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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			ORIGINAL
Counsel For The State Bar Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182 Bar # 281574	Case Number(s): 13-C-13741, 14-C-03999 14-C-04000 - WKM	For Court use only FILED JUL 08 2015 STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
Counsel For Respondent Susan L. Margolis Margolis & Margolis LLP 2000 Riverside Dr. Los Angeles, CA 90039 (323) 953-8996 Bar # 104629	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: BRADLEY HOWARD SPEAR Bar # 133371 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 **April 8, 1988**.
- (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 **16** 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 [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 **91-C-03027, see stipulation, page 12.**
 - (b) ☒ Date prior discipline effective **February 25, 1992.**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code not involving moral turpitude but involving other misconduct warranting discipline.**
 - (d) ☒ Degree of prior discipline **private reproof with public disclosure.**
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.
 - i.
 - (a) State Bar Court case # of prior case: **93-C-13841, see stipulation, page 12.**
 - (b) Date prior discipline effective: **May 11, 1994.**
 - (c) Rules of Professional Conduct/State Bar Act violations: **proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code not involving moral turpitude but involving other misconduct warranting discipline.**
 - (d) Degree of prior discipline: **public reproof.**
 - ii.
 - (a) State Bar Court case # of prior case: **94-C-14471, see stipulation, page 12.**
 - (b) Date prior discipline effective: **December 22, 1994.**
 - (c) Rules of Professional Conduct/State Bar Act violations: **proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code not involving moral turpitude but involving other misconduct warranting discipline.**
 - (d) Degree of prior discipline: **private reproof.**

iii.

(a) State Bar Court case # of prior case: 02-C-11201, see stipulation, page 12.

(b) Date prior discipline effective: July 11, 2006.

(c) Rules of Professional Conduct/State Bar Act violations: proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code not involving moral turpitude but involving other misconduct warranting discipline.

(d) Degree of prior discipline: public reproof.

- (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.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See stipulation, page 12.**
- (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.

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- (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. **See stipulation, page 12.**
- (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:

Recognition of Wrongdoing and Pre-Trial Stipulation, see stipulation, page 12.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **two 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 1.2(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:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of **three years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **two 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 1.2(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:

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 1.2(c)(1), 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.

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- (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:**
- (a) **To satisfy the condition of Ethics School, respondent may attend a session of Ethics School between the date that respondent executes this Stipulation and the effective date of the discipline herein. In that event, respondent must provide to the Office of Probation satisfactory proof of his attendance at Ethics School and passage of the test given at the end of that session with his first quarterly report due under this Stipulation.**
- (b) **To satisfy the requirement of the MPRE, respondent may take the MPRE between the date that respondent executes this Stipulation and the effective date of the discipline herein. In that event, respondent must provide proof of passage of the MPRE to the Office of Probation with his first quarterly report due under this Stipulation.**

Attachment language (if any):

Substance Abuse Conditions:

Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription. However, a prescription for medical marijuana will not be accepted; respondent must abstain from marijuana. Respondent is responsible for learning about and then avoiding all products containing the above drugs and alcohol including, but not limited to: mouthwash; cough/cold/allergy preparations (e.g. Nyquil®); over the counter medicines (e.g. sleep aids and diet aids); foods prepared with alcohol (e.g. wine and vanilla extract), etc. Consumption of these products could produce a positive test result and would violate this agreement. Respondent must report compliance with this condition to the Office of Probation with each quarterly report.

Respondent must attend at least two meetings per month of any abstinence-based self-help group of Respondent's own choosing, including inter alia, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include : (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program.]) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol. Before respondent attends the first self-help group meeting, respondent must contact the Office of Probation and obtain approval for the program respondent selected. If respondent wants to change groups, respondent must obtain the Office of Probation's approval prior to attending a meeting with the new self-help group.

As a separate reporting requirement, respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period. Respondent cannot sign as the verifier of respondent's proof of attendance.

Respondent must select a licensed medical laboratory or its licensed collection facility which conducts testing pursuant to Department of Transportation guidelines. Respondent must furnish to the laboratory blood and/or urine samples as may be required by the Office of Probation to show that respondent has abstained from alcohol and drugs. Specifically, respondent must be tested for a 10-panel (consisting of (1) Amphetamines; (2) Methamphetamines; (3) Barbiturates; (4) Benzodiazepines; (5) Cocaine Metabolite; (6) Opiates; (7) Oxycodone; (8) Marijuana; (9) Methadone; and (10) Propoxyphene) and for alcohol with an Ethyl Glucuronide ("EtG") test. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. The sample must be collected under direct observation by the licensed medical laboratory or its licensed collection facility.

