




ORIGINAL

(Do not write above this line.)

State Bar Court of California
Hearing Department
San Francisco
STAYED SUSPENSION

<p>Counsel For The State Bar</p> <p>Jonathan Ceseña Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2183</p> <p>Bar # 289721</p>	<p>Case Number(s): 12-C-17983-PEM</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED </p> <p>OCT 16 2014</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Arthur L. Margolis 2000 Riverside Dr. Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: STEPHEN JOHN COGLAN</p> <p>Bar # 203376</p> <p>A Member of the State Bar of California (Respondent)</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 6, 1999**.
- (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 **12** 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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective January 1, 2014)

Stayed Suspension

80

- (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):
 - Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **two billing cycles from the effective date 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 [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 **03-C-04869. (See Attachment at page 9).**
 - (b) Date prior discipline effective **June 22, 2005.**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(a).**
 - (d) Degree of prior discipline **Private Reproval with Public Disclosure.**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(Do not write above this line.)

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

(Do not write above this line.)

(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

Pretrial Stipulation See Attachment at page 10.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one year**.

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 1.2(c)(1), 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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

(1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) 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.

(3) 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.

(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 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.

(5) 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.

- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
- Substance Abuse Conditions Law Office Management Conditions
- Medical Conditions 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 within one year. **Failure to pass the MPRE results in actual suspension without 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: **Respondent's misconduct did not occur within the practice of law. The protection of the public and the interests of the respondent do not require passage of the MPRE in this case. (In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181).**
- (2) **Other Conditions:**

Respondent recognizes that a repeat conviction for DUI suggests an alcohol and/or drug problem that needs to be addressed before it affects respondent's legal practice. Respondent agrees to take the steps necessary to control the use of alcohol and/or drugs such that it will not affect respondent's law practice in the future. Respondent's agreement to participate in an abstinence-based self-help group (as defined herein), as a condition of discipline, is part of respondent's efforts to address such concerns.

As a condition of probation, and during the period of probation, Respondent must attend a minimum of two (2) meetings per month of any abstinence-based self-help group of respondent's choosing, including without limitation Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include a subculture to support recovery, including abstinence-based group meetings. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [no First Amendment violation where probationer given choice between AA and secular program.]) Respondent is encouraged, but not required, to obtain a "sponsor" during the term of participation in these meetings.

The program called "Moderation Management" is not acceptable because it is not abstinence-based and allows the participant to continue consuming alcohol.

Respondent must contact the Office of Probation and obtain written approval for the program Respondent

(Do not write above this line.)

has selected prior to attending the first self-help group meeting. If respondent wants to change groups, respondent must first obtain the Office of Probation's written approval prior to attending a meeting with the new self-help group.

respondent was driving in the opposite direction. Officer Douglas briefly spoke with respondent regarding the 911 call and then allowed respondent to drive away. Dispatch informed Officer Douglas that the caller had called back and stated that respondent had been drinking.

8. Officer Douglas turned around and pulled respondent over approximately 1.2 miles away at an intersection. Respondent got out of his car and Officer Douglas observed that respondent was unsteady on his feet and placed his hand on his vehicle for balance. Respondent admitted to consuming four glasses of wine over the course of watching a football game.

9. Officer Douglas could smell a strong odor of alcohol coming from respondent and coming from his breath as he spoke. Respondent's eyes were watery. Officer Douglas requested that the California Highway Patrol ("CHP") respond to the scene to conduct a DUI investigation.

10. CHP Officer Ben Greenlee arrived and interviewed respondent. Officer Greenlee observed respondent had "unsteady balance, slurred speech, red/watery eyes, and the strong odor of an alcoholic beverage emanating from his breath." Officer Greenlee had respondent attempt to complete field sobriety tests. Respondent did not perform the field sobriety tests as explained or demonstrated.

11. Respondent refused to take a Preliminary Alcohol Screening test and opted to take the blood chemical test.

12. Respondent was placed under arrest for violating California Vehicle Code section 23152(a) [Driving Under the Influence]; section 23152(b) [Driving with a BAC of .08% or higher]; and section 23540 [Enhancement for Second DUI within 10 Years] and was transported to the Marin County Jail. On November 11, 2012 at approximately 6:56 p.m., blood was drawn from respondent's left arm using a non-alcoholic sterilizing agent.

13. On November 16, 2012, an analysis of respondent's blood sample from November 11, 2012 showed respondent's Blood Alcohol Content ("BAC") was .21%.

