

PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 12-C-17354; 13-C-13615;
)	13-C-14934-PEM
ANDREW RUSSELL MARTIN,)	(Cons.)
)	
A Member of the State Bar, No. 226244.)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
_____)	

Introduction¹

In this consolidated conviction referral matter, respondent **Andrew Russell Martin** was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for two years.

Significant Procedural History

Following respondent's misdemeanor convictions, the review department issued three referral orders to the hearing department, as follows:

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

A. Case No. 12-C-17354

Following the transmittal to the State Bar Court of the records of respondent's January 9, 2013 conviction for violating Vehicle Code section 23152, subdivision (b) [driving with blood alcohol level of .08% or more], a misdemeanor which may or may not involve moral turpitude, the review department filed an order on November 1, 2013, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A Notice of Hearing on Conviction (NOH) was filed on November 4, 2013, for the conviction referral matter. Respondent filed a response on November 25, 2013.

B. Case No. 13-C-13615

Following the transmittal to the State Bar Court of the records of respondent's August 27, 2009 conviction for violating Vehicle Code section 14601.1, subdivision (a) [driving while license is suspended], a misdemeanor which may or may not involve moral turpitude, the review department filed an order on April 10, 2014,² referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A second NOH was filed on April 18, 2014, for the conviction referral matter. Respondent filed a response on June 2, 2014.

On May 12, 2014, the court consolidated the two conviction referral matters.

² On page 6, paragraph 16, of the Stipulation Re Facts and Conclusions of Law filed April 6, 2015, the date "December 5, 2013" is hereby corrected to read "April 10, 2014," as the filing date of the review department referral order.

C. Case No. 13-C-14934

Following the transmittal to the State Bar Court of the records of respondent's April 16, 2014 conviction for violating Penal Code section 242 [battery], a misdemeanor which may or may not involve moral turpitude, the review department filed an order on August 6, 2014, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A third NOH was filed on August 7, 2014.

On September 22, 2014, all three conviction referral matters were consolidated.

Respondent requested referral for evaluation of his eligibility for participation in the State Bar Court's ADP. Respondent also contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

Respondent submitted a declaration which established a nexus between respondent's substance abuse issue and his misconduct in this matter.

On April 6, 2015, the State Bar and respondent filed a Stipulation Re Facts and Conclusions of Law. The court issued a Confidential Statement of Alternative Dispositions and Orders, formally advising the parties of: (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP; and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. Agreeing to those alternative possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on April 6, 2015.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. After receiving a Certificate of One Year of Participation in the Lawyer Assistance Program – Substance Use, the court found that respondent has successfully completed the ADP at a status conference on November 21, 2016.

This matter was submitted for decision on November 21, 2016.

Findings of Fact and Conclusions of Law

Culpability Findings

The parties' Stipulation filed on April 6, 2015, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

1. Case No. 12-C-17354

On October 9, 2012, respondent was arrested for DUI. On January 9, 2013, he pled guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (b).

Respondent stipulated that the facts and circumstances surrounding his violation did not involve moral turpitude but did involve other misconduct warranting discipline.

2. Case No. 13-C-13615

On August 21, 2009, respondent was arrested in a road rage incident and for impersonating another living person. On August 29, 2009, he pled nolo contendere to a misdemeanor violation of Vehicle Code section 14601.1, subdivision (a) [driving while license is suspended].

Respondent stipulated that the facts and circumstances surrounding his violation involved moral turpitude.

3. Case No. 13-C-14934

On August 2, 2013, respondent was arrested for battery. On April 16, 2014, he pled guilty to violating Penal Code section 242, a misdemeanor.

Respondent stipulated that the facts and circumstances surrounding his violation involved moral turpitude.

Aggravation³

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute an aggravating circumstance.

Mitigation

Respondent's successful completion of the ADP is considered as a mitigating circumstance in this matter.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law, including standards 2.15 and 2.16 and *In re Kelley* (1990) 52 Cal.3d 487 and *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below. Also, the court does not recommend that respondent take and pass the State Bar's Ethics School because it has no relationship to the criminal misconduct.

³ All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Recommendations

It is hereby recommended that respondent **Andrew Russell Martin**, State Bar Number 226244, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation⁴ for a period of two years subject to the following conditions:

1. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California.
2. Within 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 Business and Professions Code section 6002.1.
3. Within 30 days after 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.
4. 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 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 20 days before the last day of the period of probation and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions.

