



ORIGINAL

(Do not write above this line.)

State Bar Court of California

Hearing Department

Los Angeles

REPROVAL

PUBLIC MATTER

Counsel for the State Bar

Joseph A. Silvos III
Deputy Trial Counsel
 845 S. Figueroa St.
 Los Angeles, CA 90017
 (213) 765-1247

Bar # 248502

Case Number(s):
 18-C-11756

For Court use only

FILED

SEP 25 2018

STATE BAR COURT
 CLERK'S OFFICE
 LOS ANGELES

Counsel For Respondent

Albert Menaster
Deputy Public Defender
 320 West Temple St. Rm 590
 Los Angeles, CA 90012

Bar # 57787

Submitted to: **Assigned Judge**

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

In the Matter of:

MICHAEL FRANK TANNER

Bar # 206913

PUBLIC REPROVAL☐ PREVIOUS STIPULATION REJECTED

A Member of the State Bar of California
 (Respondent)

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 1, 2000**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

- (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):
- ☒ It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
- ☐ Case ineligible for costs (private reproof).
- ☐ It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:
- If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
- ☐ Costs are entirely waived.
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a Respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the Respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) ☐ A private reproof imposed on a Respondent after initiation of a State Bar Court proceeding is part of the Respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) ☒ A public reproof imposed on a Respondent is publicly available as part of the Respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [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.
 - (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.
 - (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 page 10.**
 - (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
 - (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's 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: **See page 10.**

C. Mitigating Circumstances [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 Respondent's misconduct or to the State Bar during disciplinary investigation 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 Respondent's 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 Respondent.
- (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 Respondent, 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 Respondent's control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial Stipulation, see page 10.

No Prior Record of Discipline, see page 10.

Good Character, see page 10.

D. Discipline:

Discipline – Reprimand

Respondent is **Publicly** reprimanded. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, this reprimand will be effective when this stipulation becomes final. Furthermore, pursuant to rule

9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the protection of the public and the interests of Respondent will be served by the following conditions being attached to this reprobation. Failure to comply with any condition attached to this reprobation may constitute cause for a separate disciplinary proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is ordered to comply with the following conditions attached to this reprobation for **one year** (Reprobation Conditions Period) following the effective date of the reprobation.

- (1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Reprobation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reprobation.
- (3) ☒ **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR within ten (10) days after such change, in the manner required by that office.
- (4) ☒ **Meet and Cooperate with Office of Probation:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 45 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the Reprobation Conditions Period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's Reprobation Conditions Period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with reprobation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) ☒ **Quarterly and Final Reports:**
 - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the Reprobation Conditions Period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten

(10) days before the last day of the Reproval Conditions Period and no later than the last day of the Reproval Conditions Period.

- b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the Reproval Conditions Period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) ☒ **State Bar Ethics School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (8) ☐ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within after the effective date of the order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
- (11) ☒ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the Reproval Conditions Period, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any

(Do not write above this line.)

alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

- (12) ☐ **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE _____ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
- (13) ☐ **Other:** Respondent must also comply with the following additional reprobation conditions: _____
- (14) ☐ **Multistate Professional Responsibility Examination Within One Year:** It is further ordered that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)
- (15) ☐ **The following conditions are attached hereto and incorporated:**
- ☐ Financial Conditions ☐ Medical Conditions
- ☐ Substance Abuse Conditions

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL FRANK TANNER

CASE NUMBER: 18-C-11756

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. 18-C-11756 (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 14, 2017, the Los Angeles City Attorney's Office filed a misdemeanor complaint in the Los Angeles Superior Court in Case number #### charging respondent with five (5) violations of California law, to wit: Penal Code section 273.5(a) [infliction of corporal injury resulting in a traumatic condition upon a spouse]; Penal Code section 242/243(d) [battery with serious bodily injury]; Penal Code section 242/243(e)(1) [battery against a spouse]; Penal Code section 242/243(e)(1) [battery against a spouse]; and Penal Code section 273a [child endangerment].
3. On March 1, 2018, respondent pleaded nolo contendere to Count 2, a misdemeanor violation of Penal Code section 242/243(d) [battery causing serious bodily injury]. Pursuant to the plea agreement, the court dismissed the remaining counts in the furtherance of justice.
4. On March 1, 2018, the court suspended the imposition of respondent's sentence and gave respondent three (3) years' summary probation. The court also required respondent to: pay various fees and costs; perform 45 days of CalTrans; obey all laws and orders of the court; not own, use, or possess any dangerous or deadly weapons (including firearms, knives, or concealable weapons); not use or threaten the use of force or violence against any person; not annoy, harass, or molest any person or witness involved in the criminal case, especially respondent's wife ("Victim") and respondent's son; stay 10 yards away from and have no contact with Victim; obey the protective order issued by any court; make restitution to the Victim in the amount of \$7,195.00; and enroll in a domestic violence counseling program and any court approved parenting class within 30 days of sentencing and successfully complete 52 weeks of the program.
5. Respondent is currently on probation.
6. On May 7, 2018, the Review Department received notice from the State Bar that respondent had not filed a Notice of Appeal for his conviction.