CONCLUSIONS OF LAW:

14. The facts and circumstances surrounding the above described violation did not involve moral turpitude but did involve other misconduct warranting discipline.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Standard 1.5(a): Prior record of discipline. In State Bar case number 03-C-4869 respondent received a private reproof with public disclosure for a violation of Business and Professions Code 6068(a) for two separate convictions for driving while under the influence of alcohol. On December 29, 1998, respondent admitted and pled guilty to violating California Vehicle Code section 23103.5 [Reckless Driving; Alcohol Involved] on November 18, 1998. On February 13, 2004, respondent was convicted of violating California Vehicle Code section 23152(a) [Driving While Under the Influence] on November 18, 2003.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Pre-trial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. Of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.)

The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) Any discipline recommendation that deviates from the Standards must include clear reasons for the departure. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Here, standard 2.12(b) applies to respondent’s misconduct where on its face or in the surrounding circumstances moral turpitude cannot be found. Standard 2.12(b) provides: “Suspension or reproof is appropriate for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.” Respondent was convicted of one misdemeanor DUI, the facts and circumstances of which do not involve moral turpitude.

Standard 1.8(a) states, “If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.”

On May 22, 2005, in State Bar case number 03-C-04869, respondent received a private reproof with public disclosure for two convictions: a 1998 conviction for reckless driving involving alcohol and a 2004 conviction for driving while under the influence. The prior misconduct is not remote in time and it was serious. Therefore, imposing greater discipline in this case would not be manifestly unjust.

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, respondent has a prior record of discipline and in mitigation respondent has agreed to enter into a pretrial stipulation. In light of the respondent’s prior for alcohol

related convictions, standard 1.8(a), and the mitigating circumstances, a stayed suspension would be appropriate.

Case law is instructive. In *In re Kelley* (1990) 52 Cal. 3d 487, the Supreme Court imposed a public reproof for the conviction of a second DUI while the attorney was still on probation for the first DUI. The Supreme Court noted that though Kelley's convictions did not cause specific harm to the public or the courts, and there were several significant mitigating factors, "relatively minimal discipline is warranted in this case, even though petitioner's crimes were serious and involved a threat of harm to the public." (*Id.* at p. 498.)

Like *Kelley*, respondent's misconduct is serious and involved disregard for the safety of others. In *Kelley*, the attorney had two convictions for DUI and substantial mitigation. Here, respondent has two DUI convictions and one wet reckless conviction. Respondent also drove with a Blood Alcohol Content at almost three times the legal limit and has a prior record of discipline and limited mitigation. Thus, a level of discipline greater than *Kelley* is warranted. A one year stayed suspension with two years probation with substance abuse conditions would best protect the public, serve the purpose of attorney discipline and is in accordance with the standards and case law.

COSTS OF DISCIPLINARY PROCEEDINGS.

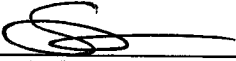
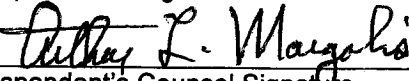
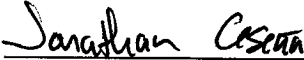
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 29, 2014, the prosecution costs in this matter are \$2,447.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: STEPHEN JOHN COGHLAN	Case number(s): 12-C-17983
---	-------------------------------

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>9/25/14</u> Date	 Respondent's Signature	<u>Stephen John Coghlan</u> Print Name
<u>9/30/14</u> Date	 Respondent's Counsel Signature	<u>Arthur Margolis</u> Print Name
<u>10/6/14</u> Date	 Deputy Trial Counsel's Signature	<u>Jonathan Cesena</u> Print Name

(Do not write above this line.)

In the Matter of: STEPHEN JOHN COGHLAN	Case Number(s): 12-C-17983-PEM
---	-----------------------------------

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.

1. On page 6 of the stipulation, an "X" is inserted in the box next to paragraph F.(1); and
2. On page 6 of the stipulation, the "X" next to "No MPRE recommended" in paragraph F.(1) is deleted along with the subsequent language explaining the parties' reasoning. (See In re Segretti (1976) 15 Cal.3d 878, 891 [Professional responsibility examination will be a condition of probation for all suspensions, including stayed].)

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.)**

October 16, 2014 _____
Date Judge of the State Bar Court

Pat McElroy

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 October 16, 2014, 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:

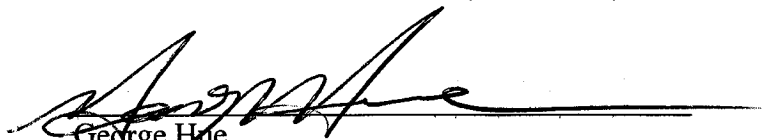
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Jonathan Cesena, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 16, 2014.


George Hue
Case Administrator
State Bar Court