⁴ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

6. Respondent must fully comply with respondent's Lawyer Assistance Program (LAP) Participation Agreement/Plan. Respondent must provide the LAP with a satisfactory written waiver authorizing the LAP to provide the Office of Probation and the State Bar Court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of such waiver is a violation of this condition. Respondent will be relieved of this condition upon providing satisfactory certification of completion of the LAP to the Office of Probation.
7. Respondent must abstain from use of any alcoholic beverages, and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
8. Respondent must comply with all conditions of respondent's criminal probation and must so declare under penalty of perjury in any quarterly report required to be filed with the Office of Probation. If respondent has completed probation in the underlying criminal matter, or completes it during the period of his disciplinary probation, respondent must provide to the Office of Probation satisfactory documentary evidence of the successful completion of the criminal probation in the quarterly report due after such completion. If such satisfactory evidence is provided, respondent will be deemed to have fully satisfied this probation condition.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Direction Re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: February 6, 2017


PAT McELROY
Judge of the State Bar Court

State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar Catherine Taylor Deputy Trial Counsel 180 Howard St. San Francisco, CA 94105 415-538-2537 Bar # 210540	Case Number (s) 12-C-17354-PEM 13-C-13615 13-C-14934	(for Court's use) PUBLIC MATTER FILED <i>ch</i> APR 06 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Andrew Russell Martin Holman & Martin P.O. Box 2664 San Anselmo, CA 94979 415-755-5599 Bar # 226244	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: ANDREW RUSSELL MARTIN Bar # 226244 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 **August 7, 2003**.
- (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 **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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

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(Do not write above this line.)

- (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. **See Attachment at page 9.**
- (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 Attachment at page 9.**
- (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: See Attachment at page 9.

Pretrial Stipulation: See Attachment at page 9.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ANDREW RUSSELL MARTIN

CASE NUMBERS: 12-C-17354 [13-C-13615 & 13-C-14934]

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 12-C-17354 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

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

2. On October 26, 2012, the Marin County District Attorney filed a criminal complaint in Marin County Superior Court, case no. CR182577A charging respondent with: Vehicle Code section 23152(a), Driving Under the Influence, a misdemeanor; Vehicle Code section 23152(b) Driving While Having a .08% or Higher Blood Alcohol, a misdemeanor; and Vehicle Code section 22349(a), an infraction, Speeding Greater than Sixty-Five (65) MPH.

3. On October 30, 2012, respondent appeared in court for his arraignment. Respondent was advised of his rights and requested a continuance to retain counsel. The matter was continued to December 10, 2012 at 9:00 a.m.

4. On December 10, 2012, respondent failed to appear and a bench warrant was issued with bail set at \$5,000.

5. On December 21, 2012, respondent calendared a hearing to recall the warrant, which was set for December 26, 2012 at 9:00 a.m.

6. On December 26, 2012, respondent appeared pro per, and the bench warrant was recalled subject to payment of \$50 fine plus fees. The matter was continued to January 9, 2013.

7. On January 9, 2013, respondent pled guilty to Count 2, a violation of Vehicle Code section 23152(b). Count 1 was dismissed as duplicative and Count 3 was dismissed in furtherance of justice on the motion of the district attorney.

8. On January 9, 2013, respondent waived time for sentencing and the court suspended the imposition of sentence, placed respondent on probation for three years with terms that included: completion of a first offender drinking driver program within 180 days; no driving with any amount of alcohol in his blood during the probation period; and various fines and fees.

9. On November 1, 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:

10. On October 9, 2012, at around 1943 hours, Officer C. Russell with the California Highway Patrol was on patrol duty, on the shoulder of the DeLong Avenue on-ramp to US-101 in Marin County. From approximately 300 feet away, the radar unit in the patrol car confirmed a vehicle to be traveling at 81 mph and increased to 83 mph as the officer entered the freeway. Officer Russell made an enforcement stop on the suspect vehicle after exiting the freeway at Rowland Blvd.

11. Upon contacting the driver, identified as respondent, Officer Russell smelled an odor of an alcoholic beverage from inside respondent's car. When asked how much alcohol he had drunk, respondent replied he had drunk some beer between 4pm and 7:30 pm and was on his way to pick up his son in Novato. After administering a series of field sobriety exercises, including the PAS device readings of .091 and .092, Officer Russell determined respondent was impaired and under the influence of alcohol. Respondent was arrested and elected a blood sample to satisfy the chemical test requirement. Respondent's blood alcohol content was measured to be .09% alcohol.

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. 13-C-13615 (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 August 26, 2009, the Sonoma County District Attorney filed a criminal complaint in Sonoma County Superior Court, case no. SCR 568183, charging respondent with one count of Penal Code 529, False Personation, a misdemeanor; one count of Penal Code section 148.9(a) False Information to a Peace Officer, a misdemeanor; and one count of Vehicle Code section 14601.1(a), Driving on a Suspended License, a misdemeanor.

15. On August 27, 2009, respondent pled nolo contendere to Count Three, a violation of Vehicle Code section 14601.1(a). The court found respondent guilty and the remaining counts were dismissed on motion of the district attorney. Respondent waived time for sentencing and was sentenced that day to 24 months of probation, including the terms: be of good conduct and obey all laws; do not drive without California Driver's License and Insurance in effect. The probation term expired August 27, 2011.

