

(Do not write above this line.)

ORIGINAL

**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Sue Hong Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1161</p> <p>Bar # 285852</p>	<p>Case Number(s): 13-H-13579-DFM 14-C-3434</p>	<p>For Court use only</p> <p>FILED MAY 08 2015 <i>P.B.</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Susan Margolis Margolis & Margolis LLP 2000 Riverside Dr Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar # 104629</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: BRIAN JOSEPH BAKER</p> <p>Bar # 257228</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **August 1, 2008**.
- (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 **16** 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."



W.H.

(Do not write above this line.)

- (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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **three billing cycles following the effective date of the Supreme Court order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is 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.

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 **11-C-19478**
 - (b) Date prior discipline effective **May 31, 2012**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **One count of Vehicle Code section 23152(b)[Driving a Vehicle with a blood-alcohol level of 0.08% or more with a prior].**
 - (d) Degree of prior discipline **Public Reproval**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(Do not write above this line.)

- (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 at Page 10.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

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

(Do not write above this line.)

- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-trial stipulation: See Attachment at Page10.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: **Respondent takes and passes the Multistate Professional Responsibility Examination ("MPRE") as indicated below under section F.(I)..**

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 No Ethics School recommended. Reason: _____
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

(Do not write above this line.)

further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

Provision by respondent of proof of passage of the MPRE to the Office of Probation within six months prior to the effective date of the discipline herein shall be deemed to satisfy this MPRE requirement.

- (2) **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.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions: See Substance Abuse Conditions on Page 7.**

In the Matter of:	Case Number(s):
BRIAN JOSEPH BAKER	13-H-13579, 14-C-03434-DFM

SUBSTANCE ABUSE CONDITIONS

a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

b. Respondent must attend at least eight (8) meetings per month of:

Any abstinence-based self-help group of Respondent's own choosing, including *inter alia*, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include : (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See *O'Conner v. Calif.* (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program.]) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol. Before Respondent attends the first self-help group meeting, Respondent must contact the Office of Probation and obtain approval for the program Respondent selected. If Respondent wants to change groups, Respondent must obtain the Office of Probation's approval prior to attending a meeting with the new self-help group.

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period. Respondent cannot sign as the verifier of Respondent's proof of attendance.

c. Respondent must select a licensed medical laboratory or its licensed collection facility which conducts testing pursuant to Department of Transportation guidelines. Respondent must furnish to the laboratory blood and/or urine samples as may be required by the Office of Probation to show that Respondent has abstained from alcohol and drugs. Specifically, Respondent must be tested for a 10-panel (consisting of (1) Amphetamines; (2) Methamphetamines; (3) Barbiturates; (4) Benzodiazepines; (5) Cocaine Metabolite; (6) Opiates; (7) Oxycodone; (8) Marijuana; (9) Methadone; and (10) Propoxyphene) and for alcohol with an Ethyl Glucuronide ("EtG") test. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. The sample must be collected under direct observation by the licensed medical laboratory or its licensed collection facility.

Respondent must cause the laboratory to test the first portion of each sample to be tested, and cause the second portion of the specimen to be stored in a manner which will ensure that the

specimen may be accurately tested in the future. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report containing an analysis of Respondent's blood and/or urine including cut off values and stating that the collection of the specimen was observed. In the event that a test result was positive, and Respondent believes this result to be a false or "innocent" positive, Respondent will be given up to 5 days to have the second specimen re-tested at the original laboratory or at another approved laboratory, and/or to meet with a Medical Review Officer employed or approved by the laboratory to discuss the results. If the laboratory determines that the initial positive test was indeed a false or "innocent" positive, that determination will be accepted by the Office of Probation.

Random Testing: Respondent shall be randomly tested no less than 12 times per year.

Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within six (6) hours.

Within twenty-four (24) hours of the Office of Probation's initial call to Respondent, Respondent must furnish to the licensed medical laboratory or its licensed collection facility the required blood and/or urine samples. For good cause, the Office of Probation may require Respondent to deliver an additional specimen (not to be counted towards the number of random testings set forth above) of Respondent's urine and/or blood. Respondent will be notified by phone, and the testing must occur no later than twenty-four (24) hours after that call.

d. Within thirty (30) days from the effective date of discipline, Respondent must provide the Office of Probation with medical waivers. Respondent must provide the Office of Probation and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BRIAN BAKER
CASE NUMBER: 13-H-13579; 14-C-3434-DFM

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 13-H-13579 (Reproval Violation)

