

(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar Sherrie B. McLetchie 180 Howard San Francisco CA 94105 (415) 538-2297 Bar # 85447	Case Number (s) 12-C-10777 [12-C-10778]	(for Court's use) PUBLIC MATTER FILED <i>R</i> JAN 14 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Sierra David Sterkin PO Box 1964 Placerville CA 95667 (530) 306-3724 Bar # 234356	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Sierra David Sterkin PO Box 1964 Placerville CA 95667 Bar # 234356 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 12/07/04.
- (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 9 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



(Do not write above this line.)

- (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
 - (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. See "Facts Supporting Aggravating Circumstances".
- (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. See "Facts Supporting Aggravating Circumstances".
- (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 "Facts Supporting Aggravating Circumstances".
- (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.
- (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:

Since late May 2012 respondent has cooperated with the State Bar during these proceedings, including entering into this stipulation.

6. On March 12, 2012, respondent submitted an "Answer to Transmittal of Records of Conviction of Attorney" to the State Bar's PC69 Conviction transmittal, which among other things, denied that his conviction involved circumstances involving moral turpitude or other conduct warranting discipline, denied there was a nexus between his conviction and the practice of law such that disbarment or suspension was warranted, and requested this matter be handling through ADP as the conviction was a result of his bipolar disorder which had since been stabilized through treatment received after the incident which led to his conviction, specifically, a change in his prescription and entry into a program to help persons with bipolar disorder.

7. On April 4, 2012, the Review Department of the State Bar Court issued an order placing respondent on interim suspension, effective April 27, 2012, based on the felony nature of respondent's PC69 Conviction, finding that the essential elements of Penal Code section 69 do not inherently involve moral turpitude, but may involve moral turpitude or other misconduct warranting discipline based on the facts and circumstances surrounding the conviction.

8. On April 17, 2012, respondent filed a motion to delay or stay his PC69 Conviction interim suspension pending completion of the El Dorado County Behavioral Health Court program because he represented that there was a "good chance" that his felony conviction would be either reduced to a misdemeanor or "dropped altogether".

9. On April 23, 2012, the State Bar transmitted evidence to the State Bar Court that respondent's PC69 Conviction was final.

10. On April 24, 2012, the Review Department issued an order temporarily staying respondent's interim suspension based on respondent's PC69 Conviction pending review of his motion and the State Bar's response, if any.

11. On April 25, 2012, the State Bar filed its opposition to respondent's motion to stay his PC69 Conviction interim suspension pointing out, among other things, that respondent's crime will be deemed a felony for State Bar purposes even if there is a later order suspending sentence, granting probation or reducing the conviction to a misdemeanor (Bus. & Prof. Code §6102(d)) and will still form the basis for discipline even if the charges are later dismissed pursuant to Penal Code section 1203.4 (Bus. & Prof. Code §6102(e)). The State Bar's opposition also pointed out that on March 5, 2012, respondent had suffered his PC422 Conviction arising out of conduct which occurred on January 5, 2012, which respondent had not in any way referred to in his motion to stay his interim suspension.

12. On May 1, 2012, respondent submitted "Supplemental Information for Motion to Delay or Stay Interim Suspension" stating that at the time of the events which led to his PC422 Conviction he was off his medication.

13. By order filed May 3, 2012, the Review Department of the State Bar Court issued an order finding no good cause to further stay respondent's PC69 Conviction interim suspension, lifting the stay so that respondent's interim suspension became effective May 14, 2012, and 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 respondent's felony PC69 Conviction involved moral turpitude or other misconduct warranting discipline.

14. On May 7, 2012, the State Bar transmitted to the State Bar Court a certified copy of the record of respondent's PC422 Conviction, a misdemeanor for which there was probable cause to believe involved moral turpitude. As of May 7, 2012, respondent's PC422 Conviction was final.

15. On May 10, 2012, the Hearing Department served and issued the Notice of Hearing on Conviction on respondent's PC69 Conviction (12-C-10777).

16. On May 17, 2012, respondent submitted a rule 9.20 compliance declaration.

17. On May 18, 2012, respondent filed an Answer to Notice of Hearing on Conviction in 12-C-10777 in which he requested admission into the State Bar Court's Alternative Discipline Program.

18. By order filed May 31, 2012, the Review Department referred 12-C-10778 to the Hearing Department characterizing respondent's PC422 Conviction as a "misdemeanor for which there is probable cause to believe involves moral turpitude" and ordering respondent suspended effective June 22, 2012, and referring this matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed.

19. On June 15, 2012, the Court issued and served its Notice of Assignment and Notice of Initial Status Conference in 12-C-10778.

20. On June 20, 2012, respondent filed his Answer to Notice of Hearing on Conviction in 12-C-10778 in which he requested admission into the State Bar Court's Alternative Discipline Program.

21. On July 2, 2012, at the first status conference, on the Court's own motion, the Court consolidated 12-C-10777 and 12-C-10778.

Case No. 12-C-10777 (PC69 Conviction Proceeding)

FACTS:

22. On October 16, 2011, a police officer observed respondent yelling obscenities at people, and shattering a box of empty wine bottles in the middle of Main Street, Placerville, California.

