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

<p>Counsel For The State Bar Scott D. Karpf Deputy Trial Counsel State Bar of California / OCTC 845 S. Figueroa Street Los Angeles, CA 90017 Tel. (213) 765-1161 Bar # 274682</p>	<p>Case Number (s) 17-C-00853-CV; 17-C-00855</p>	<p>(for Court's use)</p> <p align="center">PUBLIC MATTER</p> <p align="center">FILED</p> <p align="center">v8 OCT 23 2017</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent Douglas Arthur Schenck Law Offices of Douglas A. Schenck 2901 W Coast Hwy Ste 200 Newport Beach, CA 92663 Tel. (949) 270-2770 Bar # 200699</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: DOUGLAS ARTHUR SCHENCK Bar # 200699 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 **April 30, 1999**.
- (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 **11** pages, excluding 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) 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(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. See Attachment to Stipulation, at page ten.
- (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.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See Attachment to Stipulation, at page ten.
- (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.

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- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment to Stipulation, at page ten.
- (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 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 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 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.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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(13) **No mitigating circumstances are involved.**

Additional mitigating circumstances:

Please see "No Prior Discipline" in Attachment to Stipulation, at page ten.

Please see "Pretrial Stipulation" in Attachment to Stipulation, at page ten.

Please see "Good Character References" in Attachment to Stipulation, at page ten.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DOUGLAS ARTHUR SCHENCK
CASE NUMBER: 17-C-00853-CV; 17-C-00855

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. 17-C-00853 (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 March 14, 2014, the Orange County District Attorney's Office filed a three-count criminal complaint in the Orange County Superior Court, West Justice Center, case number 14WM02422, charging respondent as follows:
 - a. Count 1: violating Vehicle Code §23152(a) [Driving Under the Influence of Alcohol], a misdemeanor,
 - b. Count 2: violating Vehicle Code §23152(b) [Driving With a Blood Alcohol Concentration of 0.08 Percent or More], a misdemeanor, and
 - c. Count 3: violating Vehicle Code §12500(a) [Driving Without a Valid License], a misdemeanor.

The Orange County District Attorney's Office also alleged Vehicle Code §23538(b)(2) [Driving With a Blood Alcohol Concentration of .20% or Greater] enhancements on each DUI count.

3. On July 7, 2014, respondent entered guilty pleas to all counts and admitted the high blood alcohol concentration enhancements.
4. On July 7, 2014, as to Count 1, the court suspended the imposition of respondent's sentence and placed respondent on informal probation for a period of three years with conditions, including that respondent:
 - a. Complete 10 days of CalTrans trash cleanup;
 - b. Enroll and complete a nine-month First Offender Alcohol Program;

- c. Pay restitution to the victim in an amount to be determined plus 10% interest of the judgment from the date of the loss;
- d. Attend the Mothers Against Drunk Driving Victim Impact Panel;
- e. Pay booking fees to the Costa Mesa Police Department;
- f. Pay fines and fees to the court in the amount of \$2,199;
- g. Not drive a motor vehicle with any measurable amount of alcohol in his blood,
- h. Not drive a motor vehicle without a valid driver's license or proof of liability insurance in his possession; and
- i. Obey all laws and orders of the Court.

As to Counts 2 and 3, the Court stayed sentence of those counts pursuant to Penal Code §654.

- 5. On August 12, 2015, respondent, through his counsel was served a Notice of Grounds for Probation Violation for failing to complete his 10 days of CalTrans trash cleanup and failing to enroll in a nine-month First Offender Alcohol Program. On that same date respondent, by and through his counsel, waived his right to have a probation violation hearing and admitted violating probation. Probation was revoked and reinstated with modifications, including the court imposing but staying 10 days of jail pending proof of completion of the 10 days of CalTrans trash cleanup, and ordered respondent to enroll in the nine-month First Offender Alcohol Program.
- 6. On January 4, 2017, respondent was served a Notice of Grounds for Probation Violation based on the filing of a new criminal DUI and Driving on a Suspended License case, Case No. 16HM13286, failing to enroll in the nine-month First Offender Alcohol Program, failing to complete the 10 days of CalTrans trash cleanup, and for failing to either pay the \$1,799 fines and fees then owed or report to collections.
- 7. On April 4, 2017, respondent waived his right to have a probation violation hearing and admitted to violating probation. Probation was revoked and reinstated with modifications, including:
 - a. Modifying probation from informal to formal, and extending probation until October 4, 2018;
 - b. Complying with DUI Court terms imposed in Case No. 16HM13286; and
 - c. Vacating the order for respondent to complete a nine-month First Offender Alcohol Program, and ordering that respondent attend and complete an 18-month Multiple Offender Alcohol Program, concurrent to Case No. 16HM13286.

