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State Bar Court of California Hearing Department Los Angeles		
Counsel For The State Bar Suzan J. Anderson Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015 (213) 765-1209 Bar # 160559	Case Number (s) 07-C-10382-RAP	(for Court's use) <div style="text-align: center;"> FILED NOV 30 2007 <i>KDC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Donald Paul Fedderly 88 Bartley Square Building B, Unit 4 Flanders, NJ 07836 Bar # 91253	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter Of: Donald Paul Fedderly Bar # 91253 A Member of the State Bar of California (Respondent)	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted November 29, 1979.
- (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 13 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



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- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: **Costs to be paid in equal amounts prior to February 1 for the two billing cycles following the effective date of the Supreme Court order.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

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 a separate attachment entitled "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.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances

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.
- (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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **Please see attachment page 12.**
- (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. **Please see attachment page 12.**
- (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. **Please see attachment page 12.**
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one (1) year**.

- 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 1.4(c)(ii), 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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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.

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- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: **Respondent lives in New Jersey and will take additional MPRE classes instead of Ethics School.**
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|--|--|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

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Attachment language (if any):

Please see attachment pages 9 through 12.

In the Matter of
Donald Paul Fedderly

Case number(s):
07-C-10382-RAP

A Member of the State Bar

Law Office Management Conditions

- a. Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/12 months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **twelve (12)** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

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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 four (4) meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program **Lawyers Concerned About Lawyers (New Jersey program)**

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.

- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. 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 twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers 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: Donald Paul Fedderly

CASE NUMBER(S): 07-C-10382-RAP

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On March 21, 2006, respondent was convicted of violating New Jersey Statutes Sections 2C:12-1c(2) and 39:4-50, Assault by Auto While Driving Intoxicated, a misdemeanor.
3. On August 15, 2007, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department to hold a hearing an issue a decision limited to the issue of whether the facts and circumstances surrounding the offense of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.
4. On September 19, 2007, the Review Department of the State Bar Court issued an augmented order referring the matter to the Hearing Department to include a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offenses involved moral turpitude or other misconduct warranting discipline.

FACTS AND CONCLUSIONS OF LAW.

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

FACTS

1. As a result of an automobile accident in Mt. Olive Township, New Jersey, on September 7, 2005, Respondent was issued two summons charging him with reckless driving in violation of N.J.S.A. 30:4-96 and driving while intoxicated in violation of N.J.S.A. 39:4-90. Subsequently, as a result of a police investigation into the same incident, Respondent was also charged with third degree assault by auto, in violation of N.J.S.A. 2C:12-1c(2), as a result of the

injuries suffered by the other driver in the accident.

2. On March 21, 2006, Respondent appeared in the Superior Court of New Jersey, Law Division - Criminal, Morris County and entered guilty pleas to third degree assault by auto [N.J.S.A. 2C:12-1c(2)] and driving while intoxicated [N.J.S.A. 39:4-50]. The State dismissed the reckless driving summons as a result of Respondent's guilty plea.

3. On April 27, 2006, Respondent was sentenced to three years probation, 180 hours of community service, a seven-month loss of driving privileges, fined \$500 and assessed associated costs. The court took into account the aggravating factor of the need to deter. However, the court found six mitigating factors, namely that Respondent: (1) did not contemplate harm, (2) will do community service, (3) had no prior criminal activity, (4) would not have these circumstances reoccur, (4) would not likely commit the acts again, (5) would respond to probation and (6) that Respondent had no previous history of offenses of any type and heretofore had been a credit to the legal profession.

CONCLUSIONS OF LAW

The facts and circumstances surrounding Respondent's criminal conviction did not involve moral turpitude, but did involve other conduct warranting discipline. Respondent acknowledges that by the conduct described above, he failed to support the laws of New Jersey in wilful violation of Business and Professions Code section 6068(a).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was November 13, 2007.

COST OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 11, 2007, the costs in this matter are \$1,636.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the costs of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Pursuant to standard 1.3, the primary purposes of disciplinary proceedings and imposing sanctions for professional misconduct are, "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

With respect to the criminal conviction, standard 3.4 provides:

Final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.

