

Filed February 9, 2023

**STATE BAR COURT OF CALIFORNIA**  
**REVIEW DEPARTMENT**

In the Matter of	)	18-C-12445
	)	
JOSEPH LAWRENCE PORCHE,	)	OPINION
	)	[As Modified on March 10, 2023]
State Bar No. 246195.	)	
_____	)	

Joseph Lawrence Porche requests review of a March 2, 2022, Hearing Department order denying his third motion to withdraw a stipulation he entered into regarding a criminal conviction. The hearing judge denied his motion with prejudice. Porche, represented below by counsel experienced in State Bar Court matters, had agreed to resolve the conviction matter by stipulating in September 2019 to a public reproof based on his nolo contendere plea to a violation of Penal Code section 632, subdivision (a) (eavesdropping).<sup>1</sup> On review, Porche asserts that the judge erred by not granting his requested relief of withdrawal of the stipulation. The Office of Chief Trial Counsel of the State Bar (OCTC) maintains that the judge’s denial was proper.

Upon concluding that the record shows no abuse of discretion or error of law, we affirm the hearing judge’s March 2, 2022 order.

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<sup>1</sup> All further references to sections are to the Penal Code unless otherwise noted.

## I. BACKGROUND

This matter stems from a conviction referral proceeding that resulted in Porche's public reproof due to his misdemeanor eavesdropping conviction in the San Joaquin County Superior Court. (Bus. & Prof Code, §§ 6101-6102.)

### A. Porche's Misdemeanor Eavesdropping Conviction

Based upon alleged events between Porche and his then wife in July through early August 2017, respondent was arrested on or about July 3, 2017, and August 1, 2017. In addition, on July 28, 2017, and the next day, respondent recorded three conversations with his then wife. The conversations occurred in their home and respondent did not have consent to record any of the conversations.

Porche was initially charged on October 2, 2017, with a felony and a misdemeanor violation of section 273.5, subdivision (a), as well as a felony violation of section 136.1, subdivision (b)(2). Thereafter, on July 20, 2018, Porche pleaded nolo contendere to an amended misdemeanor charge under Penal Code section 632, subdivision (a),<sup>2</sup> and the remaining counts were dismissed. As reflected in the resulting minute order, the superior court judge stated to Porche that the nolo contendere plea had the same legal effect as a guilty plea. In determining Porche's plea was knowingly and voluntarily made, the judge ascertained Porche was aware of "the possible defenses" to the charge. Porche was sentenced to, inter alia, three years' informal probation with an expiration date of July 20, 2021. The section 632(a) conviction was affirmed on direct appeal.

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<sup>2</sup> Section 632, subdivision (a), states in relevant part: "A person who, intentionally and without the consent of all parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500) per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment."

**B. The 2019 Conviction Referral Proceeding and Public Reproval**

On August 31, 2018, OCTC transmitted to us the record of Porche's conviction. On March 18, 2019, Porche filed a "Waiver of Finality & Request For Orders" (waiver filing) where he specifically waived the finality of the section 632(a) conviction. Porche requested "the State Bar adjudicate his case as if the appeal were non-existent." Also contained in the waiver filing were several requests. First, Porche asked us to dismiss the matter because the conviction was not one of moral turpitude or misconduct otherwise warranting discipline. He provided various explanations for and defenses to the surreptitious recording conviction. Porche also requested we seal the matter and order OCTC to cease the notification on his attorney page of the State Bar website that the criminal conviction referral proceedings were pending. By order dated April 25, 2019, we referred the matter to the Hearing Department to determine whether the facts and circumstances surrounding the misdemeanor conviction involved moral turpitude or other misconduct warranting discipline. (Bus. & Prof. Code, § 6102, subd. (e); Rules Proc. of State Bar, rule 5.344.<sup>3</sup>) We denied the motions contained within the waiver filing for lack of good cause. The matter then proceeded in the Hearing Department.

On August 20, 2019, OCTC and Porche, who was represented by counsel, were ordered to participate in a settlement conference. Soon thereafter, a stipulation of facts, conclusions of law, and disposition (2019 Stipulation) was submitted to the hearing judge. In the 2019 Stipulation, Porche stipulated to the fact of his misdemeanor eavesdropping conviction, the underlying factual basis for that plea, and the resulting sentence. He also agreed that, although the violation did not involve moral turpitude, it constituted other conduct that warranted discipline. In terms of mitigation and aggravation, Porche agreed it was an aggravating factor

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<sup>3</sup> All further references to rules are to the Rules of Procedure of the State Bar, unless otherwise noted.

that he made three non-consensual recordings. It was further agreed there were mitigating factors regarding discipline: (1) he entered into the 2019 Stipulation; (2) he performed community service in years prior to the criminal case; and (3) there were character reference letters from four people who knew him well.