1. On April 23, 2012, respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California, in Case No. 11-C-19478.
2. On May 10, 2012, the Hearing Department of the State Bar Court filed an Order Approving the Stipulation and imposing upon respondent a public reproval with conditions attached for a period of one year.
3. On May 10, 2012, the Hearing Department's May 7, 2012, Order Approving the Stipulation for a Public Reproval was properly served by mail upon the respondent. Respondent received the Order.
4. The public reproval became effective on May 31, 2012.
5. Pursuant to the public reproval, respondent was ordered to comply with the following terms and conditions of probation, among others:
 - a. to comply with the State Bar Act and the Rules of Professional Conduct during the period of probation;
 - b. to submit to the Office of Probation written quarterly reports each January 10, April 10, July 10, and October 10 of each year or part thereof during the reproval period, certifying under penalty of perjury whether he has complied with all provisions of the State Bar Act and the Rules of Professional Conduct and all terms of the reproval during the preceding calendar quarter or part thereof covered by the report, and to file a final report no earlier than twenty (20) days prior to the expiration of the reproval period and no later than the last day of said period, including whether there are any proceedings pending against him or her in the State Bar Court;
 - c. to contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation within thirty (30) days from the effective date of discipline.
 - d. to provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), to the Office of Probation within one year of the effective date of the reproval.

- e. to provide satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session to the State Bar's Office of Probation within one year after the effective date of discipline.
- f. to comply with Substance Abuse Conditions.

6. On June 1, 2012, a Probation Deputy from the Office of Probation of the State Bar of California sent a letter to respondent. In the letter, the Probation Deputy reminded respondent of the terms and conditions of his probation imposed pursuant to the Public Repeval. In the June 1, 2012, letter, the Probation Deputy specifically reminded Respondent regarding his obligations to submit quarterly probation reports, with the first due on July 10, 2012. Enclosed with the June 1, 2012, letter were, among other things, copies of the relevant portions of the Public Repeval setting forth the conditions of the respondent's probation, an Alcoholics Anonymous ("AA") Attendance Form, a Quarterly Report Instruction sheet, and a Quarterly Report form specially tailored for respondent to use in submitting his quarterly reports. Respondent received the June 1, 2012, letter.

7. Respondent failed to submit to the Office of Probation, AA meeting reports due on September 10, 2012, October 10, 2012, and November 2012.

8. Respondent failed to report to the Office of Probation, Underlying Criminal Matter ("UCM") Compliance due on October 10, 2012.

9. Respondent failed to submit to the Office of Probation, the final AA Report due on May 31, 2013.

10. Respondent failed to provide to the Office of Probation, proof of attendance of Ethics School due on May 31, 2013.

11. Respondent failed to submit to the Office of Probation, the proof of successful passage of the MPRE due on May 31, 2013.

12. Respondent failed to timely submit to the Office of Probation, AA meeting reports due on December 10, 2012, February 10, 2013, March 10, 2013, April 10, 2013, and May 10, 2013. Respondent submitted the AA meeting reports on December 11, 2012, February 12, 2013, March 12, 2013, April 15, 2013, and May 13, 2013, respectively.

13. Respondent failed to timely submit to the Office of Probation, Quarterly reports due on July 10, 2012, October 10, 2012, and April 10, 2013. Respondent submitted the quarterly reports on June 4, 2013.

14. Respondent failed to timely report to the Office of Probation, UCM compliance due on July 10, 2012, and April 10, 2013. Respondent submitted both of the UCM compliance reports on June 18, 2013.

15. Respondent failed to timely submit to the Office of Probation, the final report due on May 31, 2013. Respondent submitted the final report on June 18, 2013.

16. Respondent was a resident at the Santa Barbara Rescue Mission Men's recovery program from September 2012 through September 2013.

17. Respondent did not seek to modify the conditions of his probation with the court.

CONCLUSIONS OF LAW:

18. By failing to submit four AA meeting reports, a UCM compliance report, provide proof of attendance at Ethics School, proof of passage of the MPRE, and by failing to timely submit five AA meeting reports, three quarterly reports, two UCM compliance reports, and the final report, respondent failed to comply with all conditions attached to the public reprobation in willful violation of Rules of Professional Conduct, rule 1-110.

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. 14-C-3434 (Conviction Proceeding)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

19. 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.

20. On January 27, 2014, the San Luis Obispo County District Attorney filed a criminal complaint in the San Luis Obispo County Superior Court, case no. 14-C-00839, charging respondent with one count of violation of Vehicle Code section 23152(a)[Driving Under the Influence of Alcohol-with a prior], a misdemeanor, and one count of violation of Vehicle Code section 23152(b)[Driving While Having a 0.08% or Higher Blood Alcohol-with a prior], a misdemeanor.