By definition, every criminal conviction involves a violation of Business and Professions Code section 6068(a). Pursuant to standard 2.6, the culpability of a member of a violation of Business and Professions Code section 6068, "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3."

The Supreme Court gives the standards "great weight," and will reject a recommendation consistent with the standards only where the Court entertains "grave doubts" as to its propriety. *In re Naney* (1990) 51 Cal. 3d 186, 190; *see also In re Silverton* (2005) 36 Cal. 4th 81, 91, 92. Further, although the standards are not mandatory, it is well established that the standards may be deviated from only when there is compelling, well-defined reason to do so. *See Aronin v. State Bar* (1990) 52 Cal. 3d 276, 291; *see also Bates v. State Bar* (1990) 52 Cal. 3d 1056, 1060, fn. 2.

In re Kelley (1990) 52 Cal.3d 487

Kelley was convicted of two separate driving-under-the-influence charges at different times. Kelley initially refused to take a field sobriety test during the second arrest, but ultimately complied when a second police officer arrived at the scene. The Supreme Court found that this did not constitute moral turpitude, but that there was some nexus between Kelley's conduct and her fitness to practice law. The Court determined that Kelley should receive some discipline, but limited it to a public reproof and a 3-year probation.

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208

Anderson was convicted of four separate driving-under-the-influence charges at different times. In the third of which he pushed the officer backwards, causing him to fall. Anderson returned to his car and, when the officer tried to turn off the car's ignition, Anderson pushed the officer's hand away, put the car in gear and drove off into the night at high speed without headlights. The officer suffered a minor cut to his hand. The Court found that even here, there was no moral turpitude, but imposed a 60-day actual suspension and 1-year stayed suspension due to these violations.

Respondent's conduct falls between *Kelley* and *Anderson*. Respondent's conduct goes beyond *Kelley* in that he was also convicted of assault by auto due to the accident where the other driver suffered a broken ankle, but does not rise to the level of the conduct in *Anderson*. Accordingly, the one-year stayed suspension and one-year probation falls within the case law and follows the standards.

MITIGATING CIRCUMSTANCES.

Respondent has been a licensed attorney for 28 years and has no prior record of discipline. Std. 1.2(e)(i).

Throughout this proceeding, Respondent cooperated fully with the State Bar and was willing to discuss this matter, answer any questions which were posed by the State Bar, and entered into this comprehensive stipulation. Std. 1.2(e)(v).

Respondent stopped drinking immediately after the accident as he was overcome with remorse. A month after the accident, Respondent voluntarily submitted to evaluation by Hackettstown Memorial Hospital where it was recommended that he attend their outpatient program. Respondent successfully completed their three-month program and continues to be involved with Lawyers Concerned About Lawyers, a New Jersey program much like the Other Bar. Std. 1.2(e)(vii).

STATE BAR ETHICS SCHOOL EXCLUSION

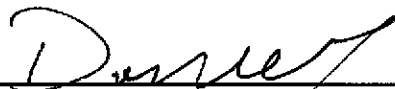
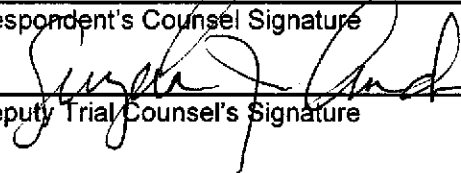
Respondent resides outside California and is unable to attend State Bar Ethics School. As an alternative to State Bar Ethics School, the parties agree that respondent will complete the following courses: 6 of the required 12 hours of MCLE shall be in legal ethics.

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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>11-20-07</u> Date	 Respondent's Signature	<u>Donald Paul Fedderly</u> Print Name
<u> </u> Date	Respondent's Counsel Signature	Print Name
<u>11-21-07</u> Date	 Deputy Trial Counsel's Signature	<u>Suzan J. Anderson</u> Print Name

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ORDER

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), 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.)**

Nov. 28, 2007
Date


Judge of the State Bar Court

RICHARD A. PLATEL

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 November 30, 2007, 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:

**DONALD PAUL FEDDERLY
88 BARTLEY SQUARE
BUILDING B UNIT 4
FLANDERS NJ 07836**

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

SUZAN ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **November 30, 2007**.



Angela Owens-Carpenter
Case Administrator
State Bar Court