On September 9, 2019—more than three years ago—the hearing judge ordered Porche publicly reprovved based on the 2019 Stipulation, which, inter alia, reflected the misdemeanor eavesdropping conviction. The 2019 Stipulation was approved and Porche was thereafter publicly reprovved. The September 9, 2019 reprovval order stated in pertinent part:

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. [Citation.] **Otherwise the stipulation shall be effective 15 days after service of this order.**

(Original boldface.) The order was served the same day it was issued: September 9, 2019. No request to modify or withdraw the 2019 Stipulation was filed within the prescribed time period and that stipulation was thereafter effective September 24, 2019.

### C. Porche’s Post-Conviction State Court Proceedings

Following the finality of the 2019 reprovval order, Porche took multiple steps in the state courts to address his 2017 arrests and his 2018 conviction.

First, in January 2020, he obtained a section 851.8 factual innocence finding regarding the dismissed counts in his criminal case. However, his motion to seal and destroy arrest and related records pursuant to section 851.91, was denied.<sup>4</sup> Porche’s appeal of the motion’s denial to the California Court of Appeal was unsuccessful.<sup>5</sup>

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<sup>4</sup> *People v. Porche* (Super. Ct. San Joaquin County, Jan. 27, 2020, Nos. MAN-CR-MDV-2017-0009168; MAN-FDV-2017-10817).

<sup>5</sup> *People v. Porche* (Jan. 14, 2022, C091519) [nonpub. opn.].

Next, in November 2020, Porche obtained a section 1203.4 dismissal for, what we assume to be, the section 632(a) conviction.<sup>6</sup> Finally, on September 29, 2022, the Appellate Division of the San Joaquin County Superior Court affirmed the trial court's January 27, 2020 rulings granting the section 851.8 motion regarding the dismissed counts and denying Porche's section 851.91 motion.<sup>7</sup>

#### **D. State Bar Court Proceedings After the 2019 Stipulation**

Prior to the motion that is the basis for the instant appeal, Porche made other attempts in the Hearing Department to undo the 2019 Stipulation. On August 31, 2020, almost a year after the 2019 Stipulation became final, Porche filed a "Motion to Withdraw Stipulation and Plea" (First Motion). Porche asserted five grounds for relief, including a claim that the section 851.8 order obtained eight months earlier regarding the dismissed counts in his criminal case was "newly discovered evidence."<sup>8</sup> The First Motion was denied on October 7, 2020, on the grounds that Porche's motion was untimely and there were no new facts applicable to the 2019 Stipulation. He did not appeal that ruling to us. Instead, Porche requested reconsideration on

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<sup>6</sup> *People v. Porche* (Super Ct. San Joaquin County, Nov. 4, 2020, No. MAN-CR-FDV-2017-10817). An uncertified copy of this order was attached as exhibit 1 to the "Motion to Withdraw Stipulation and Plea" filed on November 6, 2020. The order has no citation as to the conviction dismissed. Since Porche has no other convictions, we assume the dismissal is for the section 632(a) count.

<sup>7</sup> *People v. Porche* (Super. Ct. San Joaquin County, Appellate Div., Sept. 29, 2022, No. MAN-MDV-2017-0009168). These are the same motions addressed in *People v. Porche* (Jan. 14, 2022, C091519). The matter in the Superior Court for San Joaquin County, Appellate Division, was stayed pending the California Court of Appeals' ruling.

<sup>8</sup> The First Motion also argued that he was coerced into signing the 2019 Stipulation, he had ineffective assistance of counsel during the disciplinary proceeding, and the 2019 Stipulation did not meet the requirements of rule 5.56(A)(4). Five exhibits were attached in support of the motion: (a) uncertified copies of January 27, 2020 minute orders ruling on section 851.8 and 851.91 motions; (b) a partial transcript of a January 7, 2020 hearing before the Appellate Division of the Superior Court of San Joaquin County; and (c) a partial transcript of a November 6, 2019 proceeding between Porche and his then wife.

