


ORIGINAL

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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Nancy C. Brown 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1213 Bar # 102623	Case Number(s): 12-H-11015	For Court use only PUBLIC MATTER FILED JUL 03 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES 
In Pro Per Respondent Benjamin Emil Herron 2450 Burgener Blvd. San Diego, CA 92110 (619) 723-9073 Bar # 249172	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: BENJAMIN EMIL HERRON Bar # 249172 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 1, 2007.
- (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 11 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."



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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: two billing cycles following 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 [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 10-O-09304
 - (b) ☒ Date prior discipline effective December 14, 2010
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6068(l)
 - (d) ☒ Degree of prior discipline Public Reprimand
 - (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.

- (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 below.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

Respondent's misconduct in case no. 10-O-09304 which resulted in his prior discipline, is the same as or similar to his misconduct in the present case, and evidences a pattern of misconduct by Respondent. Standard 1.2(b)(ii).

In case no. 10-O-09304, Respondent and the State Bar entered into a Stipulation as to Facts and Agreement in Lieu of Discipline (the "ALD") after Respondent's conviction for a second violation of Vehicle Code section 23152(a) (driving under the influence).

In the ALD, Respondent agreed to perform certain conditions for one year, including filing quarterly reports for the period of the ALD, continually participating and complying with his participation plan with LAP, providing the Office of Probation with a copy of a written waiver authorizing the LAP to provide the Office of Probation with information regarding the terms and conditions of his effective participation plan and complying with the conditions of probation imposed in his criminal matter.

Respondent failed to file a quarterly report with the Office of Probation, failed to provide the written waiver to the Office of Probation, failed to continually participate and comply with his participation plan with the LAP and failed to timely comply with certain conditions of his criminal probation arising from the DUI.

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☒ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law 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:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of two (2) 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 thirty (30) days.

- 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.
- (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:
- | | |
|--|---|
| <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 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:
- (5) ☒ **Other Conditions:** See (9) above: Respondent is still under criminal probation in the original DUI case that resulted in the ALD and case no. 10-O-09304.

SUBSTANCE ABUSE CONDITIONS

- a. Respondent must abstain from use of any alcoholic beverages and shall not use or possess any narcotics, dangerous drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least 4 meetings per month of Alcoholics Anonymous, Narcotics Anonymous and/or the Other Bar, or any other relevant 12-step program, if approved in writing by the Office of Probation.

As a separate reporting requirement, if requested by the Office of Probation, Respondent must provide to the Office of Probation satisfactory proof of meeting attendance for each month during the period of probation.

- c. Respondent must select a licensed medical laboratory or laboratories acceptable to the Office of Probation and having the capability to provide observed testing of Respondent as specified below. Respondent must provide a copy of this order and of the Office of Probation Lab Test Information Sheet to each and every laboratory utilized by him to perform any portion of the testing required to comply with this condition or probation. In the event that Respondent subsequently is informed or learns that any laboratory, previously approved by the Office of Probation to conduct the testing set forth below, is no longer able or willing to perform any of such testing in the manner set forth below, Respondent is to notify the Office of Probation in writing of that fact within seventy-two hours after acquiring such information; and he must select a new licensed medical laboratory, acceptable to the Office of Probation and having the capability to provide observed testing of Respondent as specified below, sufficiently promptly that he will be able to continue to comply timely with the testing requirements set forth below.
- d. Respondent must be tested, at his expense, within the first five (5) days of each calendar month during probation to show that he has abstained from the use of alcohol and drugs. This testing will utilize (1) a 10-panel test of the drugs listed in the Office of Probation's Lab Test Information Sheet of Respondent's blood and (2) an Ethyl Glucuronide ("EtG") test of a sample of Respondent's urine obtained by the laboratory by observed collection, or equivalent tests accepted and approved in advance by the Office of Probation. These tests are to be performed by the laboratory pursuant to Department of Transportation Guidelines, including observed testing. Respondent must cause the laboratory to provide directly to the Office of Probation, at Respondent's expense, a screening report on or before the tenth day of each such month which contains an analysis of the above blood and urine tests, shows that each tested sample was properly obtained within ten days of the report, and demonstrates that the above testing requirements were satisfied. A

SUBSTANCE ABUSE CONDITIONS continued

“screening report” lists all of the items for which Respondent was tested, with the individual results for each such item. An overall synopsis, e.g., “negative”, with no breakdown, is not sufficient.