21. On May 20, 2014, the court entered respondent's plea of nolo contendere to the count of violation of Vehicle Code section 23152(b)[Driving While Having a 0.08% or Higher Blood Alcohol-with a prior], a misdemeanor, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

22. On September 4, 2014, the court ordered respondent among other things, to serve 90 days in a Sober Living facility, enter into a Driving Under the Influence three month program, and placed respondent on court supervised bench probation for three years.

23. On November 26, 2014, 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 offense(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

24. On January 3, 2014, respondent drove a vehicle while intoxicated. On that date, at about 11:55 p.m., in San Luis Obispo County, respondent was traveling at an unsafe speed and stopped at three consecutive intersections with green lights at each intersection.

25. A police officer responded to the scene to conduct an investigation. Respondent's breath smelled of alcohol. Respondent also had watery eyes. Upon being questioned by the police officer, respondent denied consuming any alcohol.

26. Upon exiting his vehicle, respondent was unsteady on his feet and bumped into his car as he walked along the side. Respondent was arrested for driving under the influence and the officer found an open plastic bottle of vodka in respondent's sweatshirt. The cap was on the bottle, but there was less than half of the vodka remaining. Once under arrest, respondent elected to submit to a breath test. The results were: 0.14% Blood Alcohol Content ("BAC") and 0.14% BAC.

27. Respondent enrolled himself as a resident at the Santa Barbara Rescue Mission, Cornerstone Sober Living facility in January 2014 through early May 2014.

28. Respondent moved to the New House Sober Living facility in Santa Barbara in early May 2014 and has remained as a resident there to date.

CONCLUSIONS OF LAW:

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

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)):

In State Bar case no. 11-C-19478, effective on May 31, 2012, respondent was disciplined with a public reproof for a period of one year after being convicted for violating Vehicle Code section 23152 (b) (driving a vehicle with a blood-alcohol level of .08% or more with a prior), which constitutes other misconduct warranting discipline. In the underlying criminal matter, on May 5, 2010, imposition of sentence was suspended and Respondent was sentenced to 45 days of county jail, and placed on summary probation for 36 months.

In regard to respondent's prior conviction, on October 30, 2000, respondent was convicted of violating Vehicle Code section 23152(a)(Driving Under the Influence of Alcohol), misdemeanor, in San Luis Obispo County.

Multiple Acts of Misconduct (Std. 1.5(b)):

Respondent's present misconduct involves the failure to submit all AA meeting reports, UCM compliance reports, proof of attendance at Ethics School, proof of successful passage of the MPRE, and failure to timely submit all AA meeting reports and UCM compliance reports. Respondent engaged in

multiple acts of misconduct by violating all the conditions of his reproof. Respondent has also been convicted of DUI for the third time.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation of facts and conclusions of law prior to trial, thereby preserving State Bar Court 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 Silvertown* (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 1.7(a) states if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 2.12(b) applies to the instant matter as it involves a criminal misdemeanor conviction not involving moral turpitude, which provides for suspension or reproof. In addition, Standard 2.10, which provides for actual suspension, applies here as respondent has violated probation conditions attached to his 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. Pursuant to Standard 2.10, actual suspension is warranted for failing to comply with respondent’s reproof.

Standard 1.8(a) states that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Here, the exceptions do not apply, and therefore the sanction must be greater than a public reproof, which was previously imposed.

In evaluating respondent's misconduct and assessing the level of discipline, the standards require actual suspension. Based on his prior record of discipline, progressive discipline is warranted. Although untimely, respondent made efforts to satisfy some of the terms of his reproof. Respondent belatedly submitted some AA meeting reports, quarterly reports, UCM compliance reports, and final report. Further, respondent is entitled to mitigation for entering into a pre-trial stipulation. Although respondent was a resident at the Santa Barbara Rescue Mission from September 2012 through September 2013, where he was placed under intensive restrictions, by not taking and passing the MPRE, nor attending Ethics School, or submitting all AA meeting reports and all UCM compliance report, respondent has committed multiple acts of misconduct. Further, respondent did not seek to modify the terms and conditions of his probation with the court.

In January of 2014, within four months of completing the recovery program at the Santa Barbara Rescue Mission, respondent was arrested for his third DUI. Respondent's subsequent conviction of his third DUI is serious misconduct because it demonstrates a disregard for the law and safety of others.