October 20, 2020, making additional arguments, which included an allegation the hearing judge had a “conflict of interest” since she approved the 2019 Stipulation.

While the October 20, 2020 reconsideration request was pending, Porche filed a “Motion to Withdraw Stipulation and Plea” (Second Motion) on November 6, 2020.<sup>9</sup> On November 20, 2022, the hearing judge denied the request for reconsideration and the Second Motion, citing to rule 5.115(B). Porche did not seek review of the November 20, 2022 order.

The instant appeal surrounds Porche’s third attempt to withdraw from the 2019 Stipulation and resulting reproof order. Porche filed a “Motion to Vacate the Order Approving the Stipulation and Plea and to Withdraw the Stipulation and Plea,” on February 14, 2022 (Third Motion) with five exhibits. The Third Motion presented the following claims: (a) newly discovered evidence regarding the January 27, 2020 order finding Porche factually innocent of the dismissed charges; (b) Porche was coerced by OCTC to sign the 2019 Stipulation; (c) ineffective assistance of counsel; and (d) the 2019 Stipulation was defective regarding the eavesdropping conviction and therefore the 2019 Stipulation “misled the court and prevented it from making an informed decision.” Porche asserted it would be a “grave injustice” to allow the conviction to stand and there was good cause to bring the motion more than 15 days after the stipulation was approved.

The hearing judge denied the motion on March 2, 2022. The judge ruled that the Third Motion, filed two years after the 2019 Stipulation and reproof order, was untimely pursuant to rule 5.58(F). Further, there was no good cause for the delay. The judge also addressed the

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<sup>9</sup> The Second Motion again argued he had “good cause” to be seeking relief outside the time frame of rule 5.58(F) and breach of the 2019 Stipulation by OCTC because he was not advised that the fact of reproof would remain on the State Bar of California’s public website. One exhibit, an uncertified copy of a section 1203.4 order in the underlying criminal case, was attached in support of this motion.

merits of the motion and found “Porche’s specific contentions have twice been rejected by this court and the court finds no factual or legal basis to reconsider those orders.”

The hearing judge went on to state, “The only new fact submitted is the dismissal of the appeal of the criminal court’s January 27, 2020 findings and orders, which is immaterial as it did not involve the conviction addressed by the [2019] Stipulation.” The judge also noted Porche had asserted factual innocence regarding the dismissed charges and submitted information about the dismissed charges to OCTC before he entered into the 2019 Stipulation.

The instant review followed. Porche’s opening brief attached a certified copy of the court order effectuating the section 851.8 finding regarding his August 1, 2017 domestic violence arrest.<sup>10</sup> After OCTC’s brief was filed on October 25, 2022, Porche did not file a reply brief. However, he did file the following four motions: (a) “Request for Judicial Notice” (October 25, 2022); (b) “Motion to Modify or Rescind Approval for the Stipulation because of Breach by the State Bar” (October 27, 2022); (c) “Motion to Seal Records Submitted Under Seal” (October 28, 2022); (d) “Motion to Disapprove and Modify the Stipulation to Comply with Penal Code § 1203.425” (October 31, 2022); and (e) an amended “Request for Judicial Notice” (November 9, 2022). The requests for judicial notice were granted, we deferred ruling on the remaining motions, and provided the parties additional time at oral argument to address the motions. Oral argument was held on November 17, 2022, and the matter was thereafter submitted.

## **II. STANDARD OF REVIEW**

The hearing judge’s ruling that the Third Motion was untimely pursuant to rule 5.58(F) was a procedural one as was her alternative determination that Porche’s Third Motion was

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<sup>10</sup> The order was signed on January 27, 2020, and required the sealing and destruction of records relating to that arrest. It was stayed until the People’s appeal was dismissed for failure to file an opening brief. The order was filed on June 30, 2022.

meritless, even if timely. The standard of review we apply to procedural rulings is abuse of discretion or error of law. (*In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454, 461.) Therefore, we evaluate whether the judge’s decision exceeded the “bounds of reason,” given all the circumstances before the court. (See *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74, 78.)<sup>11</sup>