8. On May 3, 2017, 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 offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

9. On February 21, 2014, at approximately 10:11 p.m. in Costa Mesa, California, victim Ross N. was riding as a passenger in his own vehicle, when his vehicle was rear-ended by a black Mercedes E350 driven by respondent. Respondent's Mercedes was estimated to be travelling at 10 MPH when it struck Mr. N.'s vehicle.
10. Respondent was on his cellular telephone and not paying attention to traffic at the time of the collision.
11. Officer Smith of the Costa Mesa Police Department was dispatched to the scene of the accident. Upon contacting respondent, Officer Smith noticed that respondent had a blank stare on his face; had red, bloodshot, and watery eyes; and swayed from side-to-side and had difficulty keeping his balance. Respondent also presented an expired driver's license to Officer Smith.
12. Officers Torres and Reyes, assigned to the Costa Mesa Police Department DUI Team, responded to the scene to perform a DUI evaluation on respondent.
13. Officer Torres observed that respondent had an obvious odor of alcohol on his breath; had red and watery eyes; spoke in a slow and slurred manner; and demonstrated poor coordination.
14. Upon questioning by the officers, respondent denied consuming any alcohol.
15. After conducting field sobriety tests, and after properly admonishing respondent, Officer Torres administered a preliminary alcohol screening (PAS) test to determine if respondent had alcohol in his system. Respondent blew 0.21% and 0.23%, respectively, on his two PAS test attempts.
16. Respondent was arrested on suspicion of DUI and Driving Without a Valid License.
17. After being arrested, Officer Torres advised respondent, pursuant to the Implied Consent law, of his requirement to submit to a chemical test to determine the level of alcohol in his blood stream. At first, respondent chose to take a breath test, then changed his mind and requested a blood test.
18. At approximately 11:33 p.m., a blood technician at the Costa Mesa County jail took a blood sample from respondent. Later testing of respondent's blood revealed a blood alcohol concentration of 0.24%, three times the legal limit.

CONCLUSIONS OF LAW:

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

Case No. 17-C-00855 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

20. 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.
21. On December 1, 2016, the Orange County District Attorney's Office filed a three-count criminal complaint in the Orange County Superior Court, Harbor Justice Center, case number 16HM13286, charging respondent as follows:
- a. Count 1: violating Vehicle Code §23152(a) [Driving Under the Influence of Alcohol], a misdemeanor,
 - b. Count 2: violating Vehicle Code §23152(b) [Driving With a Blood Alcohol Concentration of 0.08 Percent or More], a misdemeanor, and
 - c. Count 3: violating Vehicle Code §14601.2(a) [Driving While Privilege to Drive is Suspended or Revoked], a misdemeanor.

The Orange County District Attorney's Office also alleged Vehicle Code §23538(b)(2) [Driving With a Blood Alcohol Concentration of .20% or Greater] and Vehicle Code §23540 [Second DUI within 10 Years of a Prior Conviction] enhancements on each DUI count.

22. On April 4, 2017, respondent entered a guilty plea to Count 1, admitted the high blood alcohol concentration enhancement, and admitted his prior conviction in Orange County Superior Court Case No. 14WM02422. Count 2 was stayed pursuant to Penal Code §654. Count 3 was dismissed pursuant to the plea and in the interest of justice.
23. On that same date, as to Count 1, the court suspended the imposition of respondent's sentence and placed respondent on formal probation for a period of five years with conditions, including, but not limited to, that respondent:
- a. Serve 270 days in the County Jail, but stayed the jail time pending successful completion of the Orange County Superior Court's intensive DUI Court Program.
 - b. Serve four days in the County Jail in lieu of paying \$390 in fines and the penalty assessment;
 - c. Enroll and complete an 18-month Multiple Offender Alcohol Program; and
 - d. Attend the Mothers Against Drunk Driving Victim Impact Panel.