However, in the instant case, the conditions attached to the discipline, if complied with, should minimize the likelihood of respondent engaging in similar misconduct in the future. Considering Standards 1.7(a), 1.8(a), 2.10, and the purposes of the Standards, the appropriate level of discipline for respondent in this matter is two years of stayed suspension, two years of probation with substance abuse conditions, including 90 days of actual suspension and until respondent takes and passes the MPRE.

In the present case, although respondent's misconduct does not involve the practice of law it is nonetheless serious because it demonstrates a threat to the safety of others and respondent's inability to comply with the law and disciplinary conditions. In light of the facts and circumstances surrounding this matter, along with the mitigating and aggravating factors, a lengthy suspension will fulfill the primary purposes of discipline by protecting the public, the courts and the legal profession; maintaining the highest professional standards; and preserving public confidence in the legal profession.

In *Conroy v. State Bar* (1990) 51 Cal. 3d 799, the attorney was publicly reproofed and then failed to take and pass the MPRE within one year as required. Respondent defaulted in the matter before the Hearing Department, but participated in the Review Department and Supreme Court proceedings. The court found respondent's subsequent passage of the MPRE was mitigating but was outweighed by aggravating factors. In aggravation the court considered respondent's prior discipline, respondent's default at the Hearing Department level and respondent's lack of remorse for the present violation. The discipline imposed in light of the aggravation was one year suspension, stayed, two years of probation and sixty-day actual suspension.

Here, similar to *Conroy*, respondent belatedly complied with some of the conditions attached to his public reproof and has a prior record of discipline. However, unlike *Conroy*, respondent has not defaulted in this matter and has expressed his desire to enter into a pre-filing stipulation for settlement in mitigation. On the other hand, respondent in the present matter has been convicted of a DUI for the third time which constitutes other misconduct warranting discipline. Therefore an increased level of discipline consisting of a two year suspension, stayed, two year probation with conditions, including

substance abuse conditions, and a ninety-day actual suspension and until respondent takes and passes the MPRE, is appropriate.

In *In re Kelley* (1990) 52 Cal.3d 487, an attorney was convicted twice of drunk driving within a 31-month period. On her first arrest, the attorney had driven her car into an embankment and was arrested at the scene. While on probation, she was stopped by a police officer while driving home and eventually arrested after failing a field sobriety test. No one was injured in either of her drunk driving offenses. The Court found that the attorney's conduct did not involve moral turpitude, but rather constituted other misconduct warranting disciplinary action. The Court ordered her publicly reprovved and directed her to participate in the State Bar's program on alcohol abuse. Here, respondent has been convicted three times of driving under the influence of alcohol. Further, respondent failed to comply with the terms of his public reprovval stemming from his second DUI conviction referral matter. Therefore, a lengthier and actual suspension of 90 days is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 1, 2015, the prosecution costs in this matter are \$5,317. 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 MCLE CREDIT



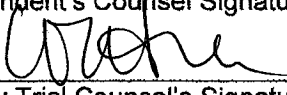
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of reprovval. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: BRIAN JOSEPH BAKER	Case number(s): 13-H-13579; 14-C-3434
---	--

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>5/4/15</u> Date	<u></u> Respondent's Signature	<u>BRIAN JOSEPH BAKER</u> Print Name
<u>5/4/15</u> Date	<u></u> Respondent's Counsel Signature	<u>SUSAN MARGOLIS</u> Print Name
<u>5/7/15</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>SUE HONG</u> Print Name

(Do not write above this line.)

In the Matter of: BRIAN JOSEPH BAKER	Case Number(s): 13-H-13579; 14-C-3434
--	--

ACTUAL SUSPENSION 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.

Page 5: The box for Paragraph (10) and the box entitled "Substance Abuse Conditions" are deemed checked.

Page 6: The box and language for Paragraph (5) is deleted (having been replaced as provided above).

Page 7, Paragraph b: The following language is added at the end of the second paragraph (after the words "new self-help group."): "The foregoing requirements and prohibitions are solely applicable to Respondent's efforts to comply with the condition of this probation that he attend eight meetings each month at an approved self-help group. Nothing contained in this paragraph is intended or is to be interpreted as prohibiting or regulating Respondent's ability to seek additional treatment or assistance from any other self-help group."

Page 8: The provision re Random Testing is modified to provide: "Respondent will be randomly tested a minimum of six times during the period of his probation, but no more than 12 times."

Page 8: Paragraph d is deleted in its entirety.

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.)**

5/8/15

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 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 May 8, 2015, 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:

**SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039**

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

Sue K. Hong, Enforcement, Los Angeles

Terrie Goldade, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 8, 2015.



Paul Barona
Case Administrator
State Bar Court