### III. PORCHE’S ARGUMENTS ON REVIEW

On review, Porche asserts the hearing judge applied the incorrect procedural rule, erred in findings regarding the import of a California appellate court decision in his criminal case, and the section 1203.4 order relating to his no contest plea. Porche also argues the hearing judge erred in ruling the imposed discipline had ended. We have carefully considered all of Porche’s arguments on review and find they are unsupported either by the record or applicable case law. As for his motions filed in the days prior to oral argument, all but the amended request for judicial notice are denied.<sup>12</sup>

Porche’s section 632(a) conviction is conclusive evidence of guilt. (Bus. & Prof. Code, § 6101.) As established by his own exhibits submitted across three separate motions before the Hearing Department, his plea was knowingly made, and he was represented by criminal defense counsel. In September 2019, Porche entered into a stipulated disposition in this conviction referral matter. In that stipulation, he admitted he entered a nolo contendere plea to a violation of section 632, subdivision (a). He also stipulated to the details of the sentence imposed and that

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<sup>11</sup> OCTC argues that because Porche’s Third Motion was pursuant to rule 5.58(F), any review is an interlocutory one and governed by rule 5.150. OCTC cites to rule 5.58(H) in support of the argument. As an interlocutory review matter, OCTC further asserts Porche’s brief was untimely. (Rule 5.150(B).) We disagree. The underlying matter is a conviction-referral proceeding, which would resolve the entirety of our referral to this court’s Hearing Department. (Rules 5.340, 5.347.) Therefore, this review is governed by rule 5.151.

<sup>12</sup> Any arguments not specifically addressed here have been considered and rejected as meritless.



the matter involved misconduct warranting discipline. He was represented by counsel experienced in State Bar Court matters. As detailed below, nothing that has occurred since provides a basis to undo the 2019 Stipulation or the agreed-to resolution for a public reproof.

**A. The Hearing Judge Properly Applied Rule 5.58(F)**

A motion to withdraw or modify a stipulation has two elements pursuant to rule 5.58(F). First, the moving party must show good cause for the request. Second, the motion must be filed within 15 days after service of the order approving the stipulation. (Rule 5.58(F).) Porche concedes the Third Motion was not filed within 15 days of September 9, 2019. We find no error in the hearing judge’s application of rule 5.58(F) to the Third Motion and the finding there was no good cause.

To work around the unambiguous language of rule 5.58(F), Porche argues that rule 5.54(C) applied to the Third Motion and he need not show good cause under rule 5.58(F). Rather he must establish “extraordinary reasons” for relief. Simply put, Porche is wrong. Rule 5.54(C) applies to stipulations that contain only facts. The 2019 Stipulation was to facts, law, and disposition pursuant to rule 5.56 and required approval of a hearing judge. (Rule 5.58(A).) Hence, rule 5.58(F) applied to Porche’s request for withdrawal and modification. It was not an abuse of discretion to apply the proper rule.<sup>13</sup>

**B. The January 2022 Appellate Court Decision**

The eavesdropping conviction and the underlying factual basis for that conviction (the non-consensual, surreptitious recordings of Porche’s then wife) were set forth in the 2019

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<sup>13</sup> Even if rule 5.54(C) applied, the facts here do not establish “extraordinary reasons.”

Stipulation.<sup>14</sup> A nolo contendere plea in a criminal matter is an admission of guilt. (§ 1016(3); Bus. & Prof Code, § 6101, subd. (e).)

There were no “new facts” in the 2022 California Court of Appeal decision presented in the Third Motion vis-à-vis the eavesdropping conviction. For example, the Court of Appeal affirmed the lower court’s denial of Porche’s section 891.91 motion and held “[n]othing in section 851.91 or its legislative history suggests that the law was meant to allow a defendant to seal charges dismissed as part of a no contest plea to one of several charges in a pending information.” (*People v. Porche* (Jan. 14, 2022, C091519) [nonpub. opn.] at pp. 1-2.) The court’s dismissal of the People’s appeal of the grant of the section 851.8 motion for failure to file an opening brief related to dismissed counts, not the section 632(a) conviction.