23. Although the officer agreed with respondent's request for transport for mental health treatment, respondent thereafter punched the officer in the side of his head and resisted being placed into handcuffs. In the course of their physical conflict, the officer suffered an abrasion to a hand, abrasions to both knees, and thereafter suffered from a sore jaw, numb ear, and a severe headache. Another officer who came upon respondent's arrest in progress also received abrasions on both his knees while assisting.

24. Respondent was immediately taken into custody.

25. Since sometime in August 2011, through October 16, 2011, respondent had not been taking prescribed medication.

26. On January 30, 2012, respondent plead *nolo contendere* to Count Two of the Criminal Complaint against him in *People v. Sterkin*, El Dorado County Superior Court, docket number P11CRF0552, filed November 1, 2011, which read as follows:

On or about the 16th day of October, 2011, in the County of El Dorado, the crime of RESISTING EXECUTIVE OFFICER, in violation of **PENAL CODE SECTION 69**, a Felony, was committed by SIERRA DAVID STERKIN, who did unlawfully attempt by means of threats and violence to deter and prevent Officer Litzius and Officer Scholtz, who were then and there executive officer(s), from performing a duty imposed upon such officer(s) by law, and did knowingly resist by the use of force and violence said executive officer in the performance of his/her duty.

CONCLUSIONS OF LAW:

27. The facts and circumstances surrounding the above-described violation involved moral turpitude.

Case No. 12-C-10778 (PC422 Conviction Proceeding)

FACTS:

28. On the morning of January 5, 2012, respondent threatened his neighbor, Ruth Lynn Henderson ("Henderson"), by stating: "I am going to slit your throat with a buck knife and watch your guts fall on the floor."

29. Prior to respondent making the threat, Henderson had not had any contact with respondent, the threat not provoked in any way, and Henderson was worried because she believed that respondent had recently been released from a mental hospital.

30. On January 5, 2012, respondent was free on bail in *People v. Sterkin*, El Dorado County Superior Court, docket number P11CRF0552, and was not taking any prescribed medication.

31. On March 5, 2012, respondent plead *nolo contendere* to Count One of the Amended Criminal Complaint against him in *People v. Sterkin*, El Dorado County Superior Court, docket number P11CRF0019, as amended on March 5, 2012, which read in pertinent part as follows:

On or about the 5th day of January, 2012, in the County of El Dorado, the crime of CRIMINAL THREATS, in violation of **PENAL CODE SECTION 422**, a Felony misd[demeanor], was committed by SIERRA DAVID STERKIN, who did willfully and unlawfully threaten to commit a crime which would result in death and great bodily injury to Ruth Lynn Henderson, with specific intent that the statement be taken as a threat.

It is further alleged that the threatened crime, on its face and under the circumstances in which it was made, was so unequivocal, unconditional, immediate and specific as to convey to the victim a gravity of purpose and an immediate prospect of execution.

It is further alleged that the said victim was reasonably in sustained fear of his/her safety and the safety of his/her immediate family.

///
///
///

CONCLUSIONS OF LAW:

32. The facts and circumstances surrounding the above-described violation involved moral turpitude.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Multiple Misconduct:

Standard 1.2(b) of the Standards for Attorney Sanctions for Professional Misconduct provides that it is an aggravating circumstance "that the current misconduct found or acknowledged by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct . . ." (std. 1.2(b)(ii)). Here, respondent stands convicted of two criminal acts occurring three months apart.

Dishonesty/Concealment:

Standard 1.2(b) provides that it is an aggravating circumstance "that the member'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 . . ." Here, after respondent claimed that he had been stabilized through treatment received after the incident which led to his PC69 conviction, specifically, a change in his prescription and entry into a program to help persons with bipolar disorder, respondent dishonestly concealed from the Review Department in his April 17, 2012 motion to delay or stay his PC69 Conviction interim suspension ordered in 12-C-10777, that on March 5, 2012, he had *additionally* suffered the PC422 Conviction (12-C-10778).

Indifference Toward Rectification:

Standard 1.2(b) provides that it is an aggravating circumstance "that the member demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct . . ." (std. 1.2(b)(v)). Here, respondent was arrested and taken into custody on October 16, 2011, but that did not deter him from going off his medication which he alleges resulted in the conduct three months later which resulted in his PC422 Conviction.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was November 4, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 5, 2012, the prosecution costs in this matter are \$7,193. 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.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

Pursuant to rule 3201, respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of:
Sierra David Sterkin

Case number(s):
12-O-10777 [12-O-10778]

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

11/8/12 
Date Respondent's Signature Sierra David Sterkin
Print Name

11/13/12 
Date Respondent's Counsel Signature Sherrie B. McLetchie
Deputy Trial Counsel's Signature Print Name
Senior

(Do not write above this line.)

In the Matter of: Sierra David Sterkin	Case Number(s): 12-C-10777 [12-C-10778]
-------------------------------------------	--------------------------------------------

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.)

Jan 14, 2013
Date


LUCY ARMENDARIZ
Judge of the State Bar Court