




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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2357 Bar # 243691	Case Number(s): 14-C-01084-LMA	For Court use only PUBLIC MATTER FILED  SEP 11 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Damon Eric Gardner 1541 Ponderosa Way Redwood Valley, CA 95470 (707) 338-2961 Bar # 226776	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: DAMON ERIC GARDNER Bar # 226776 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 2, 2003**.
- (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 **14** 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: (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(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☒ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith. **See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 11.**
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (7) ☐ **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.
- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 11.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☐ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☒ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. See "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 11.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively 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 "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 11.**
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline - See "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 11.

Pre-trial Stipulation- See "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 11.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **2 years**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 **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 **90 days**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 present 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.
- (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:**

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In the Matter of: DAMON ERIC GARDNER	Case Number(s): 14-C-01084-LMA
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Substance Abuse Conditions

- a. ☒ 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.
- b. ☒ Respondent must attend at least two meetings per month of:

- ☐ Alcoholics Anonymous
- ☐ Narcotics Anonymous
- ☐ The Other Bar
- ☒ Other program See below

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.

- c. ☐ Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. ☐ 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 twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. ☒ 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. 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.

Other:

Respondent recognizes that the facts and circumstances underlying his conviction suggest 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-

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help group (as defined herein), as a condition of discipline, is part of respondent's efforts to address such concerns.

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

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

Respondent must contact the Office of Probation and obtain written approval for the program respondent 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 own attendance.

Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAMON ERIC GARDNER

CASE NUMBER: 14-C-01084-LMA

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. 14-C-01084-LMA (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 4, 2014, the Sacramento County District Attorney's Office filed a criminal complaint in Sacramento Superior Court, case no. 14M00210, charging respondent with one count of violation of Penal Code section 25850(a) [Carrying a Loaded Firearm in a Public Place or Vehicle], a misdemeanor, and one count of violation of Penal Code section 25400(a)(2) [Carrying a Concealed Weapon], a misdemeanor.

3. On February 26, 2014, respondent pled guilty to the count of violation of Penal Code section 25400(a)(2) [Carrying a Concealed Weapon], a misdemeanor, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

4. On February 26, 2014, the court suspended the imposition of sentence and placed respondent on informal probation for a period of three years. The court also sentenced respondent to thirty days in jail, with credit for time served, and which could be served through a work release program. Respondent was also ordered to pay fines and restitution in the amount of \$613.97.

5. On May 22, 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 for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

6. In 1994, prior to admission, respondent was convicted of violating Penal Code section 415(i) [Fighting in Public], an infraction. In 1999, also prior to admission, respondent was convicted of violating Penal Code section 647(f) [Disorderly Conduct/Drunk in Public], and fined.

7. As of October 17, 2013, respondent was a deputy district attorney in Mendocino County. Respondent maintained a carry and conceal gun permit. Respondent's permit stated, in all capital letters, "NOT VALID IF UNDER THE INFLUENCE OF DRUGS OR ALCOHOL." The permit further stated that the holder shall not carry a concealed weapon while consuming alcohol, being in a bar, or under the influence of any medication.

8. As of October 17, 2013, respondent and a female companion were in Sacramento for a prosecutor's conference.

9. On October 17, 2013, over the course of the evening, respondent consumed at least 2 ½ glasses of beer, 3 vodkas and Red Bulls, and 2 twenty ounce "black and tan" beers. Respondent carried a concealed .38 caliber handgun throughout the evening.

10. Late in the evening, respondent and his companion left DeVere's Irish pub in Sacramento. Respondent wanted to go to the club next door, but his companion wanted to return to the hotel room. A verbal argument ensued between respondent and his companion, and respondent's companion walked away from him.

11. Respondent then proceeded to get into a verbal altercation with two men. Respondent threw a punch at one of the men, and the two men brought respondent to the ground, and proceeded to punch and kick him while he was on the ground. Respondent pulled out his handgun, and shot one of the men in the abdomen. Respondent then fled the scene.

12. Sacramento Police and California Highway Patrol ("CHP") responded to the scene. The shooting victim was transported to the hospital, where he was treated for non-life threatening injuries. The responding officer noted that the victim appeared intoxicated.

13. Respondent called his companion as she was being interviewed by the officers, and she told respondent to turn himself in to the police. Respondent told her that he was scared and did not know where he was located. Respondent then located a CHP cruiser and turned himself in to the officers, and surrendered his weapon. The CHP officer noted that respondent had swelling and bleeding on the left side of his face, and appeared intoxicated. The CHP officer also removed a pocket knife from respondent's pocket.

14. While being interviewed by the police officers, respondent misstated to the officers that he had drank only 2 Jameson whiskey and ginger ale mixed drinks that evening.

15. Early the next morning, respondent was driven back to the Sheraton hotel by the police, where he and his companion were staying for the conference.

16. Respondent was subsequently arrested on January 30, 2014.

CONCLUSIONS OF LAW:

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

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Dishonesty (Std. 1.5(d)): Respondent misstated the amount of alcohol he had consumed on the evening of October 17, 2013 to the police. Specifically, respondent told the officers that he had consumed only two alcoholic beverages that evening, when he had consumed at least 7 ½ drinks that evening. Respondent's dishonesty with the police constitutes an aggravating circumstance pursuant to Standard 1.5(d).

Harm (Std. 1.5(j)): Respondent shot the victim in his abdomen, causing substantial bodily injury. The physical injury caused by respondent's misconduct constitutes an aggravating circumstance pursuant to Standard 1.5(j).

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although respondent's misconduct is serious, he is entitled to limited mitigation for having practiced law for approximately 10 years prior to engaging in the alleged acts of misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.) Respondent's lack of a prior record of discipline constitutes a mitigating circumstance.