Porche has conceded multiple times in this matter that he did record his spouse without consent. He simply asserts various justifications for violating the law and a legislative policy argument that California should not be a “two party consent” state. The time to assert a legal defense to the charge was during the pendency of the criminal proceeding, not following his agreement to a public reproof in this matter. Early on Porche made OCTC aware of this theory that his claims of factual innocence for other charges were a justification for the illegal recordings and his theory regarding discipline. Porche’s arguments were delineated in his March 18, 2019 waiver filing in this department. This is six months before Porche signed the 2019 Stipulation.<sup>15</sup>

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<sup>14</sup> The applicable jury instruction sets out the straightforward elements of the offense: (1) the defendant intentionally recorded a conversation by using an electronic device; (2) when the conversation was recorded defendant did not have the consent of all the individuals who were party to the conversation; and (3) at least one party to the conversation intended the conversation be confidential and that person had objectively reasonable grounds to believe that the conversation was confidential. (CALCRIM No. 3010 (Mar. 2022).

<sup>15</sup> In addition to the section 851.8 factual innocence finding as to dismissed counts having no effect on the conviction at issue, the finding is not admissible here. (§ 851.8(1).)

Porche argues he established good cause for the delay in seeking relief from the 2019 Stipulation as he did not obtain the various state court rulings and orders until after the fact. This argument ignores the underlying occurrence of facts and justifications to undo the 2019 Stipulation—and by extension the waiver filing—were known to him at the time he executed both documents. The hearing judge did not abuse her discretion by finding Porche’s Third Motion was untimely and no good cause existed to relieve Porche from the consequences of the 2019 Stipulation.

**C. Porche’s Misdemeanor Conviction was not Voided Under Section 1203.4 for State Bar Purposes**

We further find Porche’s claim, that the San Joaquin County Superior Court in February 2020 dismissed the eavesdropping conviction pursuant to section 1203.4, to be of no import to the issue before us. It does not support the relief sought in this matter.

As a foundational matter, the regulation of the practice of law in California (and all other states of the Union) is inherently a judicial function under the plenary power of the state’s highest court. (*In re Attorney Disciplinary System* (1998) 19 Cal.4th 582, 592-597.) In California, the State Bar discipline system, including the operation of this court, is part of the judicial branch of California government. (Cal. Const., art. VI, § 9.) This State Bar Court acts as an arm of the Supreme Court to aid that court in its inherent power over attorney discipline. (*In re Attorney Disciplinary System, supra*, 19 Cal.4th at pp. 599-601.) As such, in that attorney regulation function, neither the Supreme Court nor the State Bar are bound by laws governing ordinary licensing bodies found in the executive branch of government. (*Id.* at pp. 598-600, also citing *Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300-302.) Indeed, as discussed *ante*, the California Legislature has recognized this concept. (Bus. & Prof. Code, § 6102, subds. (c) & (e).)

The above principles are not new. As early as 1935, our Supreme Court held that a pardon ordered by the Governor did not automatically authorize a disbarred attorney to

circumvent a formal reinstatement proceeding conducted by the State Bar, and thereby automatically return to the practice of law, despite legislative history that the law under which the Governor's pardon was issued included restoration of rights previously taken away by a licensing board. (*In re Lavine* (1935) 2 Cal.2d 324, 329-331.) Thus, Porche's attempts must fail to apply other criminal remedial statutes, or to apply other (i.e., executive branch) licensing board statutes, to limit this court's authority as an arm of the Supreme Court.

Moreover, it is well settled that the "court possesses inherent powers to discipline a wayward attorney whether or not [the] misconduct involves moral turpitude." (*In re Rohan* (1978) 21 Cal.3d 195, 202 [State Bar Act does not limit or alter powers of court to discipline members].) Attorneys, such as Porche, may be disciplined even if misconduct does not involve moral turpitude or the direct performance of their professional duties. (*Id.* at p. 204.)

Next, section 1203.4 orders are irrelevant in various contexts of attorney discipline matters. For example, attorney discipline can proceed regardless of any section 1203.4 order, whether or not the underlying conviction is eligible for summary disbarment. (See Bus. & Prof. Code § 6102, subds. (c) & (e); *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, 820, fn.7 [fact that conviction set aside under § 1203.4 does not affect finality of conviction for purpose of disciplinary proceeding].) Porche concedes on review that "the State Bar is not compelled to drop a discipline matter because of a [section 1203.4] dismissal . . . ." We are not persuaded that the lack of a direct reference to section 1203.4 for non-moral turpitude misdemeanor convictions warrants a different outcome. (See *In Re Phillips* (1941) 17 Cal 2d 55, 60-61.)

