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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-19357-LMA; 12-C-10098	(for Court's use) <div style="text-align: center;"> PUBLIC MATTER FILED AUG 25 2014 </div> <div style="text-align: center;"> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
Counsel For Respondent Samuel C. Bellicini Fishkin & Slatter LLP 1575 Treat Blvd., Suite 215 Walnut Creek, CA 94598 (925) 944-5600 Bar # 152191	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: MARK GINALSKI Bar # 133828 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 **June 16, 1988**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **8** pages, excluding 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."



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- (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 [see Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
 - (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 intentional, 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) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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:

**No Prior Discipline at page 6.
Pro Bono Work at pages 6-7.**

FACTS:

6. On November 30, 2011, at approximately 11:37p.m., Tiburon police pulled Respondent over in Tiburon, CA after police saw Respondent driving on the shoulder of the road and unable to maintain his lane. The police officer further observed Respondent have difficulty parking his vehicle when he pulled into a public parking lot.

7. The officer noted that Respondent had red and watery eyes, slurred speech, unsteady gait, and a strong odor of alcohol emitting from his breath.

8. Respondent repeatedly misrepresented to the officer that he had drank only "two beers."

9. The officer performed field sobriety tests. Respondent failed to perform as explained and/or demonstrated the field sobriety tests including the nystagmus, standing rhomberg, finger to nose, heel to toe, leg raise, and written alphabet tests.

10. The officer performed a preliminary alcohol screening breath test to measure the alcohol content of Respondent's breath. The test results showed Respondent's blood alcohol content was .139 and .136.

11. Respondent was then arrested and transported to the Tiburon Police Department where the officer used an evidential portable alcohol system to conduct a post-arrest breath test to test Respondent's blood alcohol content. The test results showed Respondent's blood alcohol content was .14 and .15. Respondent was released to a sober adult per the "Tiburon Community Release Program."

CONCLUSIONS OF LAW:

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

Case No. 12-C-10098 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

13. 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.

14. On May 24, 2002, the Marin County District Attorney filed a criminal complaint in the Marin County Superior Court, case no. CR124574A, charging Respondent with one count of violation of Vehicle Code section 23152(a) [Driving Under the Influence]. The complaint further alleged an enhancement for Respondent willfully refusing a peace officer's request to submit to, and willfully failed to complete, the chemical tests pursuant to Vehicle Code section 23612.

15. On May 13, 2003, the court entered Respondent's plea of guilty to the count of violation of Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor. The enhancement allegation was ordered stricken. Respondent also pled guilty to having a blood alcohol content of .16.

16. On May 13, 2003, the court suspended the imposition of sentence and placed Respondent on formal probation for a period of three years. The court ordered that Respondent, among other things,

complete first-offender drinking drive program within 180 days, pay fines and fees in the amount of \$1,095.00, and that Respondent's driver's license be restricted for a period of 90 days.

17. On November 8, 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:

18. On May 4, 2002, Respondent was pulled over driving northbound on U.S. 101 by California Highway Patrol after CHP officers observed Respondent's car drifting and swerving between lanes, and driving on the shoulder. The responding CHP officer detected a distinct odor of alcohol emitting from the vehicle, and observed that Respondent's eyes were red and watery, and that his speech was slow and slurred. When asked if he had been drinking, Respondent responded "yes." The CHP officer asked Respondent to exit the vehicle, walk around the front, and meet him at the right front of the vehicle. Respondent exited the vehicle, walked to the rear of his vehicle, dragged his right foot and stumbled two steps forward. Respondent then looked at the CHP officer and admitted "I had too much to drink." The CHP officer then detected the distinct odor of alcohol emitting from Respondent's breath. While Respondent was speaking to the CHP officer, he swayed and repeatedly lost his balance.

19. The officer conducted field sobriety tests. Respondent failed to perform as explained and/or demonstrated a series of field sobriety tests, including the nystagmus, MPOA, and standing one leg raise, and written alphabet tests.

20. Respondent was arrested for violation of Vehicle Code section 23152(a), and transported to the Marin County Jail in San Rafael. Respondent was given two breath tests. On the first test, Respondent's blood alcohol content was .16. During the second test, Respondent failed to blow into the breath machine as repeatedly instructed to do on four occasions, putting his chin to his chest while the breath machine mouthpiece was in his mouth. Respondent refused to blow hard enough to measure a sufficient breath sample. Respondent then sat back in his chair and stated that he did not want to provide a second breath sample, and another officer read verbatim the chemical test refusal (Vehicle Code section 13353) from the back of the DS 367 form.

CONCLUSIONS OF LAW:

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

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Although Respondent's misconduct is serious, he is entitled to mitigation for having practiced law for approximately 14 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pro Bono Work – Respondent has demonstrated good character by engaging in pro bono civic and community service including serving as a Commissioner for the Marin County Planning and Personnel Commissions, serving on the City of Tiburon's Town Council, Planning Commission and Review

Board, serving as a board member of the Marin Valentine's Ball Foundation, and serving as a judge pro tem for the Counties of Sonoma and El Dorado. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359; *Porter v. State Bar* (1990) 52 Cal.3d 518, 529 [mitigative credit for community service].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of March 26, 2014 the prosecution costs in this matter are \$4,784.00. 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: MARK GINALSKI	Case number(s): 11-C-19357-LMA; 12-C-10098
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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>April 2, 2014</u> Date	 Respondent's Signature	<u>Mark Ginalski</u> Print Name
<u>4 April 2014</u> Date	 Respondent's Counsel Signature	<u>Samuel C. Bellicini</u> Print Name
<u>4/7/2014</u> Date	 Deputy Trial Counsel's Signature	<u>Heather E. Abelson</u> Print Name

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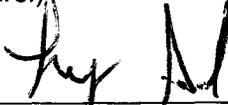
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ALTERNATIVE DISCIPLINE PROGRAM ORDER

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 Aug 25, 2014 
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 August 25, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

By personally delivering a copy of said document(s) to:

SAMUEL C. BELLICINI
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

HEATHER ABELSON
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 25, 2014.



Bernadette C.O. Molina
Case Administrator
State Bar Court