

PUBLIC MATTER

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**State Bar Court of California  
Hearing Department  
Los Angeles  
ALTERNATIVE DISCIPLINE PROGRAM**

<p>Counsel For The State Bar</p> <p><b>Drew Massey</b> Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 Tel: 213-765-1204</p> <p>Bar # 244350</p>	<p>Case Number (s) 14-C-03301-DFM 14-C-02867-DFM 14-C-02869-DFM</p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>JAN 08 2015</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Kevin Gerry</b> 711 N. Soledad Street Santa Barbara, CA 93103 Tel: 805-899-2990</p> <p>Bar # 129690</p>	<p>Submitted to: <b>Program Judge</b></p> <p><b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: <b>TIMOTHY ALAN NICHOLSON</b></p> <p>Bar # 140628</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **June 6, 1989**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."



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- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**B. Aggravating Circumstances [see 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
  - (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)  **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. **See attachment, page 7.**
- (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 attachment, page 7.**
- (8)  **Restitution:** Respondent failed to make restitution.
- (9)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

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

**Additional mitigating circumstances:**

**No prior discipline, see stipulation pages 7-8.**



FACTS:

4. On May 3, 2007, respondent drove his vehicle while intoxicated. Respondent drove onto the lawn of a private residence. There, he collided with the side of a car parked in the driveway. After the collision, Respondent drove away from the scene of the accident.

5. Respondent was located by officers about 0.2 miles from the accident scene approximately ten minutes later.

6. Orange County Sheriff's Deputy Velderrain questioned respondent. When asked if he had been drinking, respondent asserted, "just water."

7. Based on his observations of respondent's speech and balance, Deputy Velderrain administered a series of field sobriety tests. Respondent did not pass any test and was arrested.

8. After arriving at the police station, respondent consented to a blood alcohol test which revealed that respondent's blood alcohol content ("BAC") was 0.34%.

CONCLUSIONS OF LAW:

9. 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-03301 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

10. On December 8, 2008, the Orange County District Attorney filed a criminal complaint in the Orange County Superior Court, case no. 08HM09969, charging respondent with one count of violation of Vehicle Code section 23152(a) [driving under the influence of alcohol/drugs], a misdemeanor, and one count of violation of Vehicle Code section 23152(b) [driving with blood alcohol .08% or more], a misdemeanor. The complaint further alleged that respondent had a prior conviction for violation of Vehicle Code section 23152(a) [driving with blood alcohol .08% or more] entered on June 1, 2007.

11. On March 17, 2009, the court entered respondent's plea of guilty to one count of violation of Vehicle Code section 23152(b) [driving with blood alcohol .08% or more] and the court dismissed the remaining count on motion of the people.

12. At the time of the entry of the plea, the court suspended the imposition of sentence and ordered that respondent be placed on informal probation for five years on conditions which included, without limitation, that respondent not drive with a measurable amount of alcohol in his system, pay a fine of \$390 plus penalty assessments, attend and complete an eighteen (18) month Multiple Offender Alcohol Program, serve sixty (60) days in county jail, as well as other conditions.

FACTS:

13. On November 21, 2008, respondent drove his vehicle while intoxicated. Respondent struck a raised curb at the Irvine Spectrum in Irvine, California. A private security guard heard the collision and investigated the incident. When he arrived, respondent was still in his vehicle and the security guard attempted to get respondent's attention by knocking on the window. Respondent did not respond.

14. After approximately one minute, respondent accelerated forward. Respondent's vehicle went over the curb and collided with a decorative fountain.

15. Officer August of the Irvine Police Department spoke with respondent at the scene. Respondent informed Officer August that he, respondent, had consumed two glasses of white wine.

16. Officer Hillyard of the Irvine Police Department also questioned respondent at the scene. Respondent denied drinking any alcoholic beverage when questioned by Officer Hillyard.

17. Officer Hillyard questioned respondent and then conducted a series of field sobriety tests. Respondent did not pass any test and was arrested. After being transported to the station, respondent consented to a blood alcohol test which revealed that respondent's BAC was 0.32%.

18. In his guilty plea, respondent stipulated that he had a BAC of 0.32% at the time of the incident.

#### CONCLUSIONS OF LAW:

19. 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-02867 (Conviction Proceedings)

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

20. On August 1, 2013, the Orange County District Attorney filed a criminal complaint in the Orange County Superior Court, case no. 13HM06187, charging respondent with one count of violation of Vehicle Code section 23152(a) [driving under the influence of alcohol/drugs with two priors], a misdemeanor, one count of violation of Vehicle Code section 23152(b) [driving with blood alcohol .08% or more with two priors], a misdemeanor, one count of violation of Vehicle Code section 20002(a) [hit and run with property damage], a misdemeanor, and one count of violation of Vehicle Code section 14601.2(a) [driving on suspended license], a misdemeanor. The complaint further alleged that respondent had prior convictions for violation of Vehicle Code section 23152(a) [Driving under the Influence] entered on June 1, 2007 and March 17, 2009.