Respondent must cause the laboratory to test the first portion of each sample to be tested, and cause the second portion of the specimen to be stored in a manner which will ensure that the specimen may be accurately tested in the future. Respondent must cause the laboratory to provide to the Office of Probation, at the respondent's expense, a screening report containing an analysis of respondent's blood and/or urine including cut off values and stating that the collection of the specimen was observed. In the event that a test result was positive, and respondent believes this result to be a false or "innocent" positive, respondent will be given up to 5 days to have the second specimen re-tested at the original laboratory or at another approved laboratory, and/or to meet with a Medical Review Officer employed or approved by the laboratory to discuss the results. If the laboratory determines that the initial positive test was indeed a false or "innocent" positive, that determination will be accepted by the Office of Probation.

Respondent must maintain with the Office of Probation a current address and a current telephone number at which respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of respondent's blood or urine within six (6) hours.

Random Testing: Respondent shall be randomly tested no more than four (4) times per year. Respondent is not required to do Standard Monthly Testing.

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

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BRADLEY HOWARD SPEAR

CASE NUMBERS: 13-C-13741, 14-C-03999, 14-C-04000

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 13-C-13741 (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 July 10, 2013, The Los Angeles City Attorney's Office filed a criminal complaint against respondent alleging that on June 19, 2013 he violated one count of Penal Code § 273.5, inflicting corporal injury upon a spouse, co-habitant or fiancée, a misdemeanor.

3. Respondent was arraigned on August 9, 2013, when he entered a plea to an added count of Penal Code § 415(1), fighting in public, a misdemeanor. Pursuant to the plea, the People dismissed the count alleging a violation of Penal Code § 273.5. Respondent was sentenced on August 9, 2014 to a 24-month summary probation and ordered to enroll and successfully complete a 52-week batterer's treatment program, attend 52 AA meetings, and obey any protective orders issued relating to his conviction.

4. On August 20, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

5. On June 19, 2013 at approximately 7:59 p.m., Los Angeles Police Department officers were dispatched to 9531 Comanche Avenue in Chatsworth, CA to respond to a report of a domestic violence incident. Officers arrived at that location approximately 20 minutes later where they found respondent on his cell phone outside his residence. As soon as officers arrived, respondent stated, "I've been waiting for you guys," and was arrested. An officer then spoke with the victim, who stated that she and respondent got into an argument in the front yard of their house over their cat when respondent became angry and pushed her in the upper torso with both hands. The victim then went into the house, respondent followed her, and continued to verbally argue with her. Both respondent and the victim had been drinking prior to the incident.

CONCLUSIONS OF LAW:

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

Case No. 14-C-03999 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

7. 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.

8. On January 12, 2006 a misdemeanor criminal complaint was filed against respondent alleging that respondent violated one count of Penal Code § 647(B).

9. On May 4, 2006, respondent pled nolo contendere to a misdemeanor violation of Penal Code §647(b) (solicitation of prostitution), as a result of which he was sentenced to ten (10) days in county jail and placed on probation for 24 months.

10. On February 20, 2015, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

11. On December 22, 2005, at approximately 10:00 p.m., respondent pulled his car into the parking lot of a CVS pharmacy on the corner of Valerio Street and Reseda Boulevard in Northridge, California to make a purchase. Officer P. was at the location with other Los Angeles Police Department officers conducting an impromptu prostitution sting operation. Respondent and Officer P. had a conversation in the parking lot about respondent paying Officer P. for sex. Officer P. asked respondent to meet her at a motel next door to have sex. Respondent asked Officer P. if she was a police officer, which she denied.

CONCLUSIONS OF LAW:

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

Case No. 14-C-04000 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

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

14. On June 15, 2010, the Mono County District Attorney's Office filed a misdemeanor complaint alleging that respondent violated one count of Vehicle Code § 23152(a) and one count of

Vehicle Code § 23152(b). Attached to each count was a special allegation that respondent suffered a prior conviction for driving under the influence (“DUI”) on September 6, 2001.

15. On July 8, 2013, respondent pleaded no contest to a “wet” reckless in violation of Vehicle Code § 23103 per Vehicle Code § 23103.5, and both DUI counts and the prior allegations were dismissed. Respondent was placed on three years conditional probation, and ordered to pay fines and complete a wet reckless course, in addition to the standard DUI terms and conditions of probation.

16. On November 5, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

17. On May 28, 2010 at approximately 11:30 p.m., Officer C. of the California Highway Patrol was on Main St. in Mammoth, CA in the number one lane, when he observed a car traveling in the opposite direction at a speed greater than the posted 35 m.p.h. speed limit. The radar on Officer C’s patrol unit registered that the other car was driving at a speed of 45 m.p.h. Officer C. conducted an enforcement stop of respondent for speeding in violation of Vehicle Code § 22350, a violation of the basic speed law. Respondent pulled over to the right side of Main St. and Officer C. made a passenger side approach.

