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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Susan Jackson Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1498 Bar # 125042	Case Number(s): 13-O-13066-DFM	For Court use only <div style="text-align: center;"> FILED OCT 15 2014 <i>MC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Michael Lawrence DeFrank 21821 NE Heartwood Cir Fairview, OR 97024 (760) 799-8453 Bar # 187888	<h1 style="margin: 0;">PUBLIC MATTER</h1>	
In the Matter of: MICHAEL LAWRENCE DEFRANK Bar # 187888 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 **May 27, 1997**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(10)** 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."

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs to be awarded to the State Bar.
- Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case : **10-H-11291**
- (b) Date prior discipline effective : **9/17/11**
- (c) Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct ("RPC"), rule 1-110**
- (d) Degree of prior discipline **60 days' actual suspension, one year stayed suspension, and two years' probation with conditions**
- (e) If respondent has two or more incidents of prior discipline, use space provided below:
- Case number 09-H-14476; Discipline effective on 12/24/10; Violations - RPC 1-110; Degree of prior discipline - one year stayed suspension; two years' probation with conditions**
- Case number 07-C-14800; Discipline effective on 2/10/08; Facts and circumstances surrounding criminal conviction do not involve moral turpitude but involve other misconduct warranting discipline; Degree of discipline - three year reprobation period with conditions**
- (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.

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- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See attachment, page 8.**
- (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.

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- (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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial Stipulation. See attachment, page 8.

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D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.

- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.

- (3) **Other:**

8. As a condition of probation, Respondent was ordered to timely submit or cause to be submitted to the Office of Probation, eleven blood test reports by their respective due dates of December 10, 2011, January 10, 2012, February 10, 2012, March 10, 2012, April 10, 2012, May 10, 2012, June 10, 2012, August 10, 2012, September 10, 2012, October 10, 2012, and March 10, 2013. Respondent did not comply with this condition.

9. As a condition of probation, Respondent was ordered to submit to the Office of Probation one urine test report by its due date of April 10, 2012. Respondent did not comply with this condition.

10. As a condition of probation, Respondent was ordered to abstain from using alcohol and/or controlled substances. Respondent did not comply with this condition as evidenced by his urine test taken March 5, 2012, which tested positive for "EtG Alcohol".

11. As a condition of probation, Respondent was ordered to abstain from using alcohol and/or controlled substances. Respondent did not comply with this condition as evidenced by his urine test taken May 3, 2013, which tested positive for "Cocaine Metabolite".

CONCLUSIONS OF LAW:

12. By failing to comply with conditions of Probation requiring timely blood and urine testing, timely submission of laboratory reports to the Office of Probation, and abstention from alcohol and/or controlled substances, Respondent did not comply with all conditions attached to his disciplinary probation, in willful violation of Business and Professions Code, section 6068(k).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a prior record of discipline in three matters, as set forth at length below.

Case No. 07-C-14800: In November 2007, Respondent was convicted of driving under the influence, a violation of Vehicle Code section 23152(b). In December 2008, Respondent stipulated to a public reproof, with conditions including required testing of his blood and urine over a three-year period. The public reproof became effective on December 10, 2008.

Effective December 24, 2010, in Supreme Court order S186390 (case number 09-H-14476), Respondent stipulated to failing to comply with the conditions of his public reproof, including the substance abuse conditions by, among other things, failing to timely file quarterly reports, failing to timely select a medical lab approved by the Office of Probation, failing to timely cause the medical lab to provide the Office of Probation with lab reports, and failing to provide the Office of Probation with proof of attendance at Alcohol Anonymous, in violation of Rule of Professional Conduct, rule 1-110. Respondent stipulated to one year of stayed suspension and two years' probation with conditions.

Effective September 17, 2011, in Supreme Court order S193837 (case number 10-H-11291), Respondent was suspended for 60 days actual suspension, one year stayed suspension, and two years' probation with conditions including substance abuse conditions. Respondent stipulated to failing to comply with the substance abuse conditions of his public reproof, in violation of Rules of Professional Conduct, Rule 1-110, by repeatedly failing to provide a testable urine specimen and refusing to comply with laboratory procedures to ensure specimen integrity.

Multiple Acts of Misconduct (Std 1.5(b)): Respondent engaged in multiple acts of misconduct as he failed to comply with multiple conditions of probation.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Pretrial Stipulation: Respondent has entered into a stipulation as to facts and culpability, which avoids the need for a trial and use of the court's 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).)

Standard 2.10, which applies to Respondent's violation(s) of Business and Professions Code § 6068(k), provides that "[a]ctual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders." The most severe sanction applicable to Respondent's misconduct is found in Standard 1.8(b), which applies to Respondent's prior records of discipline.

Standard 1.8(b) provides that disbarment is appropriate when a member has two or more prior impositions of discipline - unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct - where actual suspension was ordered in any of the prior disciplines; where the prior and current misconduct demonstrate a pattern of misconduct; or where the prior and the current misconduct demonstrate an unwillingness or inability to conform to ethical responsibilities.

Respondent has three prior impositions of discipline. There are no compelling mitigating circumstances that clearly predominate. The current misconduct did not occur during the same timeframe as the misconduct in the prior matters.

Respondent's failure to comply with his probation conditions is serious and demonstrates that disbarment is appropriate. Respondent received actual suspension in his last imposition of discipline, which also involved violating conditions of his probation. The last two priors and the current misconduct illustrate Respondent's pattern of failing to comply with multiple conditions of probation, which span a four year period between 2009 and 2013. This further demonstrates Respondent's unwillingness or inability to conform to ethical responsibilities and obligations because he has repeatedly failed to comply with probation conditions. (*In re Rose* (1997) 3 Cal State Bar Ct. Rptr. 646, 655) While Respondent is entitled to some mitigation for entering into this stipulation, such mitigation does not outweigh the aggravating factors of his prior record of discipline and his multiple probation violations. Based on the aggravating factors, disbarment is necessary to protect the public, the court and the legal profession, to maintain the highest professional standards, and to preserve public confidence in the legal profession.

Disbarment is consistent with case law supporting imposition of the greatest amount of discipline for probation violations significantly related to the misconduct for which probation was imposed, as such violations reflect adversely on the attorney's rehabilitation efforts and raise serious concerns about the need for public protection. (See *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540 and *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 17, 2014, the prosecution costs in this matter are \$5,543.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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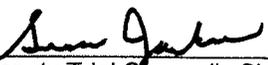
In the Matter of: Michael Lawrence DeFrank	Case number(s): 13-O-13066
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SIGNATURE OF THE PARTIES

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.

10-1-2014  Michael Lawrence DeFrank
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name

10/3/14  Susan J. Jackson
Date Deputy Trial Counsel's Signature Print Name

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DISBARMENT 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.

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.)**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

OCTOBER 14, 2014
Date


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 15, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT

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:

**MICHAEL L. DEFRANK
LAW OFC MICHAEL L DEFRANK
21821 NE HEARTWOOD CIR
FAIRVIEW, OR 97024**

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

SUSAN JACKSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 15, 2014.



Tammy Cleaver
Case Administrator
State Bar Court