


**NOT FOR PUBLICATION**

Counsel for the State Bar <b>Cydney Batchelor, #114637</b> State Bar of California 180 Howard St. San Francisco, CA 94105 Tele: 415/538-2204	Case number(s)  03-C-2467-JMR  kwiktag® 022 602 896 	(for Court's use)  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>LD</i> APR 19 2004  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent <b>Jerome Fishkin, Esq., # 47798</b> 369 Pine St., #627 San Francisco, CA 94104 Tele: 415/403-1300	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  REPROVAL <input checked="" type="checkbox"/> PRIVATE <input type="checkbox"/> PUBLIC  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  <b>KAREN L. WITTE</b>  Bar # 69545  A Member of the State Bar of California (Respondent)		

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 24, 1976  
(date)
- (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 and order consist of 9 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."  
See attachment
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."  
See attachment
- (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. (Check one option only):
  - costs added to membership fee for calendar year following effective date of discipline (public reproval)
  - case ineligible for costs (private reproval)
  - costs to be paid in equal amounts for the following membership years:  


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 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth under "Partial Waiver of Costs"
  - costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

(8) The parties understand that:

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1)  Prior record of discipline [see standard 1.2(f)]

(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 or under "Prior Discipline".

(2)  Dishonesty: Respondent's misconduct was 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.
- (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 attached
- (8)  No aggravating circumstances are involved.

Additional aggravating circumstances:

None.

C. Mitigating Circumstances [see standard 1.2(e)]. 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. See attachment
- (2)  No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3)  Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See attachment.
- (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. See attachment.
- (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 in good faith.
- (8)  Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (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 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.
- (13)  No mitigating circumstances are involved.

Additional mitigating circumstances:

See attachment.

D. Discipline:

- (1)  Private reproof (check applicable conditions, if any, below)
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2)  Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

- (1)  Respondent shall comply with the conditions attached to the reproof for a period of Two (2) years.
- (2)  During the condition period attached to the reproof, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent shall report to the Membership Records Office and to the Probation Unit, 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)  Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (5)  Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the monitor.
- (6)  Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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 conditions attached to the reproof.
- (7)  Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered.
- (8)  Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.
- (9)  Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the reproof.
- No MPRE ordered. See attachment.
- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |
- (11)  Other conditions negotiated by the parties:
- See attachment.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      KAREN L. WITTE

CASE NUMBER(S):                      03-C-2467-JMR

**FACTS AND CONCLUSIONS OF LAW.**

Procedural Background: This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court. On July 9, 2003, Respondent was convicted of two misdemeanor violations of Vehicle Code section 23152(a), for offenses that occurred on December 14, 2002 and March 9, 2003. On February 4, 2004, 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 found that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

Facts: On December 14, 2002, Respondent was arrested for violating sections 23152(a) and 23152(b) of the Vehicle Code in Marin County. Before the first case was resolved, Respondent was arrested a second time for the same offenses on March 9, 2003. On July 9, 2003, Respondent plead guilty to two misdemeanor violations of Vehicle Code section 23152(a). As a result of her plea, Respondent was placed on three years probation.

Conclusions of Law: The facts and circumstances surrounding Respondent's violations of California Vehicle Code section 23152 (a) do not involve moral turpitude, but do involve other conduct warranting discipline. The Respondent acknowledges that by the conduct described herein, she willfully violated Business and Professions Code section 6068(a).

**NEXUS BETWEEN MISCONDUCT AND SUBSTANCE ABUSE.**

Respondent states that she was under the influence of alcohol at the time all the above misconduct occurred, and that she suffers from a chemical dependency (alcohol) problem.

## **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was March 12, 2003.

## **AGGRAVATING CIRCUMSTANCES.**

**Multiple Acts of Misconduct:** Respondent was found culpable of two separate incidents of driving under the influence of alcohol within a three-month period of time.

## **MITIGATING CIRCUMSTANCES.**

### **Facts Supporting Mitigating Circumstances.**

**No prior record of discipline:** Respondent has no prior record of discipline since being admitted to practice in California 28 years ago, in 1976.

**Candor and cooperation:** Respondent has been completely candid and cooperative with the State Bar during its investigation and resolution of these cases.

**Objective Steps Promptly Taken:** Respondent immediately entered guilty pleas both her criminal cases, and immediately admitted to both criminal courts and the State Bar that she had a chemical dependency (alcohol) problem.

### **Additional Mitigating Circumstances.**

**Compliance with Criminal Probation:** Respondent has complied with her probation conditions in the criminal proceedings which underlie the conviction referral here.

**Substance Abuse Treatment:** As noted above, Respondent accepted responsibility for her misconduct by electing not to challenge any of the criminal charges, but to enter pleas by which she accepted full responsibility. The following month, in April 2003, Respondent contacted the State Bar to inquire how best to address her chemical dependency problem. The State Bar referred her to the Lawyer Assistance Program (LAP). The same day, Respondent called LAP and signed a pre-enrollment assessment agreement. At the conclusion of the LAP evaluation, Respondent met with its Evaluation Committee, and then entered into a long-term participation agreement with LAP on July 17, 2003. Respondent has been in full compliance with LAP since that date.

**OTHER REPROVAL CONDITIONS.**

**Participation in State Bar Lawyer's Assistance Program.** On July 17, 2003, Respondent voluntarily entered into a participation agreement with the LAP ("the participation agreement"), which includes conditions regarding substance abuse testing, monitoring and treatment. Respondent shall comply with the terms of the participation agreement, as the participation agreement may be modified by Respondent and the LAP from time to time, and shall furnish satisfactory evidence of such compliance to the Probation Unit. Respondent shall include in each quarterly and final report required herein satisfactory evidence of all such compliance made by her during that reporting period.



3/19/04  
Date

*Karen L. Witte*  
Respondent's signature

KAREN L. WITTE  
print name

3/15/04  
Date

*[Signature]*  
Respondent's Counsel's signature

JEROME FISHKIN  
print name

3/30/04  
Date

*[Signature]*  
Deputy Trial Counsel's signature

CYDNEY BATCHELOR  
print name

### ORDER

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

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

*On page 7, the disclosure date is March 17, 2004, not 2003.*

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 135(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

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

4/19/04  
Date

*[Signature]*  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. 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 San Francisco, on April 19, 2004, 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 San Francisco, California, addressed as follows:

**JEROME FISHKIN**  
**369 PINE ST #627**  
**SAN FRANCISCO CA 94104**

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

**CYDNEY BATCHELOR, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **April 19, 2004**.



\_\_\_\_\_  
**Laine Silber**  
Case Administrator  
State Bar Court