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| State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION | | | PUBLIC MATTER |
|--|---|--|---------------|
| <p>Counsel For The State Bar</p> <p>KELSEY J. BLEVINGS DEPUTY TRIAL COUNSEL 1149 S. Hill Street Los Angeles, CA 90015 Tel. (213) 765-1209</p> <p>Bar # 271271</p> | <p>Case Number(s): 12-C-15745-RAH; 12-C-15746-RAH; 13-C-10023-RAH.</p> | <p>For Court use only</p> <div style="text-align: center; padding: 20px;"> <p style="font-size: 1.5em; font-weight: bold;">FILED</p> <p style="font-size: 1.2em; font-weight: bold;">APR 23 2013</p> <p style="font-size: 1.2em; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div> <p style="text-align: right; font-size: 1.5em; font-weight: bold; margin-top: 10px;">P.B.</p> | |
| <p>In Pro Per Respondent</p> <p>BRANDON BURNHAM POWELL P.O. Box 177 San Juan Capistrano, CA 92673 Tel. (206) 713-9194</p> <p>Bar # 167740</p> | <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> | | |
| <p>In the Matter of: BRANDON BURNHAM POWELL</p> <p>Bar # 167740</p> <p>A Member of the State Bar of California (Respondent)</p> | <p>ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 December 16, 1993.
- (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 14 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."

(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) 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: three billing cycles following the issuance of the Supreme Court order. (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.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See attachment, p.12.

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- (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 attachment, p.13.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

See attachment, p.12.

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, p.13.
- (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.

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(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:

See attachment, p13.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of three (3) years.

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 three (3) years, 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 two (2) years.

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.

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- (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:
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| <input checked="" 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:

- (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**

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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: November 9, 2012.
- (5) **Other Conditions:**

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| In the Matter of: BRANDON BURNHAM POWELL | Case Number(s): 12-C-15745-RAH; 12-C-15746-RAH; 13-C-10023-RAH. |
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Substance Abuse Conditions

- a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least eight (8) meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program Respondent shall attend at least eight (8) meetings per month of an abstinence-based self-help group of his own choosing, including inter alia, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T, S.O.S. Other self-help maintenance programs are acceptable if they include: (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See O'Conner v. California (1994), 855 F. Supp. 303 [no first amendment violation where probationer given choice between AA and secular program].) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol.

Before Respondent attends the first self help group meeting, he shall contact the Office of Probation and obtain approval for the program that he has selected. Thereafter, on a quarterly basis with his quarterly and final written reports, Respondent shall provide documentary proof of attendance at the meetings of the approved program to the Office of Probation, in a form acceptable to the Office of Probation.

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the

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laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.

- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BRANDON BURNHAM POWELL

CASE NUMBER(S): 12-C-15745-RAH;
 12-C-15746-RAH;
 13-C-10023-RAH.

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. 12-C-15745 (Conviction Proceeding)

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 October 26, 2009, Respondent was convicted of violating Health and Safety Code section 11350(a) [possession of controlled substances – hydrocodone], a felony; and section 11357(b) [possession of 28.5 grams or less of marijuana], a misdemeanor.
3. On October 23, 2012, 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:

4. On April 30, 2007, at approximately 1:00 a.m., Irvine police responded to a report of a possible burglary at an apartment complex. Upon arrival, the officers contacted Respondent who was moving furniture out of his apartment. The officers verified Respondent's identification and confirmed that it was in fact his apartment. However, the officers also discovered Respondent had a felony arrest warrant and took him into custody. During a search of Respondent's person, the officers discovered a pill bottle containing 12 hydrocodone tablets (a Schedule-III controlled substance), a small plastic zip-lock bag which contained a trace amount of methamphetamine, 2.7 grams of marijuana, and two marijuana pipes. Respondent did not have a prescription for the hydrocodone or a medical marijuana authorization.

5. On May 29, 2007, in Orange County Superior Court case 07HF0945, Respondent was charged with one count each of violating Health and Safety Code sections 11350(a) [possession of a controlled substance – hydrocodone], a felony, and Health and Safety Code section 11357(b)

[possession of 28.5 grams or less of marijuana], a misdemeanor. On June 19, 2007, Respondent appeared in court, was arraigned on the charges, and was ordered by the judge to return on August 29, 2007 for a pretrial conference. On August 29, 2007, Respondent failed to appear as ordered. The judge ordered a \$25,000 bench warrant issue for Respondent's arrest. Two years later, on May 20, 2009, Respondent was arrested by Tustin police and booked into jail on the bench warrant. On October 26, 2009, Respondent pleaded guilty to all charges. Respondent was placed on probation for three years, ordered to complete the Penal Code section 1210 drug treatment program. Respondent was then ordered to appear on November 10, 2009 at 9:00 a.m. for a review hearing. On November 10, 2009, Respondent was seven hours late to court. As a sanction, the judge imposed eight hours of community service. On April 1, 2010, Respondent was found in violation of probation for failing to timely enroll in the Penal Code section 1210 substance abuse program and ordered to attend three Narcotics Anonymous or similar self-help meetings per week. On April 28, 2011, Respondent was found in violation of probation, based on his conviction in Orange County Superior Court case 11CF0912 (discussed *post*), and ordered to serve 60 days in county jail. On August 6, 2012, Respondent was found in violation of probation for a third time and ordered to serve 90 days in county jail. Respondent's probation was ordered to terminate upon his release from custody.