16. On December 5, 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 Friday, August 21, 2009, around 1156 hours, Rohnert Park Public Safety Officers Medina, Amato and Vincent were on duty and at the Chevron station on Rohnert Park Expressway regarding a road rage incident. The officers contacted the drivers of two vehicles involved in a verbal argument about one of the drivers cutting off the other vehicle. Officer Vincent contacted the driver of one of the vehicles, a silver Dodge Charger, and discovered the driver did not have his driver's license in his possession in violation of Vehicle Code section 12951(a).

18. The driver identified himself as "Seth Martin" with a date of birth "XX-XX-XXXX" (omitted for privacy). Officer Vincent began filling out citation #110956, writing in the name "Seth Martin." While completing the citation, dispatch provided the physical descriptors of Seth Martin DOB XX-XX-XXXX as 6'-0", 195 pounds, blonde hair, blue eyes. Officer Vincent noticed the person he was talking with was approximately 5'-10" and much heavier than 195 pounds.

19. Dispatch then provided information on the vehicle, including the registered owner was "Andrew Martin." A further inquiry into the California Driver License (CDL) and warrant check on the registered owner revealed "Andrew Martin" was 5'-10", 210 pounds, blonde hair and blue eyes. Dispatch further advised the registered owner, Andrew Martin, had an outstanding arrest warrant and his CDL was suspended.

20. Officer Vincent asked the driver if his real name was Andrew Martin, not Seth Martin. The driver insisted his name was Seth Martin.

21. Officer Amato looked through the car, attempting to locate any identifying information such as a CDL, vehicle registration or insurance. Officer Amato discovered the only items located in the vehicle were legal papers with the name "Andrew Martin" typewritten on them.

22. Officer Vincent placed the driver in handcuffs and told the driver he was being detained because it appeared the driver was lying about his identity. Once the handcuffs were on, the driver admitted, "My name is Andrew Martin. Seth Martin is my brother."

23. Respondent was arrested on the outstanding warrant, impersonating another living person and driving on a suspended license.

CONCLUSIONS OF LAW:

24. The facts and circumstances surrounding the above-described violation(s) involved moral turpitude.

Case No. 13-C-14934 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

25. 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.

26. On August 16, 2013, Marin County District Attorney filed a criminal complaint against respondent in case no. CR185773, alleging violations of Penal Code section 245(a)(4), Assault by Means Likely to Cause Great Bodily Injury upon a victim, a misdemeanor; and Penal Code section 594(b)(1), Vandalism to a Golden Gate Transit bus windshield, a misdemeanor.

27. On August 23, 2013, respondent appeared without counsel for arraignment. Respondent was advised of his rights and requested a continuance to obtain counsel. The matter was continued to September 23, 2013.

28. On September 23, 2013, respondent appeared in pro per and pled not guilty. Respondent also appeared on a violation of probation in Marin County Superior Court, case no. CR182577A, triggered by his August 2, 2013 arrest. Respondent was ordered to appear on October 7, 2013.

29. On October 7, 2013, respondent appeared in pro per. The court referred respondent to confer with the public defender and continued the matter to October 23, 2013.

30. On October 23, 2013, respondent appeared in court with the public defender as counsel of record. The matter continued to November 20, 2013.

31. On November 20, 2013, the public defender conflicted out and another was attorney appointed as respondent's attorney. The matter continued to November 27, 2013.

32. On November 27, 2013, respondent's attorney appeared on his behalf, entered a not guilty plea to all counts and the court ordered respondent to appear January 8, 2014.

33. On January 8, 2014, respondent appeared late to court. The matter was continued to February 13, 2014.

34. On February 13, 2014, respondent did not appear as ordered and a bench warrant was issued but stayed until February 21, 2014.

35. On February 18, 2014, respondent calendared a hearing to deal with the arrest warrant and a hearing was set for February 20, 2014.

36. On February 20, 2014, respondent appeared with his attorney, the warrant was vacated, and trial dates were set in May. The respondent was ordered to appear for a status report on April 16, 2014.

37. On April 16, 2014, respondent appeared with his attorney. The district attorney orally amended the complaint to change Count 1 to Penal Code section 242, Battery, a misdemeanor. Respondent pled guilty to Count 1 as amended, a misdemeanor violation of Penal Code section 242. Respondent waived time for sentencing and the court imposed three years supervised probation through April 16, 2017; 20 days in custody, 20 days work release; restitution to all victims, including Golden Gate Transit for \$1,000; an anger management class; and associated fines and fees. The remaining counts were dismissed with a Harvey waiver on the prosecutor's motion. All future scheduled dates were vacated.