18. Upon contacting respondent, Officer C. observed that respondent’s eyes were red and watery, smelled an odor of an unknown alcoholic beverage emitting from within the vehicle, and that respondent’s speech was heavily slurred. Respondent admitted to having a couple of beers that night prior to driving. Based upon his observations, Officer C. conducted a DUI investigation upon respondent.

19. During preliminary field sobriety test questioning by Officer C., respondent admitted that he had three beers prior to driving and that he felt the effects of the drinks “a little but not much.” Officer C. then conducted field sobriety tests, which respondent performed poorly, and at the conclusion of the tests, respondent’s blood alcohol content (“BAC”), as registered on the Preliminary Alcohol Screening (“PAS”) Device, was .125 percent and .112 percent. Based upon respondent’s performance on the field sobriety tests, his driving pattern, the objective signs of intoxication and the PAS results, Officer C. formed the opinion that respondent drove his car under the influence of alcohol and above the legal limit of .08 percent and arrested him for violating Vehicle Code §§ 23152(a) and (b).

20. When Officer C. arrested respondent, respondent became agitated and yelled to his passenger “I’m sorry but I’m going to jail, they got me.” Officer C. told respondent to calm down and relax. Respondent then became belligerent toward the officer, yelled profanities and refused to submit to a chemical test. Respondent later submitted to a chemical test which resulted in a BAC of .09 percent and .10 percent.

CONCLUSIONS OF LAW:

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

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has four prior records of discipline.

91-C-03027: Effective February 25, 1992, respondent received a private reproof with public disclosure, as a result of his May 2, 1991 conviction for a violation of Vehicle Code § 23152(b) (driving with a blood alcohol level of 0.08% or more). The misconduct occurred on May 2, 1991.

93-C-13841: Effective May 11, 1994, respondent received a public reproof for a second violation of Vehicle Code § 23152(b). The misconduct occurred on April 23, 1993.

94-C-14481: Effective December 22, 1994, respondent received a private reproof with public disclosure as a result of his conviction for a violation of Vehicle Code § 14610.2(a) (driving on a suspended license due to DUI conviction). The misconduct occurred on June 17, 1994.

02-C-11201: Effective July 11, 2006, case number 02-C-11201, respondent received a public reproof as a result of his conviction for a third violation of Vehicle Code § 23152(b). The discipline was imposed after successful completion of the Alternative Discipline Program. The misconduct occurred on January 8, 2002.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent engaged in multiple acts of wrongdoing that led to his three criminal convictions.

MITIGATING CIRCUMSTANCES.

Good Character (Std. 1.6(f)): Six individuals who are aware of respondent's criminal history and State Bar matter attested to respondent's good character and dedication as an attorney. The character references represent a wide range of backgrounds, both from within and outside the legal community.

Recognition of Wrongdoing: Respondent has been enrolled voluntarily in a 12-step program since September 2014 and has been participating in random drug testing, self-meetings, group meetings and individual therapy. Respondent also met with his therapist on a weekly basis for 10 months, which involved increasing his coping skills to deal with depression and anxiety. (*See Hipolito v. State Bar* (1989) 48 Cal.3d 621, 628 [efforts to pursue rehabilitation was a sign of remorse warranting mitigating].)

Pre-trial Stipulation: Respondent is entitled to mitigation for entering into this stipulation prior to trial, thereby saving State Bar time and resources. (*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 "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, supra*, 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 end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary 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.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigation circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In a criminal conviction referral proceeding, “discipline is imposed according to the gravity of the crime and the circumstances of the case.” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.) With this in mind, one of the Standards applicable here is Standard 2.12(b), which states “[s]uspension or reproof is appropriate for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.” This Standard applies to all three criminal convictions as they were all misdemeanors and none involved moral turpitude. (*In re Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201 [misdemeanor conviction for solicitation of lewd sexual acts in public was found to not involve moral turpitude]; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208; *In re Larkin* (1989) 48 Cal.3d 236.)

However, Standard 1.8(b) must be considered because respondent has four prior records of discipline. It states that “[i]f a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct: 1. Actual suspension was ordered in any one of the prior disciplinary matters; 2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or 3. The prior disciplinary matters coupled with the current record demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.”

While respondent has more than two prior records of discipline, disbarment is not warranted here under Standard 1.8(b). First, respondent’s prior discipline did not include any actual suspension. Second, while respondent has engaged in repetitive misconduct, a pattern is not evident. There was an eight-year gap between the misconduct underlying respondent’s third discipline, which was not alcohol-related, and his fourth discipline. This indicates that there was no “consistent course of conduct over a significant period of time” to establish a pattern. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776.) Third, respondent has shown a willingness to conform to ethical responsibilities by stipulating to his prior misconduct and complying with reproof conditions.