Recognition of Wrongdoing (Standard 1.6(g)): On October 18, 2013, the day following the shooting, of his own volition, respondent checked himself into a residential alcohol treatment center, where he successfully completed a 30-day in-patient program. Respondent's recognition of wrongdoing constitutes a mitigating circumstance pursuant to Standard 1.6(g).

Good Character (Std. 1.6(f)): Respondent provided the State Bar with 10 character reference letters from individuals within the legal and general communities, all of whom were aware of the full extent of respondent's misconduct. Respondent is entitled to some mitigation for good character pursuant to Standard 1.6(f).

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. (*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 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.) 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 mitigating 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).)

Here, respondent was convicted of violating Penal Code section 25400(a)(2) (Carrying a Concealed Weapon), a misdemeanor. In determining which Standard applies, we must first determine whether or not respondent's conviction involved moral turpitude. "Criminal conduct not committed in the practice of law or against a client reveals moral turpitude... if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession. [Citations.]" (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) Carrying a concealed weapon falls into the category of offenses which may or may not involve moral turpitude, although most courts have found that the offense does not involve moral turpitude. (See e.g., *In re Hickey* (Cal. 1990) 50 Cal.3d. 571 (conviction for carrying a concealed weapon did not involve moral turpitude but did involve other misconduct warranting discipline); *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 198-199 and 201 [conviction for having a concealed firearm in a vehicle may or may not involve moral turpitude or other misconduct warranting discipline]. Based on this guidance from the courts, respondent's misconduct did not involve moral turpitude, but does constitute other misconduct warranting discipline. Therefore, Standard 2.16(b) applies to this case. Standard 2.16(b) provides that "[s]uspension or reproof is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline."

A 90-day actual suspension is consistent with Standard 2.16(b), and appropriate based on the facts and circumstances of this case. Respondent's misconduct was quite serious. Respondent's actions resulted in an individual being shot. Respondent chose to imbibe copious amounts of alcohol while carrying his firearm, in direct violation of his carry and conceal permit. Respondent chose to instigate an altercation, which quickly got out of hand, and resulted in respondent having to discharge his gun to protect himself. Respondent's misconduct is further aggravated by significant harm and dishonesty. Respondent was also previously convicted of two alcohol related crimes. A higher level of actual suspension is not warranted because respondent's misconduct was the result of an alcohol problem, which respondent promptly sought treatment for. Respondent is also entitled to mitigation for having no prior record of discipline, good character, recognition of wrongdoing, and entering into a pretrial stipulation.

In re Hickey, 50 Cal.3d. 571, is instructive in this matter. In *Hickey*, the respondent attorney was convicted of a violation of Penal Code section 12025(b) (Carrying a Concealed Weapon), a misdemeanor. (*Id.* at 574.) In this matter, police had responded to a domestic violence call, and respondent approached the officers with a gun in his waistband. (*Id.*) *Hickey* had a history of alcohol abuse and physical violence towards his wife. (*Id.* at 575.) In addition to this criminal conviction, in a consolidated case, *Hickey* was found to have failed to properly notify a client that he was withdrawing

from a case. (*Id.* at 577) The Supreme Court ordered respondent suspended for three years, stayed, conditioned on a three-year probation, and 30 day actual suspension. (*Id.* at 581-82.) In addressing respondent's request for mitigation for seeking treatment for his alcoholism, the Court acknowledged that treatment for alcohol abuse could be considered in mitigation, but respondent had not demonstrated a sufficient passage of time to determine that his efforts at sobriety and non-violence would endure. (*Id.* at 581.)

Here, respondent's misconduct is significantly more egregious than that of respondent Hickey because respondent actually discharged his weapon and caused substantial injury. Further, respondent was an officer of the court who was aware of the requirements associated with his carry and conceal permit, yet he chose to violate those conditions by drinking alcohol while carrying his weapon. (*See e.g., Seide v. State Bar* (1989) 49 Cal.3d 933, 938 [applicant's conduct surrounding conviction for drug trafficking more egregious due to prior law enforcement background].) Thus, respondent's conduct warrants a substantially higher level of discipline than that imposed in *Hickey*.

Balancing all of the appropriate factors, a 90-day actual suspension is consistent with the Standards and *Hickey*, and is appropriate taking into consideration the facts and circumstances of this case.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 10, 2015, the prosecution costs in this matter are \$2,447. 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


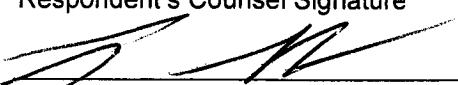
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: DAMON ERIC GARDNER	Case number(s): 14-C-01084-LMA
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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.

Date <u>8/18/15</u>	 Respondent's Signature	Damon Eric Gardner Print Name
Date <u>8/24/15</u>	 Deputy Trial Counsel's Signature	Heather E. Abelson Print Name

(Do not write above this line.)

In the Matter of: DAMON ERIC GARDNER	Case Number(s): 14-C-01084-LMA
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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:

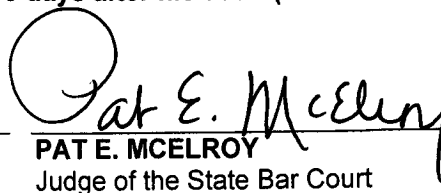
- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

On page 8 of the stipulation, the first sentence in the fourth full paragraph, which begins "Respondent must provide to," is DELETED; it is inconsistent with part b of the Substance Abuse Conditions on page 7 of the stipulation.

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

Sept. 11, 2015


PAT E. MCELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 11, 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 San Francisco, California, addressed as follows:

DAMON E. GARDNER
1541 PONDEROSA WAY
REDWOOD VALLEY, CA 95470

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

HEATHER ABELSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 11, 2015.



Mazie Yip
Case Administrator
State Bar Court