

State Bar Court of California
Hearing Department
Los Angeles

<p>Counsel For The State Bar</p> <p>Charles A. Murray Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1236</p> <p>Bar # 146069</p>	<p>Case Number (s)</p> <p>07-C-13122; 07-C-13247; 07-C-13977; 07-C-13981</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>JAN 27 2010 <i>R</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>David G. Malveaux 5033 Maytime Lane Culver City, CA 90230</p> <p>Bar # 224220</p>	<p>Submitted to: Assigned Judge</p>	
<p>In the Matter Of:</p> <p>DAVID G. MALVEAUX</p> <p>Bar # 224220</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 **December 17, 2002**.
- (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 **14** 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."



(Do not write above this line.)

- (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:
(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

See page 12. Disregard of the Law and Safety of the Public

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.
- (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 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 page 12. No harm; good character, pro bono activity

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **two (2) 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 1.4(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 **three (3) years**, 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.

(Do not write above this line.)

- (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: .
- (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 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:**

SUBSTANCE ABUSE CONDITIONS

Respondent admits that he is an alcoholic. He agrees to: submit to an examination by an alcohol treatment/recovery expert who meets with the approval of the State Bar; have the expert provide the State Bar a written evaluation setting forth recommendations for his treatment/recovery; and, comply with those treatment/recovery recommendations as conditions of his disciplinary probation in this matter. Specifically:

Identification on Evaluator:

1. Within thirty (30) days of the State Bar Court's Order approving this Stipulation, Respondent shall provide the State Bar with a writing identifying a medical provider qualified in alcohol treatment/recovery ("expert") and who meets with the approval of the State Bar, for the purpose of performing an alcohol treatment/recovery examination/evaluation and providing a written report setting forth recommendations that Respondent follow re treatment/recovery.

Materials for Evaluation:

2. The State Bar shall have at least ten (10) days after Respondent provides the expert's identity and before the examination/evaluation is conducted to provide the expert with any materials it deems relevant for an evaluation of Respondent re alcohol treatment/recovery, including copies of the Stipulation; law enforcement reports regarding the convictions described in the Stipulation; and, any other material related to Respondent's conduct in the incidents described above or the investigations or proceedings that followed.

Evaluation:

3. No less than (10) days or more than thirty (30) days after Respondent provides the expert's identity, he shall submit to an examination/evaluation by the expert for the purpose of the expert providing the State Bar written recommendations re alcohol treatment/recovery.

Respondent shall comply with all reasonable requests of the expert in conducting the examination/evaluation. If the doctor requires additional information in order to propose treatment conditions, including but not limited to interviewing third parties, Respondent will make good faith efforts to timely provide the additional information.

Waivers

4. No later than the first day of the examination/evaluation Respondent shall execute all necessary waivers of confidentiality with the expert as well as any treatment providers, including drug testing facilities, so that all Respondent information may be disclosed to the State Bar.

Within ten (10) days of the first date of the examination/evaluation, Respondent shall provide to the State Bar with a copy of the waiver provided to the doctor.

Thereafter, Respondent execute similar waivers with any other treatment providers, including drug testing facilities, and shall provide the State Bar with a copy of the waiver within ten days of execution.

Evaluation Report:

5. Respondent shall insure that a written evaluation report is provided to the State Bar within twenty (20) days of the completion of the examination/evaluation.

Costs of Evaluation:

6. Respondent shall bear all costs related to the examination/evaluation, the resulting report, and any treatment conditions recommended. Respondent understands that his treatment conditions may change if his treatment providers deem it necessary, and that he is to bear the cost of such treatment or changes in treatment, which in some cases could include but are not limited to in-patient treatment, out-patient treatment, sober living, or drug testing.