6. At no time did Respondent report his guilty plea to the felony charge of violating Health and Safety Code sections 11350(a) [possession of a controlled substance – hydrocodone], to the State Bar as required by Business and Professions Code section 6068(o)(5).

CONCLUSIONS OF LAW:

7. 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-15746 (Conviction Proceeding)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

8. 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.

9. On April 28, 2011, Respondent was convicted of violating Health and Safety Code section 11364(a) [possession of controlled substance paraphernalia], a misdemeanor; and Vehicle Code section 14601.2(a) [driving when privilege suspended or revoked for driving under the influence], a misdemeanor.

10. On October 23, 2012, 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:

11. On April 8, 2011, Tustin police detained Respondent pursuant to a traffic stop. Respondent disclosed to the officers that he was on felony probation. During the probation search of Respondent's vehicle, Officers discovered a light bulb that they determined had been modified into a

methamphetamine smoking pipe, including a small amount of methamphetamine that was retrieved from the pipe. Also, officers discovered that Respondent was displaying on his vehicle a Washington state license plate that did not correspond to the vehicle identification number. Additionally, Respondent's privilege to drive was suspended for a prior driving under the influence conviction.

12. On April 11, 2011, in Orange County Superior Court case 11CF0912, Respondent was charged with one count each of violating Health and Safety Code section 11377(a) [possession of controlled substance – methamphetamine], a felony, Health and Safety Code 11364(a) [possession of controlled substance paraphernalia], a misdemeanor, and Vehicle Code section 14601.2(a) [driving when privilege suspended or revoked for driving under the influence], a misdemeanor. On April 28, 2011, Respondent pleaded guilty to the drug paraphernalia and Vehicle Code charges. The possession of methamphetamine charge was dismissed. Probation was denied and respondent was sentenced to 60 days in county jail to be served concurrently with his sentence in case 07HF0945.

CONCLUSIONS OF LAW:

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

Case No. 13-C-10023 (Conviction Proceeding)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

14. 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.

15. On October 14, 2005, Respondent pleaded guilty to one count each of violating Vehicle Code section 23152(b) [driving with a blood alcohol concentration of 0.08%], a misdemeanor, including special allegations that, under Vehicle Code section 23578, he had a blood alcohol concentration of 0.20 percent or more by weight and, under Vehicle Code section 23540, he had a prior conviction for a DUI-related offense within the past seven years, and Vehicle Code section 14601.1(a) [driving when privilege suspended or revoked], a misdemeanor

16. On February 21, 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:

17. On December 16, 2004, Respondent was arrested for driving under the influence of alcohol. His blood alcohol concentration was 0.24 percent.

18. On May 17, 2005, in Orange County Superior Court case 05CM00247, Respondent was charged with one count each of violating Vehicle Code section 23152(a) [driving under the influence of alcohol or drugs], a misdemeanor, Vehicle Code section 23152(b) [driving with a blood alcohol concentration of 0.08%], a misdemeanor, including special allegations that, under Vehicle Code section 23578, he had a blood alcohol concentration of 0.20 percent or more by weight and, under Vehicle Code

section 23540, he had a prior conviction for a DUI-related offense within the past seven years. Respondent was also charged with one count of violating Vehicle Code section 14601.1(a) [driving when privilege suspended or revoked], a misdemeanor.

19. On October 14, 2005, Respondent pleaded guilty to the driving with a blood alcohol concentration of 0.08 percent or greater, admitted his blood alcohol concentration was 0.20 or more by weight, and admitted he had a prior DUI-related conviction within the prior seven years. Respondent also pleaded guilty to driving while his privilege to drive was suspended. The remaining charges were dismissed pursuant to plea bargain. The imposition of sentence was suspended for three years pending successful completion of probation. Among other conditions of his probation, Respondent was ordered to serve 60 days in the county jail and complete an 18 month multiple offender program.

CONCLUSIONS OF LAW:

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

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Additional Aggravating Circumstances: Respondent has previously been convicted of the same or similar offenses.

