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**State Bar Court of California
Hearing Department
San Francisco
REPROVAL**

Counsel For The State Bar Tammy M. Albertsen Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2527 Bar # 154248	Case Number(s): 13-C-11093; 13-C-11382; 13-C-11383-PEM (cons.)	For Court use only PUBLIC MATTER FILED  NOV 26 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Robert F. Hahn Gould & Hahn 2550 9th Street, Suite 101 (510) 665-1800 Bar # 189901	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: CHRISTOPHER JOHN SMITH Bar # 172842 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 December 8, 1994.
- (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 13 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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.
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) Prior record of discipline [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline

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- (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 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, Stipulation Attachment at pages 10-11.
- (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, Stipulation Attachment at page 10.
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of

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Reproval

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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:

- * No Prior Record of Discipline
- * Good Character
- * Recognition of Wrongdoing
- * Pre-trial Stipulation

See Stipulation Attachment, page 11

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproval for a period of one (1) year.
- (2) During the condition period attached to the reproval, 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

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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 condition period attached to the reprobation. 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 the reprobation during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reprobation.
- (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) 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 of the effective date of the reprobation.

No MPRE recommended. Reason: The protection of the public and the interests of Respondent do not require passage of the MPRE in this case. See, In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181.

- (11) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input 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:

Additional Reprobation Condition:

(Effective January 1, 2011)

Reprobation

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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 this reproof, is part of Respondent's efforts to address such concerns.

As a condition of reproof, 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 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 must provide to the Office of Probation satisfactory proof of attendance of the meetings set forth herein with each Quarterly Report submitted to the Office of Probation. Respondent may not sign as the verifier of his or her own attendance.

Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program, to abstain from alcohol and illegal drugs, and to undergo random urinalysis testing to complement abstinence.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: CHRISTOPHER JOHN SMITH

CASE NUMBERS: 13-C-11093; 13-C-11382; 13-C-11383

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the convictions did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 13-C-11093 (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 February 28, 2005, the San Mateo County District Attorney filed a criminal complaint in the San Mateo County Superior Court, case no. SM338099, charging Respondent with one count each of violation of Vehicle Code section 23152(a) [Driving under the Influence] and Vehicle Code section 23577(a) [failing to submit to chemical test].
3. On April 13, 2005, the court entered Respondent's plea of nolo contendere to a violation of Vehicle Code section 23152(a) [Driving under the Influence], a misdemeanor, and based thereon, the court found Respondent guilty of that count. The court dismissed the remaining count in the furtherance of justice.
4. On April 13, 2005, the court placed Respondent on court probation for a period of three years. The court further ordered that Respondent serve two (2) days in jail or through the Sherriff's work program, pay fines and fees of \$1,501, and comply with other standard conditions.
5. On May 20, 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:

6. On February 20 2005, a driver in Belmont, California noticed the erratic driving of another car and was concerned that the driver of the other car was under the influence of alcohol. The driver reported her concerns to police and based on the female driver's description of the car, driver and erratic driving, Belmont police proceeded to investigate the report.
7. Shortly after the driver made the report, police spotted the car about which the driver had called. The car, which was being driven by Respondent, was driving down a short street and had just pulled into a driveway. Before Respondent got out of his car, the officer approached Respondent and

immediately noticed a strong odor of alcohol coming from Respondent, as well as Respondent's bloodshot, watery eyes. The officer asked Respondent for identification, which Respondent denied having. The officer asked Respondent to get out of his car and Respondent refused. However, Respondent then lifted up one arm which the officer used to assist Respondent out of his car. After Respondent got out of his car, the officer noticed Respondent's lack of balance. The officer obtained Respondent's wallet in which the officer found Respondent's driver's license that Respondent had just moments earlier denied having.

8. The officer administered field sobriety tests, all of which Respondent either failed or refused to attempt. Respondent also refused to take the Preliminary Alcohol Screening ("P.A.S.") test. The officer arrested Respondent under suspicion of Respondent's driving under the influence of alcohol.

9. At the First Chance processing center, the officer advised Respondent of his obligation to submit to a chemical test. Respondent refused to submit to a chemical test.

10. The officer prepared a citation for Respondent to acknowledge and sign. After initially refusing to sign the citation, Respondent did in fact sign the citation. The citation alleged Respondent's violation of Vehicle Code section 23152(A) [Driving Under the Influence of Alcohol].

11. On February 28, 2005, the San Mateo County District Attorney's Office filed a misdemeanor complaint, alleging a violation of Vehicle Code section 23152(A), aggravated by a violation of Vehicle Code section 23577(A)(1) [Willful Refusal to Submit to Chemical Test].

12. On April 13, 2005, Respondent entered a plea of no contest to Count 1, a violation of Vehicle Code, section 23152(A) [Driving Under the Influence of Alcohol]. The remaining charge was dismissed in view of Respondent's plea.