Case law indicates that even when Standard 1.8(b) (previously 1.7(b)) applies in matters involving multiple records of prior discipline, disbarment is not always warranted. (*Conroy v. State Bar* (1991) 53 Cal.3d 495 [one-year actual suspension despite records of prior discipline including actual suspension]; *In re Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108 [the attorney who had two prior records of State Bar discipline was actually suspended for six months in a conviction referral case pertaining to three separate events of driving while under the influence of alcohol or phencyclidine ("PCP")].) Accordingly, consideration must be given to "the nature and chronology of respondent's record of discipline. [Citation.] Merely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

This is respondent's fifth disciplinary matter. Respondent was publicly and private reprovved three times in 1992-1994 for primarily alcohol-related misconduct. His next prior record of discipline was in 2006, when he was publicly reprovved for a misdemeanor driving under the influence conviction. In that matter, respondent successfully completed the Alternative Discipline Program after complying with exhaustive rehabilitative conditions for two years, which reflected respondent's ability to conform to ethical responsibilities and pursue rehabilitation while being monitored. Respondent has a serious history of driving under the influence of alcohol. However, he has again shown a willingness to conform to ethical responsibilities by pursuing rehabilitation. In light of the details of respondent's disciplinary history, disbarment is not warranted. However, a lengthy period of actual suspension with substance abuse conditions is warranted.

In 13-C-13741, respondent was convicted of disturbing the peace for violent conduct that he engaged in while under the influence. Respondent's conduct against the victim while serious did not involve moral turpitude, but warrants serious discipline in light of his prior record of discipline. (See *In re Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr 543 [Review Department found that the attorney's threatening behavior with the use of a firearm involved moral turpitude, in part, because there was pre-meditation and intent without a finding of influence from the abuse of alcohol].)

Respondent's three acts of misconduct are aggravated by his four prior discipline matters and multiple acts of misconduct, but mitigated by his showing of good character as an attorney, good character through six witnesses, from a variety of backgrounds, who all attested to his good character despite their knowledge of his misconduct and pre-trial stipulation. On balance, the aggravation outweighs the mitigation. Therefore, the appropriate level of discipline should be significantly greater than a public reproof. A two-year actual suspension and three-year probation with standard conditions and a Standard 1.2(c)(1) is appropriate to protect the public, courts and legal profession; maintain high professional standards by attorneys; and preserve public confidence in the legal profession. (Std. 1.1.)

Case law supports this outcome. (*In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 [attorney with two prior records of discipline, both of which included actual suspension, was not disbarred for misdemeanor conviction not involving moral turpitude or related to the practice of law and received 120-day actual suspension].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 17, 2015, the prosecution costs in this matter are \$10,143.00. 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 Ethics School.
(Rules Proc. of State Bar, rule 3201.)

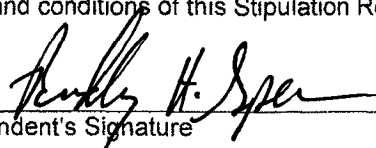
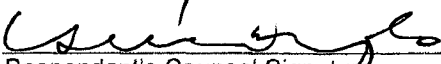
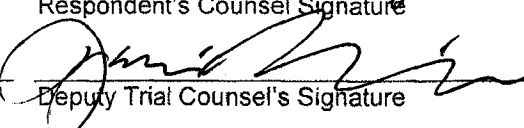
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In the Matter of:
BRADLEY HOWARD SPEAR

Case number(s):
13-C-13741, 14-C-03999, 14-C-04000

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.

6/19/15		Bradley Howard Spear
Date	Respondent's Signature	Print Name
6/22/15		Susan Margolis
Date	Respondent's Counsel Signature	Print Name
6/26/15		Jamie Kim
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
BRADLEY HOWARD SPEAR

Case Number(s):
13-C-13741, 14-C-03999, 14-C-04000-WKM

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 2 of the Stipulation, at paragraph B.(1)(e)(ii.)(a), "94-C-14471" is deleted, and in its place is inserted "94-C-14481".
2. On page 5 of the Stipulation, the "X" in the box at paragraph E.(1) is deleted, as respondent will remain actually suspended until he complies with standard 1.2(c)(1) as set forth in paragraph D.(3)(a)(i.) of the Stipulation.
3. On page 8 of the Stipulation, at lines 6-7, the following is deleted: "respondent must provide the Office of Probation and access to all of respondent's medical records".
4. The last two pages of the Stipulation as numbered 16 and 17.

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 July 8, 2015

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 8, 2015, 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:

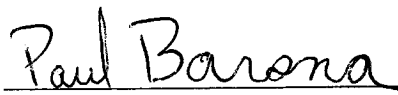
SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Jamie J. Kim, Enforcement, Los Angeles

Terrie Goldade, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 8, 2015.



Paul Barona
Case Administrator
State Bar Court