Compliance with Treatment/Recovery Recommendations:

7. Respondent understands that (a) the treatment /recovery recommendations resulting from the examination/evaluation or made in the course of his treatment shall be disciplinary probation requirements, (b) he must provide the State Bar with any proof of compliance or waiver requested by the State Bar, and (c) any violation of the treatment/recovery conditions or of these Substance Abuse Conditions is a violation of his probation requirements and may subject him to further disciplinary proceedings.

Changes in Treatment Conditions:

8. Within ten (10) days of any change in treatment condition, Respondent is to provide written notice to the State Bar specifically setting forth the changes. With that written notice, Respondent shall provide a writing from the applicable treatment provider describing the change.

Changes in Treatment Providers:

9. If treatment providers are added or changed, Respondent must notify the State Bar of the name, identification number, address, and telephone number of all such treatment providers within ten (10) days of the retaining of each one.

Within ten (10) days of retaining each such treatment provider, Respondent must provide to the State Bar with a writing from the treatment provider stating that it received a complete copy of this stipulation.

Reporting Compliance with Treatment Conditions:

10. Respondent shall report compliance and non-compliance with his alcohol treatment/recovery conditions by statement under penalty of perjury in each written quarterly probation report to the State Bar required in this matter.

Further, Respondent shall respond to any specific request for information related to these conditions within ten (10) days of the request. Stipulation item E(6) is incorporated in full and applies to these Substance Abuse Conditions.

NOTE: For purposes of these Substance Abuse Conditions, "State Bar" refers to the Office of Probation of the State Bar of California.

1 southbound lanes and into the rightmost lane, barely missing several parked vehicles. Respondent's
2 vehicle then actually collided with a parked vehicle. Both Respondent's vehicle and the parked
3 vehicle that Respondent hit sustained property damage as a result of the collision.

4 2. As the officer approached Respondent's vehicle, he observed Respondent display
5 several objective signs of being under the influence of alcohol. Respondent failed to complete the
6 field tests that were given. Respondent refused to submit to a chemical test at the scene and later at
7 the police station.

8 3. On April 23, 2003, a criminal complaint was filed in Los Angeles County Superior
9 Court case no. 3WL01175, charging Respondent with a misdemeanor violation of Vehicle Code
10 section 23152(a) [driving under the influence of alcohol].

11 4. On October 21, 2003, Respondent pled no contest and was found guilty of the
12 offense. Imposition of sentencing was suspended and Respondent was placed on summary
13 probation for 48 months on conditions that included a six month driver's license restriction,
14 completion of an alcohol program, attendance at 36 AA meetings, compliance with standard alcohol
15 conditions including he not drive with a measurable amount of alcohol in his system, and payment
16 of restitution totaling \$1,567.00.

17 **Conclusions of law for Case No. 07-C-13977**

18 5. The facts and circumstances surrounding Respondent's conviction for violation of
19 Vehicle Code section 23152(a) [driving under the influence of alcohol], a misdemeanor, do not
20 constitute moral turpitude, but do constitute other misconduct warranting discipline.

21 **Stipulated facts and circumstances for Case No. 07-C-13981**

22 6. On May 23, 2004, Respondent was involved in an incident with another person
23 outside a restaurant after he had been drinking. The incident was alcohol-related. He was charged
24 with battery.

25 7. On June 1, 2004, Respondent pled nolo contendere to a misdemeanor charge for
26 violation of Penal Code section 415 [disturbing the peace]. The battery charge was dismissed.

8. On June 1, 2004, Respondent was placed on 12 months summary probation, on
conditions that included his payment of fines and fees and that he stay 100 yards away from the
other person and the restaurant.

9 **Conclusions of law for Case No. 07-C-13981**

10 9. The facts and circumstances surrounding Respondent's conviction for violation of
11 Penal Code section 415 [disturbing the peace], a misdemeanor, do not involve moral turpitude, but
12 do constitute other misconduct warranting discipline.