FACTS:

24. On October 26, 2016, at approximately 10:00 p.m., Deputy A. Asarian of the Orange County Sheriff's Department was driving in Dana Point, California, when he observed a black Nissan Frontier in the number one lane stopped in the intersection at a red light. Deputy Asarian followed the vehicle and observed the vehicle straddle the right hand side of the lane, then cross into the number two lane and swerve back into the number one lane multiple times. Based on these violations of the Vehicle Code, Deputy Asarian initiated a traffic stop.
25. Deputy Asarian contacted the driver, who was identified as respondent. Twice respondent attempted to get out of his vehicle and was ordered to remain seated. Deputy Asarian immediately smelled an odor of alcohol emanating from the vehicle..
26. Deputy S. Wilkinson of the Orange County Sheriff's Department was dispatched to the scene to conduct a DUI investigation. Upon contacting respondent, Deputy Wilkinson noticed respondent had bloodshot and watery eyes and slurred speech. When asked to walk to the other side of his vehicle, respondent had difficulty standing and immediately stumbled as he began to walk.
27. Prior to administering field sobriety tests ("FST"), Deputy Wilkinson asked respondent a series of questions. When asked what sort of alcoholic beverages respondent had consumed that evening, respondent stated, "I haven't had a drink in nine years."
28. After conducting FSTs, and admonishing respondent, Officer Torres administered a preliminary alcohol screening (PAS) test to determine if respondent had alcohol in his system. Respondent blew 0.297% and 0.286%, respectively, on his two PAS test attempts.
29. Deputy Wilkinson arrested respondent on suspicion of DUI.
30. After being arrested, Deputy Wilkinson advised respondent, pursuant to the Implied Consent law, of his requirement to submit to a chemical test to determine the level of alcohol in his blood stream. Respondent chose to complete a blood test. Chemical analysis of respondent's blood sample was later determined that respondent's blood alcohol concentration was 0.28%.
31. Deputy Wilkinson later ran a records check on respondent, which revealed that respondent was on criminal probation for a prior DUI conviction and that respondent's California driver's license had been suspended on July 7, 2014 with mail service of the suspension notice being made upon respondent on November 10, 2014, over two years earlier.

CONCLUSIONS OF LAW:

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

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has no prior record of discipline over 14 years of practice prior to the misconduct, and this should be afforded significant weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of discipline-free practice worth significant weight in mitigation].)

Pretrial Stipulation: Respondent has entered into a detailed stipulation of facts and conclusions of law, as well as acknowledging and accepting responsibility for his misconduct, thus obviating the need for trial, and thereby preserving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigation credit was given for entering into a stipulation as to facts and culpability].)

Good Character: Respondent has submitted seven character letters attesting to his good character. Four letters are from attorneys; two letters are from clients; and one letter is from a family friend. Respondent should be afforded little to no weight in mitigation based on these letters. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [three attorneys and three clients not found to constitute a broad range of references from legal and general communities].)

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent was convicted of two distinct misdemeanors counts on July 7, 2014, including DUI and Driving Without a Valid License, and admitted two violations of his probation terms, on August 12, 2014 and April 4, 2017. Respondent was then convicted of a second DUI on April 4, 2017. Multiple acts of misconduct is an aggravating factor.

Misrepresentation (Std. 1.5 (e)): During the February 21, 2014 incident, respondent misrepresented to the police that he had not consumed alcoholic beverages prior to driving. During the October 26, 2016 incident, respondent also misrepresented to the police that he had not consumed any alcohol beverages prior to driving, specifically stating, "I haven't had a drink in nine years."

Indifference (Std. 1.5(k)): On August 12, 2015 and April 4, 2017, respondent admitted violations of probation for failing to comply with the terms and conditions of his DUI criminal probation including failing to complete 10 days of CalTrans trash cleanup, pay fines and fees to the court, and enroll and complete a nine-month First Offender Alcohol Program, in addition to being convicted of a second DUI during the April 4, 2017 hearing.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 9, 2017, the discipline costs in this matter are \$2,629. 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: DOUGLAS ARTHUR SCHENCK	Case Number(s): 17-C-00853-CV; 17-C-00855
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ALTERNATIVE DISCIPLINE PROGRAM ORDER

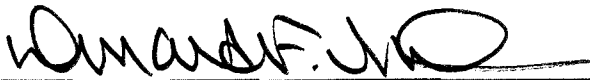
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.

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

10/23/17



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 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 23, 2017, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

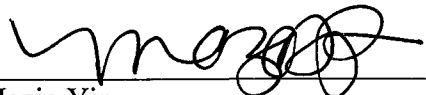
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DOUGLAS A. SCHENCK
LAW OFFICES OF DOUGLAS A. SCHENCK
2901 W COAST HWY STE 200
NEWPORT BEACH, CA 92663 - 4045

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

SCOTT D. KARPFF, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 23, 2017.



Mazie Yip
Case Administrator
State Bar Court