CONCLUSION OF LAW:

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

Case No. 13-C-11383 (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 December 15, 2008, the Ventura County District Attorney filed a criminal complaint in the Ventura County Superior Court, case no. 2008047561, charging Respondent in count one with a violation of Vehicle Code section 23152(a) [Driving under the Influence], aggravated by a prior conviction in San Mateo County Court case no. S338099 and enhanced by having a blood alcohol content of .15 percent and higher within the meaning of Vehicle Code section 23578. Respondent was also charged in count two with the alternate charge of a violation of Vehicle Code section 23152(b) [Driving with a blood alcohol level of .08 percent or higher], similarly aggravated and enhanced by the prior conviction and higher blood alcohol level. In count three, Respondent was charged with a violation of Vehicle Code section 23222(a) [Possession of an open container of an alcoholic beverage].

3. On January 23, 2009, the court entered Respondent's plea of guilty to count two, a violation of Vehicle Code section 23152(b) [Driving with a blood alcohol level of .08 percent or higher], a misdemeanor, and based thereon, the court found Respondent guilty of that count. The court also found

the related enhancements for Respondent's prior conviction and blood alcohol level of .15 percent or higher. The remaining counts and enhancements were dismissed in view of Respondent's plea.

4. On January 23, 2009, the court placed Respondent on formal probation for a period of five years. The court further ordered that Respondent, among other things, serve forty (40) days in jail and/or through the Sheriff's work furlough program, pay fines and fees of \$ 6,658 as well as comply with other standard conditions.

5. On May 20, 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.

6. On November 13, 2008, a California Highway Patrol ("CHP") officer observed a driver later identified as Respondent driving erratically on a Ventura County highway. The officer pulled Respondent over. The officer smelled the odor of alcohol emanating from within Respondent's car and coming from Respondent's person. The officer also saw an open container of an alcoholic beverage in Respondent's car.

7. The officer administered field sobriety tests ("FSTs") to Respondent; Respondent failed all the FSTs. Respondent was arrested and taken into custody. Respondent's blood alcohol level was later determined to exceed .15.

CONCLUSION OF LAW:

8. 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-11382 (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 December 15, 2009, the Ventura County District Attorney filed a criminal complaint in the Ventura County Superior Court, case no. 2009045240, charging Respondent in count one with a violation of Vehicle Code section 23152(a) [Driving under the Influence], aggravated by two prior convictions for driving under the influence and further enhanced by driving with a blood alcohol level in excess of .15 percent. Respondent was also charged in count two with the alternate charge of a violation of Vehicle Code section 23152(b) [Driving with a blood alcohol level of .08 percent or higher], similarly aggravated and enhanced by the prior convictions and higher blood alcohol level. In count three, Respondent was charged with a violation of Vehicle Code section 12500(a) [Driving Without a Valid Driver's License].

3. On January 12, 2010, the court entered Respondent's plea of guilty to count two, a violation of Vehicle Code section 23152(b) [Driving with a blood alcohol level of .08 percent or higher], a

misdemeanor, and based thereon, the court found Respondent guilty of that count. The court also found the related enhancements for Respondent's prior conviction and blood alcohol level of .15 percent or higher. The remaining counts and enhancements were dismissed in view of Respondent's plea.

4. On April 7, 2010, Respondent the court placed Respondent on formal probation for a period of five years. The court further ordered that Respondent serve 180 days in jail and/or through the Sherriff's work furlough program, pay fines and fees of \$ 5,454 and comply with other standard conditions.

5. On May 20, 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:

6. On December 11, 2009, police were called to the scene of an injury accident. Upon arrival, police discovered a driver later identified as Respondent, still in the driver seat of his car and being treated by paramedics. Respondent had rolled his car into the back of another car stopped at an intersection.

7. Police attempted to question Respondent. Respondent answered very few of the officer's questions and kept his eyes closed throughout the questioning. Police also observed Respondent's slurred speech and strong odor of alcohol emanating from his body.

8. Based on the officer's observations, he believed Respondent was under the influence of alcohol and arrested Respondent. Police attempted to get Respondent's consent to submit to a chemical test, but Respondent was unable to consent or refuse because he had essentially passed out, going in and out of consciousness. Thereafter, Respondent was taken to the hospital where medical personnel took a blood sample.

9. Respondent's blood had an alcohol content of .30. Police booked Respondent for driving under the influence, causing injury (to himself), and driving on a license suspended because of a prior DUI.

CONCLUSION OF LAW:

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

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent's three convictions for driving under the influence of alcohol constitute multiple acts of misconduct.