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Stipulated facts and circumstances for Case No. 07-C-13122

10. On June 25, 2006, in Alameda, California, an officer observed a vehicle (later identified as belonging to and operated by Respondent) pull out from a business parking lot and stop in front of a green traffic light. The officer observed that the vehicle did not move for about 30 seconds, although there were no other vehicles in the area. After Respondent failed to move in response to the officer's air horn, the officer activated his overhead emergency equipment and exited his vehicle.

11. As the officer approached Respondent, he immediately detected several objective signs that Respondent was under the influence of alcohol. Respondent failed to satisfactorily complete field tests requested by the officer. Respondent was placed under arrest and taken to Alameda Hospital where a blood test indicated blood alcohol content of .27%.

12. On July 12, 2006, a complaint was filed in Alameda County Superior Court case no. 81703-3, charging Respondent with violations of Vehicle Code section 23152(a) [driving under the influence of alcohol], count one, and Vehicle Code section 23152(b) [driving while having a blood/alcohol content of 0.08% or higher], count two, both misdemeanors. It was further alleged in the complaint that during the commission of the offense, Respondent had a concentration of alcohol in his blood of .15 percent or more, and that he had a prior drunk driving conviction (see case no. 07-C-13977 above).

13. Respondent pled not guilty and the matter proceeded to trial where on August 1, 2007, Respondent was found guilty by jury on both counts. Respondent's drunk driving was a violation of the October 21, 2003 court order requiring him to forebear driving with a measurable amount of alcohol in his system.

14. On August 3, 2007, the court suspended sentencing and placed Respondent on probation for 60 months on conditions that included 30 days in jail, a drunk driver program concurrent to case no. 398511 (State Bar file no. 07-C-13247), and standard alcohol conditions.

Conclusions of law for Case No. 07-C-13122

15. The facts and circumstances surrounding Respondent's convictions for violation of Vehicle Code section 23152(a) [driving under the influence of alcohol], and Vehicle Code section 23152(b) [driving while having a blood alcohol content of 0.08% or higher], both misdemeanors, do not involve moral turpitude, but do constitute other misconduct warranting discipline.

16. Respondent's drunk driving was in violation of the prior court order that he not operate a vehicle with a measureable amount of alcohol in his system, and a wilful violation of Business and Professions Code section 6103.

Stipulated facts and circumstances for Case No. 07-C-1324

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2 17. On November 23, 2006, in San Leandro, California, an officer on patrol observed a
3 vehicle (identified as belonging to/operated by Respondent) driving after a recent downpour of rain
4 at a speed above the posted limit. In checking the license plate, the officer discovered that the
5 registration had recently expired. In following Respondent's vehicle, the officer observed
6 Respondent's vehicle sway from left to right within the traffic lane.

7 18. The officer initiated a traffic stop and approached Respondent. The officer observed
8 Respondent display objective signs of being under the influence of alcohol. The officer asked
9 Respondent twice if he had consumed any alcoholic beverages recently and Respondent insisted he
10 had not.

11 19. Respondent failed to satisfactorily complete field tests as requested by the officer. He
12 was arrested and taken to the local jail for booking, where he submitted to breath tests indicating
13 blood alcohol content of .14% and .16%.

14 20. On December 1, 2006, a complaint was filed in Alameda County Superior Court case
15 no. 398511-5, charging Respondent with violations of Vehicle Code section 23152(a) [driving
16 under the influence of alcohol], count one, and Vehicle Code section 23152(b) [driving while
17 having a blood/alcohol content of 0.08% or higher], both misdemeanors. It was further alleged that
18 during the commission of the offense, Respondent had a concentration of alcohol in his blood of .15
19 percent or more, and that Respondent had prior drunk convictions (see above).

20 21. On August 3, 2007, Respondent pled no contest to both counts, and admitted the two
21 priors. Respondent's drunk driving was a violation of the October 21, 2003 court order requiring
22 him to forebear driving with a measurable amount of alcohol in his system.