- e. For good cause, the Office of Probation may require Respondent to submit to additional blood, urine, drug and/or alcohol testing within six hours after actual notice to Respondent that the Office of Probation requires an additional screening report. 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 within twelve (12) hours of the call being made.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Benjamin Emil Herron

CASE NUMBER: 12-H-11015

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-H-11015

FACTS

1. On or about November 8, 2010, Respondent entered into a stipulation with the Office of the Chief Trial Counsel of the State Bar of California for a public reproof to resolve case no. 10-O-09304. On or about November 22, 2010, the State Bar Court filed an order in case no. 10-O-09304 imposing the public reproof ("Reproof Order") on Respondent.
2. The Reproof Order required that Respondent submit quarterly reports to the Office of Probation beginning April 10, 2011; quarterly reports from the Lawyer's Assistance Program ("LAP") beginning April 10, 2011; and quarterly reports that Respondent was in compliance with all the conditions of probation imposed in his underlying criminal case, beginning April 10, 2011.
3. The Reproof Order also required Respondent to continually participate and comply with all provisions and conditions of either his Participation Plan during Evaluation or Participation Agreement/Plan with LAP ("LAP participation plan"), whichever was in effect; report any incidence of non-compliance with the terms and conditions of his effective LAP participation plan to the Office of Probation within five (5) days of its occurrence; and report his compliance and non-compliance with the terms and conditions of his effective LAP participation plan to the satisfaction of the Office of Probation in each written report to the Office of Probation required by the reproof.
4. Respondent failed to comply with his reporting requirements as follows:
 - Respondent failed to submit to the Office of Probation the quarterly reports due April 10, 2011 and October 10, 2011 until November 19, 2011.
 - Respondent failed to submit to the Office of Probation the quarterly reports from LAP due April 10, 2011 and July 10, 2011 until August 22, 2011.
 - In the August 22, 2011 LAP report, the LAP case manager reported that Respondent was not in compliance with the reproof condition because he did not provide verification of attendance at self-help groups, and did not provide quarterly therapy and other reports to LAP.
 - On or about September 22, 2011, the LAP case manager sent a participation report entitled "Immediate Report of Non-Compliance" to the Office of Probation resulting from Respondent's unexcused absence from a LAP group/therapy session on or about September 19, 2011.

- Respondent failed to report to the Office of Probation his non-compliance with the terms and conditions of his effective LAP participation plan within five days of its occurrence and failed to report his non-compliance in each written report to the Office of Probation required by the Reproval Order.
- On September 27, 2011, the LAP case manager sent a closed case report to the Office of Probation because Respondent decided not to continue with LAP because it was too expensive. Respondent did not seek leave of court to amend the terms of the Reproval Order before withdrawing from LAP. Respondent did not submit a quarterly report from LAP on or about October 10, 2011.
- On December 13, 2011, Respondent submitted a timely final report with the Office of Probation, but failed to disclose whether he was in compliance with the probation in his underlying criminal case, and that he was not in compliance with the conditions of his LAP participation plan.

CONCLUSIONS OF LAW

5. By failing to comply with the conditions of the public reproval ordered by the court, Respondent violated rule 1-110 of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was June 5, 2012.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.9 of the Standards for Attorney Sanctions for Professional Misconduct provides that culpability of a member for willful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

Standard 1.7 states that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 7, 2012, the prosecution costs in this matter are \$2343. 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:
BENJAMIN EMIL HERRON

Case number(s):
12-H-11015

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.

June 14, 2012

Date



Respondent's Signature

Benjamin E. Herron

Print Name

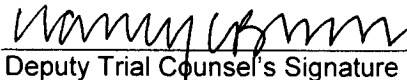
Date

Respondent's Counsel Signature

Print Name

June 18, 2012

Date



Deputy Trial Counsel's Signature

Nancy C. Brown

Print Name

(Do not write above this line.)

In the Matter of: BENJAMIN EMIL HERRON	Case Number(s): 12-H-11015
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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

7/2/12



Judge of the State Bar Court

DONALD F. MILES

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 July 3, 2012, 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:

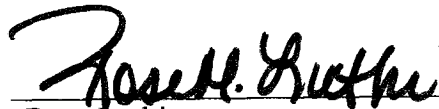
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BENJAMIN E. HERRON
2450 BURGNER BLVD
SAN DIEGO, CA 92110

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

NANCY BROWN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 3, 2012.



Rose Luthi
Case Administrator
State Bar Court