Harm (Std. 1.2(b)(iv)): Respondent's misconduct induced three separate criminal prosecutions, thereby significantly impacting the administration of justice and public confidence in attorneys. Furthermore, driving under the influence of alcohol exposes the public to extreme danger.

MITIGATING CIRCUMSTANCES.

No prior record of discipline: Respondent was admitted in 1994. His first DUI occurred in 2005, or 10.5 years after his admission; significant mitigation credit is given for more than 10 years of discipline-free practice. However, any mitigation credit must be tempered by the fact that the current three separate convictions evince serious misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Good Character: Respondent submitted character letters from eleven individuals representing a wide range within the legal and general communities – medical personnel, attorneys, lay people – attesting to their knowledge of Respondent’s multiple convictions for DUI as the basis for his State Bar discipline proceeding and stating that Respondent has very high character and Respondent is committed to his sobriety. (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29.)

Recognition of wrongdoing: In May 2007, Respondent self-admitted to Hazelden Springbrook’s 28-day residential treatment program. After Respondent’s third DUI in 2010, Respondent took responsibility for and over his conditions. Respondent self-admitted to a 60-day residential program (The Lake House) and began regularly seeing both a psychiatrist and a psychologist (to address the mental health issues that coexist with his alcoholism), both of whom Respondent continues to see and who state that Respondent is making great progress. In addition, Respondent became and remains a devotee to AA. These steps – taken without pressure from the State Bar – represent affirmative conduct (*In re Menna* (1995) 11 Cal.4th 975, 990) and also represent objective steps taken spontaneously which are designed to atone for and prevent recurrence of the misconduct.

Pretrial Stipulation: Respondent actively pursued settlement and has entered into this stipulation prior to trial. (*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].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

Respondent’s offenses do not involve moral turpitude, but do involve other misconduct warranting discipline.

Standard 3.4 provides that “[f]inal conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime’s commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.”

Under Part B, Standard 2.10 is most applicable to Respondent’s misconduct. Standard 2.10 states that the appropriate level of discipline for such misconduct is a “reproval or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In mitigation, Respondent has no prior record of discipline since being admitted in 1994 and has voluntarily entered into this stipulation. The three DUI convictions at issue did not involve the practice of law. Respondent is committed to his sobriety and has been sober for over three years. Respondent continues to seek treatment through his psychologist and psychiatrist to address his issues and prevent a relapse. Respondent has taken all reasonable steps to manage his addiction such that it does not affect his practice or the public.

In aggravation, Respondent has committed three offenses involving alcohol and driving. Further, Respondent committed the second offense while on probation for the first DUI conviction. In addition, two of the three convictions involved blood alcohol levels in excess of .15 percent; one involved a blood alcohol level of .30 percent. Respondent’s misconduct is serious because it demonstrates a disregard for the law and safety of others. However, the misconduct does not involve the practice of law and the conditions attached to this discipline, if complied with, should minimize the likelihood of Respondent engaging in similar misconduct in the future. Therefore, a discipline at the low end of the range discussed in standard 2.10 is sufficient to achieve the purposes of discipline expressed in standard 1.3, including protection the public. Accordingly, imposition of a public reproval is appropriate.

This disposition is also in accord with Supreme Court precedent. (See *In re Kelley* (1990) 52 Cal.3d 487, 497 [public reproval imposed on attorney who committed DUI offense while on probation for previous DUI].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 25, 2013, the prosecution costs in this matter are \$2,392.00. 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.

EXCLUSION FROM MCLE CREDIT


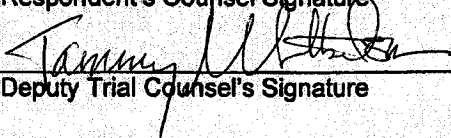
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as a condition of reproval or suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: CHRISTOPER JOHN SMITH	Case number(s): 13-C-11093; 13-C-11382; 13-C-11383-PEM
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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>11/15/13</u> Date	 Respondent's Signature	<u>Christopher John Smith</u> Print Name
<u>11/18/13</u> Date	 Respondent's Counsel Signature	<u>Robert F. Hahn</u> Print Name
<u>11/21/13</u> Date	 Deputy Trial Counsel's Signature	<u>Tammy M. Albertsen</u> Print Name

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In the Matter of: CHRISTOPHER JOHN SMITH	Case Number(s): 13-C-11093; 13-C-11382; 13-C-11383-PEM
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- 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. (See rule 5.58(E) & (F), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Nov. 26, 2013

Date


LUCY ARMENDARIZ
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, On November 26, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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


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

ROBERT F. HAHN
LAW OFFICE OF GOULD & HAHN
2550 9TH ST STE 101
BERKELEY, CA 94710

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

Tammy M. Albertsen, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 26, 2013.


Laurretta Cramer
Case Administrator
State Bar Court