23 22. On August 3, 2007, the court suspended imposition of sentencing and placed
24 Respondent on probation for 60 months on conditions that included 120 days in jail, completion of a
25 drunk driver program, 18 month license restriction, an ignition interlock device, and daily AA.

Conclusions of law for Case No. 07-C-13247

26 23. The facts and circumstances surrounding Respondent's convictions for violation of
27 Vehicle Code section 23152(a) [driving under the influence of alcohol], and section 23152(b)
28 [driving while having a blood/alcohol content of 0.08% or higher], both misdemeanors, do not
29 involve moral turpitude, but do constitute other misconduct warranting discipline.

30 24. Respondent's drunk driving was in violation of the prior court order that he not
31 operate a vehicle with a measureable amount of alcohol in his system, and a wilful violation of
32 Business and Professions Code section 6103.

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1 **AGGRAVATING CIRCUMSTANCES:**

2 **Multiple acts:** Respondent convicted in four separate incidents involving alcohol - three
3 drunk driving convictions and one conviction for disturbing the peace related to alcohol.

4 **Disregard of the Law and Safety of the Public:** "Respondent demonstrated complete
5 disregard for the conditions of [his] probation, the law, and the safety of the public. [Citation
6 omitted]. Disobedience of a court order, whether as an legal representative or as a party,
7 demonstrates a lapse of character and a disrespect for the legal system that directly relates to an
attorney's fitness to practice and serve as an officer of the court. [Citation omitted.]" (*In re Kelley*
(1990) 52 Cal.3d 487, 495.)

8 **MITIGATING CIRCUMSTANCES:**

9 **Candor and Cooperation:** Respondent displayed spontaneous candor and cooperation
10 with the State Bar during these proceedings.

11 **No Client Harm:** No misconduct toward a client was involved. (*In re Kelley* (1990) 52
12 Cal.3d 487, 498.)

13 **Good Character:** Letters have been received from nine people in support of Respondent's
14 good character. One has know Respondent for 20 years, four for about ten years, and four for about
15 five years. All are aware of Respondent's DUI arrests and convictions from Respondent's
16 disclosures to them. They stay in regular contact with Respondent, varying from almost daily to
17 every few weeks. Most met Respondent either at undergraduate or law school, or through mutual
18 friends, and all consider themselves friends of Respondent. All are attorneys and one is a
prosecutor. With knowledge of the incidents, they find Respondent to be trustworthy,
hard-working, of good moral character, and showing a commitment to participation in recovery for
his problem with alcohol.

19 **Pro Bono Activity:** In 2007, Respondent, as an associate of a large law firm, received a
20 special award for demonstrated sustained commitment to pro bono clients of the firm, and for
handling significant responsibility on pro bono matters and in serving the community.

21 **DISCIPLINE:**

22 The purpose of State Bar attorney discipline is not to punish the attorney. As described in
23 Standard 1.3 the State Bar is concerned with "protection of the public, the courts and the legal
24 profession; the maintenance of high professional standards by attorneys and the preservation of
public confidence in the legal profession."

25 Standard 3.4 provides that the final conviction of a member of a crime which does not
26 involve moral turpitude but which does involve other misconduct warranting discipline shall result
in a sanction that is appropriate to the nature and extent of the misconduct found to have been
committed by the member. (*In the Matter of Carr* (Review Dept.1992) 2 Cal. State Bar Ct. Rptr.

108, 118; *In the Matter of Katz* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 502, 510.)

Case law clearly supports the goal of the disciplinary system to always protect the public and preserve confidence in the legal professions and maintain the highest possible standards for attorneys. (*Porter v. State Bar* (1992) 52 Cal.3d 518, 527; *Harford v. State Bar* (1990) 52 Cal.3d 93, 100.)

