Code section 23153(b) [Driving With a Blood Alcohol Level of 0.08 or More and Causing Injury], a misdemeanor, and based thereon, the court found Respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count of violation of Vehicle Code section 23153(a) [Driving Under the Influence of Alcohol and Drugs and Causing Injury].

32. On April 10, 2013, the court sentenced Respondent to 30 days in county jail, suspended, and placed Respondent on court probation for a period of three years. The court ordered that Respondent's driver's license be suspended for a period of 3 years, Respondent complete a Multiple Offender Program, and Respondent pay fines and fees in the amount of \$2,477.

33. On October 17, 2013, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department 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 offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

34. On October 3, 2012, at approximately 8:27p.m., San Jose Police responded to a reported vehicle accident at the intersection of Silver Creek Valley and Beaumont Canyon in San Jose involving Respondent rear-ending another vehicle while driving, and causing injury to the driver of the other car.

35. At the scene of the accident, the driver of the other vehicle received treatment for minor injuries sustained during the accident, and was transported to Good Samaritan Hospital where she was treated for neck and back pain, and a minor injury to her hand.

36. At the scene of the accident, Respondent approached the responding officer and stated that he was the driver of the other vehicle, and that he had experienced a problem with his brakes, which was why he had left the scene of the accident for a few minutes. While interviewing Respondent, the responding officer observed signs of intoxication including Respondent having an unsteady gait, slurred speech, bloodshot/watery eyes, and an odor of an alcoholic beverage coming from Respondent's mouth. Respondent admitted that he had drunk at least one Margarita, which he could remember, at Mexico Lindo restaurant in Canyon Creek Plaza.

37. At the scene of the accident, Respondent performed field sobriety exercises. Respondent completed the finger dexterity exercise, was unable to complete the leg lift exercise due to prior leg surgery, and failed the line walk exercise.

38. At the scene of the accident, Respondent performed two PAS tests. At approximately 8:55p.m., Respondent's blood alcohol content was measured at .112%, and at 9:00p.m., Respondent's blood alcohol content was measured at .107%. Respondent was then arrested for driving while under the influence of alcohol and causing injury.

39. Respondent was taken to Santa Clara County Jail and booked for violating Vehicle Code Sections 23153.

CONCLUSIONS OF LAW:

40. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)): Respondent has been disciplined on two prior occasions. In case no. 08-C-13019, Respondent received a public reproof after stipulating to violating Business and Professions Code, section 6068(a) by violating Penal Code section 602(m) [trespass] in 2007. This discipline became effective September 14, 2010. In case no. 11-H-18534, Respondent was placed on two years' stayed suspension and two years' probation for failing to comply with the conditions attached to his reproof in case no. 08-C-13019. This discipline became effective September 8, 2012. These two prior disciplinary proceedings constitute an aggravating factor pursuant to Standard 1.2(b)(i).

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent violated Business and Professions Code section 6068(k), as well as multiple California Penal and Vehicle Code sections, in the four current matters. Further, Respondent engaged in multiple violations of the conditions attached to the stipulation from case no. 11-H-18534. These multiple acts of misconduct constitute an aggravating factor pursuant to Standard 1.2(b)(ii). (*See In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 529 [holding that failure to cooperate with probation monitor and failure to timely file probation reports constituted multiple acts of misconduct].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as December 2, 2013, the prosecution costs in this matter are \$12,640.10. 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: RICHARD BERNARD BEAUCHESNE	Case Number(s): 11-C-13895-LMA [13-O-12481; 13-C-12066; 13-C-12403]
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ALTERNATIVE DISCIPLINE PROGRAM ORDER

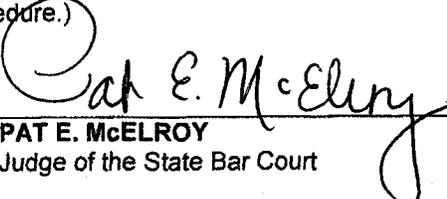
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date

Jan. 6, 2014


PAT E. McELROY
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. 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 January 6, 2014, I deposited a true copy of the following document(s):

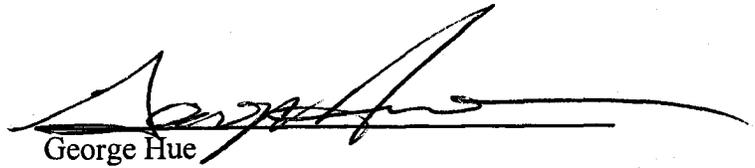
AMENDED STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

RICHARD B. BEAUCHESNE, ESQ.
HEATHER E. ABELSO, ESQ.

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 6, 2014.



George Hue
Case Administrator
State Bar Court