7. On June 1, 2018, the Review Department referred the case 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:

8. At 9:00 p.m. on February 16, 2017, Victim and respondent's son arrived at respondent's residence to pick up respondent's daughter's ski equipment. Victim brought her 14 year-old son with her because she was afraid of respondent.

9. Respondent previously took the equipment from Victim's residence without permission. Victim theorized respondent must still know the code for Victim's residence or was let in by their daughter. Respondent viewed the skis as his because he purchased them for his daughter.

10. Respondent left the skis by his front door for Victim to pick up. As Victim picked up the skis, they slipped and struck respondent's front door with a loud bang. Victim and respondent's son loaded the skis into her vehicle and proceeded to enter the vehicle. Respondent opened the front door of his residence and confronted Victim about the noise.

11. An argument ensued where Victim accused respondent of entering her residence, without her permission, to take the skis. She told respondent he would never get the skis back. In response, Respondent approached Victim's vehicle and opened the luggage compartment of the mini-van to take the skis.

12. An altercation took place which resulted in Victim hitting a nearby tree and receiving a cut to her right ear (requiring stitches), scratches to her neck, and bruising to her right palm and shoulder.

13. At some point in this altercation, respondent's son exited the vehicle to separate his parents.

14. Following the altercation respondent remained outside. Victim wanted to leave the location but started to feel dizzy and felt she could not drive away. She then noticed her ear was bleeding.

15. Respondent sustained two scratches to the back of his neck. The officers later noted the scratches were consistent with fingernail scratches.

16. The fire department responded to the scene and provided treatment to Victim. Respondent and Victim continued to bicker. As the fire department prepared to leave, Victim asked them to stay, saying "you can't leave me here with him." Respondent accused Victim of "starting it." Again, Victim pointed out that respondent left his residence to confront her.

17. Based on Victim's injuries and respondent's son's corroboration, law enforcement deemed respondent to be the aggressor and arrested respondent for a felony violation of Penal Code section 273.5 [inflicting corporal injury on a spouse or cohabitant].

18. Law enforcement sought and obtained an emergency protective order on behalf of Victim. Victim was adamant that she wanted a protective order and stated she was in fear of respondent.

CONCLUSIONS OF LAW:

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

AGGRAVATING CIRCUMSTANCES.

Significant harm to the client, the public, or the administration of justice (Std. 1.5(j)): As a direct result of respondent's actions, Victim received a gash to the back of her ear (requiring stitches) and bruising.

Other aggravating factors: Respondent, a public defender, should be well versed in the effects of domestic violence and violent conduct on the victims of domestic violence, their families, and society as a whole. (*In re Otto* (1989) 48 Cal.3d 970 [respondent's experience as a former peace officer used as aggravation because respondent understood the functions of private security officers, and used this special knowledge to continue the abuse of his cohabitant even after the security officer arrived]; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208 [respondents prosecutorial experience taken into consideration for finding DUI convictions warranted discipline]).

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): The State Bar of California admitted respondent on June 1, 2000 and respondent has no prior record of discipline. Respondent's 17 years of discipline free practice at the time of the misconduct should receive significant weight. A respondent with over 10 years of practice received significant weight. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.)

Extraordinary Good Character (Std. 1.6(f)): Respondent provided the State Bar with 13 letters of reference attributing to respondent's good moral character. The letters come from friends and family members, co-workers (from the Los Angeles Public Defender's Office), opposing counsel (from the Los Angeles District Attorney's Office and Los Angeles City Attorney's Office), and a retired judge. This represents a wide range of reference letters required for purposes of mitigation.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

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).)