1. Orange County Superior Court case 06WF2560:

On July 11, 2007, in Orange County Superior Court case 06WF2560, Respondent pleaded guilty to one count each of violating Health and Safety Code section 11377(a) [possession of a controlled substance – methamphetamine], a felony; Health and Safety Code section 11364(a) [possession of controlled substance paraphernalia], a misdemeanor; Vehicle Code section 23222(b) [possession of 28.5 grams or less of marijuana by a motorist], a misdemeanor; and Vehicle Code section 12500(a) [driving without a license], a misdemeanor. Sentencing was stayed pending completion of an 18-month drug treatment program. On October 26, 2009, following completion of the drug treatment program, the court dismissed each of Respondent's three drug-related convictions. At no time did Respondent report his guilty plea to the felony charge of violating Health and Safety Code section 11377(a) [possession of a controlled substance – methamphetamine], to the State Bar as required by Business and Professions Code section 6068(o)(5)

2. San Joaquin County Superior Court case ST021077A:

On June 15, 1998, in San Joaquin County Superior Court case ST021077A, Respondent pleaded guilty to one count of violating Vehicle Code section 23103 within the meaning of Vehicle Code section 23103.5 [alcohol related reckless driving].

Indifference: Respondent's failure to appear for approximately two years to face his charges in case 07HF0945 and his failure and to comply with the terms of his probation terms demonstrate indifference towards atonement for the consequences of his misconduct. Additionally, Respondent's failure to report his felony guilty pleas to the State Bar in cases 07HF0945 and 06WF2560 demonstrates indifference towards atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

Pattern of Misconduct: Respondent's record of multiple convictions, persistent drug use, and continual disregard of his court-ordered terms of probation over a period of eight years, demonstrates a pattern of criminal conduct and is an aggravating circumstance. (See *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 13 [repetitive misconduct spanning a period of six years demonstrates a pattern]; Std. 1.2(b)(ii).)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Record: Respondent has no prior record of discipline, but the misconduct is serious. However, some weight in mitigation should be accorded to this factor. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.)

Candor/Cooperation: Respondent has cooperated with the State Bar by admitting his culpability and entering this stipulation and should receive credit in mitigation for these actions. (*In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. at p. 50.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

The sanction applicable to criminal law violations that do not involve moral turpitude but do involve other misconduct warranting discipline is found in standard 2.6 which prescribes suspension or disbarment depending on the gravity of the offense and the extent of the harm with due regard for the purpose of imposing discipline. Here, Respondent's misconduct is serious because it demonstrates a pattern of recidivism and disregard for court orders to remain law abiding and comply with terms and conditions of probation. Furthermore, Respondent is a threat to the public because although he has received some treatment for his substance abuse problems, his most recent arrest demonstrates that he continues to struggle with his long-term addiction. Therefore, a three year stayed suspension with two year actual suspension and until Respondent demonstrates rehabilitation under standard 1.4(c)(ii) is necessary to protect the public.

The stipulated level of discipline is in line with case law involving similar misconduct. (See *In re Brown* (1995) 12 Cal.4th 205 [two years stayed suspension for attorney who was convicted of three misdemeanor counts of failing to remit employee withholding taxes]; *In re Carr* (1989) 46 Cal.3d 1089 [six months' actual suspension levied on attorney with prior disciplinary record for two misdemeanor convictions for drunk driving]. However, the sanction imposed on Respondent is justifiably higher than that imposed in *Carr* or *Brown* because Respondent was convicted of a felony. Further, Respondent's criminal record is significantly lengthier than either Carr's or Brown's and includes a prior felony conviction.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 19, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 19, 2013, the prosecution costs in this matter are \$5,026. 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 MCLE CREDIT

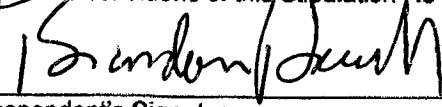

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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| In the Matter of: BRANDON BURNHAM POWELL | Case number(s): 12-C-15745-RAH; 12-C-15746-RAH; 13-C-10023-RAH. |
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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.

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|------------------------|---|---|
| <u>3/21/13</u> Date |  Respondent's Signature | <u>BRANDON BURNHAM POWELL</u> Print Name |
| <u>4/2/13</u> Date |  Deputy Trial Counsel's Signature | <u>KELSEY J. BLEVINGS</u> Print Name |

(Do not write above this line.)

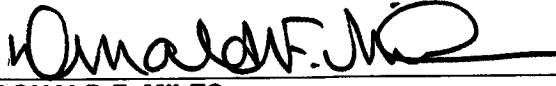
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| In the Matter of: BRANDON BURNHAM POWELL | Case Number(s): 12-C-15745-RAH; 12-C-15746-RAH; 13-C-10023-RAH. |
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ACTUAL SUSPENSION ORDER

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.

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.)**

Date 4/16/13 
DONALD F. MILES
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 Los Angeles, on April 23, 2013, 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 Los Angeles, California, addressed as follows:

**BRANDON BURNHAM POWELL
PO BOX 177
SAN JUAN CAPISTRANO, CA 92673**

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

Kelsey J. Blevings, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 23, 2013.



Paul Barona
Case Administrator
State Bar Court