The primary cases dealing with attorneys convicted of drunk driving include:

In re Kelley (1990) 52 Cal.3d 487, 495-499, the Supreme Court publicly reprovved an attorney and placed her on three (3) years disciplinary probation which included conditions to address her use of alcohol. The attorney had been convicted of drunk driving twice in a 31 month period, the second being a violation of her criminal probation on the first. Her blood alcohol content in the second incident was tested at .16% and .17%. The attorney participated in the disciplinary proceeding and was found to have significant mitigation. Although the court found that the activity did not involve the practice of law or specific harm to the public or the courts, it did find a nexus between the attorney's actions and fitness to practice law. Significant in the decision to only publically reprove the attorney was a finding that she had significant mitigation. *Kelley* also determined that the attorney's second DUI in violation of her probation conditions order for her first DUI conviction "demonstrated complete disregard for the conditions of her probation, the law, and the safety of the public. [Citation omitted.] Disobedience of a court order, whether as a legal representative or as a party, demonstrates a lapse of character and a disrespect for the legal system that directly relates to an attorney's fitness to practice and serve as an officer of the court. [Citation omitted.]" *Kelley* at 495.

The significant differences between *Kelley* and Respondent are that Respondent's record includes a third drunk driving with a significantly higher blood alcohol (.27%); one of his incidents involved a collision with another car; and, he has an additional alcohol-related conviction for a disturbing the peace incident involving another person outside a restaurant. Respondent's four conviction matters demonstrate a significantly greater scope of misconduct than *Kelley's* two less serious drunk driving incidents.

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, the Review Department recommended that an attorney actually be suspended for a period of 60 days as a result of his drunk driving on two occasions, with a record of three prior drunk driving convictions and two prior impositions of attorney discipline [both reprovalls]. Aggravating circumstances included, the attorney's struggling with the arresting officer and having to be taken to the ground to be handcuffed in one incident; and, the attorney pushing the arresting officer backwards, causing the officer to fall, and then driving away from the scene in the other incident. In mitigation, he had impressive character evidence.

Respondent's severe problem with alcohol is clear. His repeated drunk driving threatens not just harm but literally the lives of others. His repeated drunk driving despite court-ordered conditions that he not drive with alcohol in his system demonstrates disrespect for the courts and the law.


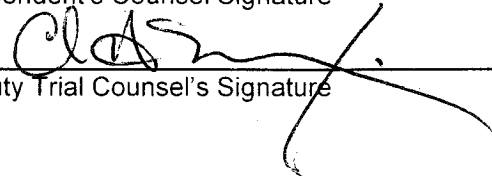
Respondent's discipline should reflect that Respondent's misconduct is more serious than that in *Kelley* though less serious than that in *Anderson*.

(Do not write above this line.)

In the Matter of DAVID G. MALVEAUX	Case number(s): 07-C-13122; 07-C-13247; 07-C-13977; 07-C-13981
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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>1-14-2010</u> Date	 Respondent's Signature	<u>DAVID G. MALVEAUX</u> Print Name
Date	Respondent's Counsel Signature	Print Name
<u>1-14-2010</u> Date	 Deputy Trial Counsel's Signature	<u>CHARLES A. MURRAY</u> Print Name

(Do not write above this line.)

In the Matter Of DAVID G. MALVEAUX	Case Number(s): 07-C-13122; 07-C-13247; 07-C-13977; 07-C-13981
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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.

At page 2, item A.(8), costs are to be added to membership fee for calendar year following effective date of discipline.

At page 4, item E.(5), the requirement of a probation monitor is deleted.

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.)**

1/27/10
Date


Judge of the State Bar Court

DONALD F. MILES

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 January 27, 2010, 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:

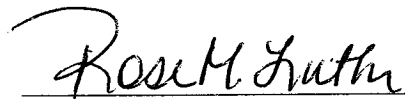
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID G. MALVEAUX, ESQ.
5033 MAYTIME LN
CULVER CITY, CA 90230

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

CHARLES MURRAY, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 27, 2010.



Rose Luthi
Case Administrator
State Bar Court