Respondent’s culpability in the proceeding is conclusively established by the record of his conviction. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) Respondent is presumed to have committed all of the elements of the crime of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

Standard 2.16 mandates suspension or reproof is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.

Respondent pleaded nolo contendere to a misdemeanor violation of California Penal Code section 242/243(d) [battery with serious bodily injury]. Respondent committed the offense against his wife and the mother of his two children. This offense constitutes domestic violence for purposes of sentencing pursuant to California Penal Code section 1203.097 (see Fam. Code, § 6211, defining “domestic violence”).

The State Bar Court looks at the facts and circumstances of the criminal act to determine if they constitute moral turpitude or other misconduct warranting discipline. In this regard, the California Supreme Court case of *In re Otto* (1989) 48 Cal.3d 970 lends some guidance.

The Supreme Court, in deciding *Otto*, did not include the facts and circumstances of the underlying case in their opinion. The Court reviewed the entire record and considered all of the facts and circumstances surrounding the case from the lower court. *In re Otto, supra*, 48 Cal.3d at p.971.

According to the Hearing Department record, during an argument, Otto struck his wife numerous times with his fist and kicked her. (*In the Matter of Otto* (Hearing Dept. 1987) No. 84-C-39SF.) She received treatment at the hospital on an outpatient basis for multiple bruises to her face, eyes, mouth, breasts, and back. *Ibid.* The district attorney charged Otto with two felonies: assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)), and infliction of corporal punishment on a cohabitant of the opposite sex resulting in a traumatic condition. (Pen. Code, § 273.5.) *Ibid.* The trial court reduced both

counts to misdemeanors and placed Otto on probation with certain conditions, including that he serve 90 days in jail. *Ibid.*

Like Otto, respondent participated in a physical altercation with his spouse which resulted in injury. But, unlike Otto, respondent did not repeatedly hit and kick the victim. In accord with the *Otto* holding, respondent's conduct does not rise to the level of moral turpitude but is misconduct warranting discipline. *In re Otto, supra*, 48 Cal.3d at p.971-972.

In *Otto*, the Hearing Department put special weight in aggravation for Otto's history as a law enforcement officer. (*In the Matter of Otto, supra*, No. 84-C-39SF.) Respondent's position as a Public Defender, like Otto's as a former peace officer, puts him on heightened notice of the harms of domestic violence to a family and society.

In mitigation, respondent's years of discipline free practice is more than twice that of Otto's (*In the Matter of Otto, supra*, No. 84-C-39SF [seven years of no prior discipline].) Otto also did not have the scope of references respondent possesses.

The Supreme Court imposed a discipline of two years stayed suspension with six months actual suspension and a two year probation period. (*In re Otto, supra*, 48 Cal.3d at p. 972.) On balance, respondent's factors in mitigation outweigh those in aggravation, and respondent's underlying conduct was less severe than Otto's. Thus, this case merits public reproof.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of September 7, 2018, the discipline costs in this matter are \$2,699. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

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

(Do not write above this line.)

In the Matter of: MICHAEL FRANK TANNER	Case Number(s): 18-C-11756
---	-------------------------------

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>9.20.18</u>	<u>Michael Frank Tanner</u>	<u>Michael Frank Tanner</u>
Date	Respondent's Signature	Print Name
<u>9/20/18</u>	<u>Albert Menaster</u>	<u>Albert Menaster</u>
Date	Respondent's Counsel Signature	Print Name
<u>9/20/18</u>	<u>Joseph A. Silvos III</u>	<u>Joseph A. Silvos III</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: MICHAEL FRANK TANNER	Case Number(s): 18-C-11756
---	-------------------------------

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☐ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☒ All court dates in the Hearing Department are vacated.

On page 10 of the Stipulation, "No Prior Discipline" paragraph, line 2, "17 years" is deleted, and in its place is inserted "over 16 years".

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **Otherwise the stipulation shall be effective 15 days after service of this order.**

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

9/25/18
Date


DONALD F. MILES
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 Court Specialist 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 September 25, 2018, 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:

ALBERT JOSEPH MENASTER
OFC OF PUBLIC DEFENDER
210 WEST TEMPLE ST
LOS ANGELES, CA 90012

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

JOSEPH A. SILVOSO, III, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 25, 2018.



Paul Songco
Court Specialist
State Bar Court