38. On August 6, 2014, 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:

39. On August 2, 2013, San Rafael Police Department Officer Melodia was dispatched to a battery call that had just occurred at the transit center located at 850 Tamalpais Ave., San Rafael, CA. The reporting party, a security guard, told police the suspect was a white male adult in his forties with blonde hair, last seen wearing a black sleeveless gym shirt and black shorts, running northbound on Lincoln Avenue, in the direction of Golden Crème Donuts.

40. Officer Leon and Corporal Cogbill were in the vicinity of Third Street when the call came out. They responded to the area and immediately located the suspect to the rear of Golden Crème Donuts, dressed exactly as described, and identified as respondent.

41. Officer Melodia asked respondent what had happened at the transit center. At first, respondent replied, "Nothing." Then respondent told the officer he was an attorney and was going to exercise his right to remain silent. Respondent was handcuffed and placed in the rear of the patrol car.

42. Officer Melodia related respondent's identifying information to dispatch and learned respondent was on probation for a DUI in Marin County, case no. CR182577A (see case no. 12-C-17354 above).

43. Officer Melodia then transported respondent back to the transit center where the victim positively identified respondent as his assailant.

44. The victim had been seated about five rows back from the driver on the no. 70 bus from San Francisco, where he had had a few drinks. As the bus pulled into the station in San Rafael, he stood up in the aisle and began to walk toward the front. A man behind him said, "What the fuck are you doing?" The victim turned around and saw a man much bigger than he. The victim continued walking toward the front of the bus and the man again stated, "What the fuck?" and shoved the victim on his left side. The victim went hurtling toward the front of the bus and smashed into the right side of the windshield, near the exit door. The window shattered into a web-like pattern.

45. Another witness was at the platform as the no. 70 bus arrived. He approached the front of the bus to load his bike when he saw two guys on the bus. One guy shoved the other guy toward the front of the bus. The victim smashed up against the windshield causing it to shatter. The witness told police the man who shoved the victim then left by the back of the bus and took off running towards Lincoln Avenue. When officers returned respondent to the transit center, the witness positively identified him as the man who shoved the victim by saying, without hesitation, "That's definitely the guy."

46. A Golden Gate Transit Supervisor, who happened to be on scene, estimated the repair costs to the windshield would be around \$1,000.

CONCLUSIONS OF LAW:

47. The facts and circumstances surrounding the above-described violation(s) involved moral turpitude.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts (Std. 1.5(b)): Respondent has committed multiple acts of misconduct over three cases, including committing battery while on probation. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944 [court held that respondent's culpability for 14 counts of misconduct in four client matters established multiple acts of misconduct, but did not establish a pattern of misconduct].)

Harm (Std. 1.5(f)): Respondent's criminal conduct in case no. 13-C-14934 resulted in significant pain to the victim's head, neck, upper right arm and shoulder. The victim suffered pain in his neck for at least three weeks following the attack and his arm and shoulder bothered him for a much longer period of time. Respondent also caused approximately \$1,000 in damage to the Golden Gate Transit bus.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: While respondent has no prior discipline with the State Bar since his admission 11 years ago, his misconduct began in 2009 and continued until 2013. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287 [respondent's unblemished practice of law for slightly less than eight years and four months prior to the start of her misconduct was a mitigating circumstance, but did not deserve significant weight].)

Pretrial Stipulation: Respondent is willing to enter this stipulation as part of his participation in the Alternative Discipline Program ("ADP"). (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of February 4, 2015, the prosecution costs in this matter are \$ 7,176. 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 or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

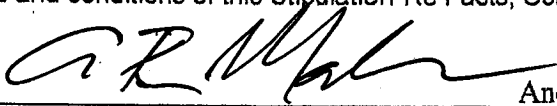
GRM

(Do not write above this line.)

In the Matter of: ANDREW RUSSELL MARTIN	Case number(s): 12-C-17354 [13-C-13615 & 13-C-14934]
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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>3/9/15</u>		
Date	Respondent's Signature	Andrew Russell Martin
		Print Name

<u>3.16.15</u>		
Date	Respondent's Counsel Signature	Print Name
	Deputy Trial Counsel's Signature	Catherine Taylor
		Print Name

(Do not write above this line.)

In the Matter of: ANDREW RUSSELL MARTIN	Case Number(s): 12-C-17354 [13-C-13615 & 13-C-14934]
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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

April 6, 2015


PAT E. McELROY
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, April 6, 2015 deposited a true copy of the following document(s):


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:

ANDREW MARTIN
CATHERINE TAYLOR

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 6, 2015.


GEORGE H. H. H.
Case Administrator
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 February 7, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS

STIPULATION RE FACTS AND CONCLUSION S OF LAW

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


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

ANDREW R. MARTIN
HOLMAN & MARTIN
1278 NOE ST
SAN FRANCISCO, CA 94114 - 3720

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

Manuel Jimenez, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 7, 2017.



Laurretta Cramer
Case Administrator
State Bar Court