21. On December 10, 2013, the court entered respondent's plea of guilty to one count of violation of Vehicle Code section 23152(a) [driving under the influence of alcohol/drugs with two priors], a misdemeanor, one count of violation of Vehicle Code section 23152(b) [driving with blood alcohol .08% or more with two priors], a misdemeanor, one count of violation of Vehicle Code section 20002(a) [hit and run with property damage], and the court dismissed the remaining count on motion of the people.

22. At the time of the entry of the plea, the court suspended the imposition of sentence and ordered that respondent be placed on informal probation for five years on conditions which included, without limitation, that respondent not drive with a measurable amount of alcohol in his system, pay a fine of \$390 plus penalty assessments, attend and complete a MADD victim's impact panel, attend and complete an eighteen (18) month Multiple Offender Alcohol Program, attend and complete a Residential and Outpatient Program (which respondent voluntarily began on September 21, 2013), serve two

hundred forty (240) days in county jail (90 days stayed on condition of completion of the residential and outpatient program), as well as other conditions.

**FACTS:**

23. On June 5, 2013, respondent drove his vehicle while intoxicated. Respondent drove into the back of another vehicle. Respondent then changed lanes and drove away.

24. Orange County Sheriff's Deputy Martinez was in an unmarked police vehicle and observed the incident. He then followed respondent until respondent collided with the center median which lifted the tires of respondent's vehicle above the ground halting it. Deputy Martinez ordered respondent out of the car. Respondent continued to push on the accelerator.

25. After further orders, respondent exited his vehicle.

26. Thereafter, Orange County Sheriff's Deputy Sandler arrived on the scene. Deputy Sandler asked respondent, "What have you been drinking," to which respondent replied, "Nothing." Based on his observations of respondent's balance and speech, Deputy Sandler conducted a series of field sobriety tests. Respondent was not able to pass any test.

27. Deputy Sandler administered a Preliminary Alcohol Screening which revealed that respondent had a BAC of 0.295%.

28. After being arrested and arriving at the police station, respondent underwent two breath tests four minutes apart which revealed a BAC of 0.23% and 0.25%.

**CONCLUSIONS OF LAW:**

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

**AGGRAVATING CIRCUMSTANCES.**

**Harm (Std. 1.5(f)):** Respondent's misconduct herein did not result in client harm. However, respondent's misconduct has significantly harmed the public. In each conviction, the circumstances reveal that respondent's actions resulted in property damage. In the 2007 incident, respondent hit a parked car. In 2008, respondent drove into and cracked a decorative fountain. In 2013, respondent hit another vehicle and then drove into a center median. The repeated nature of respondent's misconduct means that the absence of more serious damage or injury was "merely fortuitous." (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 215.)

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent stands convicted of three separate incidents of driving under the influence of alcohol. Two such incidents also included hit-and-run with property damage. Thus, respondent has engaged in multiple and repeated acts of misconduct. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.)

**MITIGATING CIRCUMSTANCES.**

**No Prior Discipline:** Respondent has been admitted to practice law since June 1989. Respondent has been discipline free over the eighteen (18) years of practice from admission to the

earliest misconduct herein (2007) and is therefore entitled to mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.) The Review Department has found an attorney with twenty-four years of practice without discipline to be entitled to "significant" mitigation. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 167.)

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 10, 2014, the prosecution costs in this matter are \$7,341. 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.

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In the Matter of: TIMOTHY ALAN NICHOLSON	Case number(s): 14-C-02869, 14-C-03301, 14-C-02867
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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>10/23/2014</u> Date	 Respondent's Signature	<u>Timothy Nicholson</u> Print Name
<u>10/23/14</u> Date	 Respondent's Counsel Signature	<u>Kevin Gerry</u> Print Name
<u>1-7-15</u> Date	 Deputy Trial Counsel's Signature	<u>Drew Massey</u> Print Name

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In the Matter of: TIMOTHY ALAN NICHOLSON	Case Number(s): 14-C-02869, 14-C-03301, 14-C-02867
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### ALTERNATIVE DISCIPLINE PROGRAM 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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

Page 8 Costs of Disciplinary Proceedings - "Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 10, 2014, the prosecution costs in this matter are \$7,341. Respondent may spread payment of the disciplinary costs over his period of probation. Annually, respondent shall pay an equal amount of the disciplinary costs until the disciplinary costs are paid in full. 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."

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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date

*January 8, 2015*

*Yvette D. Roland*  
YVETTE D. ROLAND  
Judge of the State Bar Court