In addition, for some purposes related to public protection, including the ability of the pertinent authority to regulate professional licenses, a conviction must be disclosed in spite of its dismissal under section 1203.4. (*Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872,

881 [“preclusion from certain types of employment is not the kind of penalty or disability which is eliminated by expungement” under § 1203.4].) Paragraph 7 of the November 4, 2020 order Porche submitted as an exhibit to the Second Motion plainly states this later point.

Even under state law, section 1203.4 does not erase the conviction before us. (*People v. Mazumder* (2019) 34 Cal.App.5th 732, 737 [in regard to § 1203.4, when defendant pleads guilty to offense, dismissal following successful completion of probation does not entitle defendant to seal and destroy arrest records or finding of factual innocence pursuant to § 851.8, subd. (c) because “conviction has occurred” as result of guilty plea]; *People v. E.B.* (2020) 51 Cal.App.5th 47, 58-59 [while former probationer is freed from further “penalties and disabilities” resulting from conviction, § 1203.4 order does not void conviction such that defendant may have his arrest records sealed pursuant to § 851.91].)

The hearing judge did not act “outside the bounds of reason” or contrary to law in finding Porche’s assertions as to the section 1203.4 order regarding his section 632(a) conviction unavailing.

**D. The Remaining Arguments in the Third Motion Were Properly Denied**

We find no clear evidence that Porche was coerced into signing the 2019 Stipulation and resulting disposition. In his waiver filed with us, Porche claimed factual innocence regarding the dismissed charges. He presented that argument to OCTC; the parties were aware of Porche’s position. Porche was represented by counsel and entered into the disposition for a public reproof following a settlement conference and the settlement judge was not misled. As well, the manner in which this conviction referral matter is referenced in State Bar public records (including its website) is not contrary to the terms of the 2019 Stipulation. Finally, Porche does not have a constitutional right to effective representation of counsel in this State Bar Court disciplinary proceeding. (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1116 [claim of ineffective

assistance of counsel is not a meritorious defense in attorney disciplinary proceedings as there is no constitutional right to counsel in these proceedings].) Therefore, his “ineffective assistance of counsel” claim has no merit.

**E. Motions to the Review Department Following Submission of the Briefs**

We previously granted Porche’s “Request for Judicial Notice” that was filed on October 25, 2022, and the amended motion with a certified copy on November 9, 2022. We have considered that court decision in ruling on this instant appeal. However, Porche’s October 27, 2022 “Motion to Modify or Rescind Approval for the Stipulation because of Breach by the State Bar,” his “Motion to Seal Records Submitted Under Seal,” filed October 28, 2022, and his October 31, 2022 “Motion to Disapprove and Modify the Stipulation to Comply with Penal Code § 1203.425”<sup>16</sup> are denied for lack of good cause and for reasons consistent with this opinion.

**IV. CONCLUSION AND DISPOSITION**

Upon review of the record, we find the hearing judge did not “exceed the bounds of reason” or commit an error of law in finding the Third Motion was untimely and there was no good cause

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<sup>16</sup> Porche requests that we either disapprove or modify the 2019 Stipulation because of the provisions of section 1203.425. This new provision provides for, in essence, automatic relief somewhat analogous to the relief provided in section 1203.4. This issue was not raised below to the hearing judge or discussed in the resulting order now before us on appeal. To the extent newly raised issues are properly before us, we deny the requested relief. First, Porche does not claim he has actually received the relief outlined in section 1203.425 or established the provision was in effect at the time he filed this motion. Nor does he state whether the prosecuting authority has opposed the relief. (§ 1203.425, subd. (b).) Second, although the State Bar disciplinary proceedings are not one of the listed exclusions in section 1203.425, subdivision (a)(4), as discussed *ante*, disciplinary proceedings are inherently part of the judicial branch and not a separate executive branch entity. Finally, as mentioned throughout, Porche waived finality of his conviction in this court. He is bound by that waiver. Porche stipulated to the fact of the conviction. He is bound by the admissions in that stipulation.

for Porche's delay. Nor did she abuse her discretion in the determination of the salient, operative facts in reaching that conclusion. We therefore affirm the hearing judge's order denying Porche's third motion to withdraw his stipulation.

STOVITZ, J.\*

WE CONCUR:

HONN, P. J.

McGILL, J.

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\* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.

No. 18-C-12445

*In the Matter of*  
**JOSEPH LAWRENCE PORCHE**

*Hearing Judge*  
**Hon. Manjari Chawla**

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