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State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar Christine Souhrada Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Phone: (415) 538-2183 Fax: (415) 538-2284 Bar # 228256	Case Number(s): 10-O-09340; 11-C-18517 [consolidated]	For Court use only PUBLIC MATTER FILED <i>[Signature]</i> MAY 02 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Michelle Yvonne Winspur 115 S Church St Visalia, CA 93291 Phone: (559) 909-1182 Bar # 200520	Submitted to: Assigned Judge FIRST AMENDED STIPULATION RE FACTS AND CONCLUSIONS OF LAW	
In the Matter of: MICHELLE YVONNE WINSPUR Bar # 200520 A Member of the State Bar of California (Respondent)	ALTERNATIVE DISCIPLINE PROGRAM <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 March 6, 1999.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 5.386(D)(2) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.



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- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 9 pages, excluding 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) 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 and will pay timely any disciplinary costs imposed in this proceeding.

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:
- (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. Attached, stipulation at page 8.
- (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.

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(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.
- (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. Attached, stipulation at page 8.
- (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:

Attached, stipulation at page 8.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

Michelle Y. Winspur

CASE NUMBER(S):

10-O-09340 and 11-C-18517

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 10-O-09340

FACTS:

1. Respondent represented the criminal defendant in a jury trial in the matter of *People v. Keith Dixon*, case number MS282946A, Monterey County Superior Court. The defendant was charged with misdemeanor violations of inflicting corporal injury on a spouse/cohabitant (Pen. Code § 273.5), battery against spouse/cohabitant (Pen. Code § 243(e)), and false imprisonment (Pen. Code § 236).

2. At all times mentioned, the defendant had a constitutional right to a fair trial and to receive competent assistance of counsel.

3. The trial began on May 3, 2010, whereupon respondent was called upon to represent the defendant (including but not limited to jury selection, opening statements, cross-examination of witnesses).

4. On the second day of trial, May 4, 2010, respondent appeared in court to represent the defendant. During this afternoon session of trial, respondent was called upon to cross examine a prosecution witness and otherwise represent the defendant in court proceedings.

5. Respondent was significantly intoxicated and impaired during the morning and afternoon sessions of both trial days due to her voluntary use of alcohol, and her performance as an attorney was significantly below the standard of practice for attorneys representing clients at a criminal trial.

6. In the midst of trial during the afternoon of May 4, 2010, the defendant stated in open court that he was not getting fair representation because he believed his counsel was impaired by alcohol:

Defendant: Your Honor, I just feel that although my attorney is trying to do a good job for me and whatnot, and is representing me, I feel like I am not be getting fair representation right now because her vision may be impaired by alcohol at this time at this time. I noticed different variations of movement and repetitive questions.

The Court: You think that your counsel's performance may be impaired by alcohol at this time?

Defendant: At this time I do. I don't have the background or expertise to say.

7. The court then questioned respondent about her alcohol use on the day of trial. Respondent denied being impaired, claiming that she had only consumed "one glass" of wine at 12:00 p.m. The court then stated:

"I will express my concern, my grave concern, that Mr. Dixon has not been receiving competent representation. It had occurred to me before he mentioned this to my bailiff. The matters...the performance I have seen in this courtroom do not come close to what I would expect of an attorney of many years of criminal experience. I am greatly troubled by it. And I appreciate your bringing it to my attention, Mr. Dixon. Mr. Donahue?"

8. Mr. Donahue, the prosecutor, then moved for a mistrial as implicitly suggested by the court. Thereupon, the court granted the mistrial.

9. As of November 1, 2010, the State Bar was conducting an investigation into the events surrounding her conduct in *People v. Keith Dixon*.

10. On November 1, 2010, a State Bar investigator sent respondent a letter of inquiry concerning the matter.

11. On December 3, 2010, respondent sent a response letter to the State Bar that contained the following false and misleading statement:

"...I deny that I was ever intoxicated at any time during said proceeding."

12. In truth and in fact, as respondent knew when she sent the response letter, respondent was intoxicated at numerous points during the trial.

13. The response letter also contained the following false and misleading statement:

"...it was my understanding, based on my recollection of this proceeding as well as communications with Mr. Dixon prior to the proceedings that the request for a new attorney was due to a breakdown in communication and not due to intoxication."

14. In truth and in fact, as respondent knew when she sent the response letter, the request for new counsel was based on respondent's intoxication.

15. The response letter also contained the following false and misleading statement:

"Although a mistrial was granted, it was my understanding based on my recollection of this proceeding the judge did not grant a mistrial based on my intoxication."

16. In truth and in fact, as respondent knew when she sent the response letter, the judge granted the mistrial based on respondent's intoxication.

17. These misrepresentations were deliberate and intentional, or were at least made with reckless disregard for the truth.

CONCLUSIONS OF LAW:

18. By appearing at the Keith Dixon trial while impaired, and failing to fulfill her fiduciary obligation to provide Keith Dixon with effective assistance of counsel, respondent committed an act involving moral turpitude, dishonesty and corruption in wilful violation of Business and Professions Code, section 6106.

19. By appearing in court impaired by alcohol, respondent failed to maintain the respect due to the courts of justice and judicial officers in willful violation of Business and Professions Code, section 6068(b).

20. By making false and misleading statements in response to the State Bar's letter, respondent committed acts involving moral turpitude, dishonesty and corruption in wilful violation of Business and Professions Code, section 6106.

Case No. 11-C-18517 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

21. 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.

22. On April 27, 2012, Respondent pled no contest to violating California Vehicle Code, section 23152(b) [driving with a blood alcohol content of .08% or more].

23. On January 7, 2013, 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 October 7, 2011, Respondent was due in court as an attorney for one of the parties in a jury trial at the Kings County Superior Court in Hanford, California. Before 8:45 a.m., Respondent called the court clerk to inform the court that she would be late. When Respondent spoke to the clerk, the clerk observed that Respondent spoke slowly and her speech was slurred.

25. On October 7, 2011, at approximately 9:05 a.m., a bailiff observed Respondent driving and parking her car at the courthouse, and then walking from her car to the courthouse in an unsteady and unbalanced manner. The bailiff also observed that Respondent's face was red and her eyes were watery.

26. An alcohol screening test was administered to Respondent at the courthouse. The test indicated she had a blood-alcohol level of 0.183%, and respondent was arrested for violating California Vehicle Code, section 23152(a) [driving under the influence].

27. After Respondent was arrested, a blood test was administered to measure Respondent's blood-alcohol content. The blood test indicated she had a blood-alcohol level of 0.21%.

28. At the time Respondent was arrested, Respondent's driver's license had been suspended.

29. On November 2, 2011, Respondent was charged with violating California Vehicle Code, sections 23152(a) [driving under the influence], 23152(b) [driving with a blood alcohol content of .08% or more], and 14601.1(a) [driving with a suspended license].

30. On April 27, 2012, Respondent pled no contest to violating California Vehicle Code, section 23152(b) [driving with a blood alcohol content of .08% or more].

CONCLUSIONS OF LAW:

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

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.2(b)(iv)): Respondent's misconduct harmed the administration of justice by causing a mistrial to be entered in the criminal proceeding underlying case no. 10-O-09340 in which Respondent was representing the criminal defendant.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Remorse (Std. 1.2(e)(vii)): On June 1, 2010 (less than one month following the misconduct in case no. 10-O-09340) respondent voluntarily entered a 30-day residential chemical dependency program and completed that program successfully and is therefore entitled to some mitigation. Respondent took this action before she was contacted by the State Bar; thus, she sought treatment without the threat of discipline indicating remorse and recognition of wrongdoing.

Additional Mitigating Circumstances: Although the misconduct is serious, Respondent has no prior discipline over 14 years of practice. See *In the Matter of Riordan* (Rev. Dept. 2007) 5 Cal. State Bar Ct. Rptr 41, 49.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 15, 2013.

In the Matter of: Michelle Yvonne. Winspur, No. 200520	Case number(s): 10-O-09340; 11-C-18517 [consolidated]
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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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.


If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

3-19-13
Date


Respondent's Signature

Michelle Yvonne Winspur
Print Name

Date	Respondent's Counsel Signature	Print Name
3/24/13		Christine Souhrada
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of: Michelle Yvonne Winspur, No. 200520	Case Number(s): 10-O-09340; 11-C-18517 [consolidated]
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ALTERNATIVE DISCIPLINE PROGRAM 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 stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☐ All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date

April 29, 2013


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 San Francisco, On May 2, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

1 in a sealed envelope for collection and mailing on that date as follows:

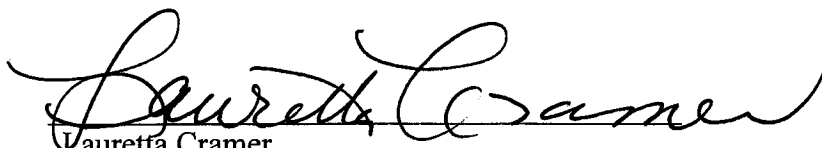
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MICHELLE Y. WINSPUR
115 S CHURCH ST
VISALIA, CA 93291

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

Christine Ann Souhrada, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 2, 2013.


Lauretta Cramer
Case Administrator
State Bar Court