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**State Bar Court of California  
Hearing Department  
San Francisco  
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p><b>Jonathan Ceseña</b> Deputy Trial Counsel 180 Howard Street San Francisco CA 94105 (415) 538-2183</p> <p>Bar # 289721</p>	<p>Case Number(s): 11-C-13996-LMA 11-C-13997 12-C-13965 12-C-15131 12-C-16973 13-C-10720</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p>NOV 13 2014</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p><b>Jonathan Irwin Arons</b> 100 Bush St. Ste. 918 San Francisco, CA 94104</p> <p>Bar # 111257</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>BARBARA SEHNAL SOUKUP</b></p> <p>Bar # 240341</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

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**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 7, 2005**.
- (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 **19** 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".

(Effective January 1, 2014)

Actual Suspension

82

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **two billing cycles from the effective date of the Supreme Court Order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case
  - (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 intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (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.

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- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment to Stipulation at page 15.**
- (8)  **Restitution:** Respondent failed to make restitution.
- (9)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct. **See Attachment to Stipulation at page 16.**
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. **See Attachment to Stipulation at page 16.**
- (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:**

**Pretrial Stipulation See Attachment to Stipulation at page 16.**

**D. Discipline:**

- (1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **four years**.

- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

(b)  The above-referenced suspension is stayed.

- (2)  **Probation:**

Respondent must be placed on probation for a period of **five years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3)  **Actual Suspension:**

(a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **two years**.

- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of

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information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

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

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

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

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|--|---|
| <input type="checkbox"/> Substance Abuse Conditions    | <input type="checkbox"/> Law Office Management Conditions |
| <input checked="" 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 during the period of actual suspension or within one year, whichever period is longer. **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 5.162(A) & (E), Rules of Procedure.**

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No MPRE recommended. Reason:

- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: **October 18, 2013. See In Re Young (1989) 49 Cal.3d 257.**
- (5)  **Other Conditions:**

**Respondent recognizes that a repeat conviction for DUI suggests an alcohol and/or drug problem that needs to be addressed before it affects respondent's legal practice. Respondent agrees to take the steps necessary to control the use of alcohol and/or drugs such that it will not affect respondent's law practice in the future. Respondent's agreement to participate in an abstinence-based self-help group (as defined herein), as a condition of discipline, is part of respondent's efforts to address such concerns.**

**As a condition of probation, and during the period of probation, Respondent must attend a minimum of two (2) meetings per month of any abstinence-based self-help group of respondent's choosing, including without limitation Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include a subculture to support recovery, including abstinence-based group meetings. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [no First Amendment violation where probationer given choice between AA and secular program.] ) Respondent is encouraged, but not required, to obtain a "sponsor" during the term of participation in these meetings.**

**Respondent's participation in the Sun Streets Centers program for alcohol abuse shall meet the requirements for one of the two monthly self help meetings requirement. The Sun Streets Centers meetings occur once a month, for two hours. Proof of attendance must be provided to the probation department. However, respondent may attend other meetings, other than the Sun Streets Centers program, in order to meet her two meetings per month of any abstinence based-self help group.**

**The program called "Moderation Management" is not acceptable because it is not abstinence-based and allows the participant to continue consuming alcohol.**

**Respondent must contact the Office of Probation and obtain written approval for the program respondent has selected prior to attending the first self-help group meeting. If respondent wants to change groups, respondent must first obtain the Office of Probation's written approval prior to attending a meeting with the new self-help group.**

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In the Matter of: <b>BARBARA SEHNAL SOUKUP</b>	Case Number(s): <b>11-C-13996-LMA</b> <b>11-C-13997</b> <b>12-C-13965</b> <b>12-C-15131</b> <b>12-C-16973</b> <b>13-C-10720</b>
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### Medical Conditions

- a.  Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b.  Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of \_\_\_\_\_ times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for \_\_\_\_\_ days or \_\_\_\_\_ months or \_\_\_\_\_ years or, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c.  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.

Other:

Respondent agrees to have monthly meetings with a licensed psychiatrist who can prescribe medication and monitor its effect. These meetings will be at respondent's own expense and respondent must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. The treatment/help shall commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. The monthly meetings must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.



7. Respondent submitted to field sobriety tests, but due “to her indecisiveness and uncooperativeness and the slight inclination of the road, the FST’s were limited.”

8. Officer Correa administered two PAS tests. The readings were .292% and .263%. However, respondent would not provide an adequate breath sample. The samples received were from two weak breath samples. There were no subsequent tests taken.

9. Respondent was placed under arrest for suspicion of Driving Under the Influence of Alcohol.

CONCLUSIONS OF LAW:

10. The facts and circumstances surrounding the above-described violation did not involve moral turpitude, due to respondent’s improperly treated mental health condition, but did involve other misconduct warranting discipline.

Case No. 11-C-13996

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

11. On June 8, 2011, the Monterey County District Attorney’s Office filed a criminal complaint in Monterey County Superior Court case number MS296604(A) charging respondent with Count One, violating Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, and violating Vehicle Code section 23577(a) [Refusal to Submit to a Chemical Test], Count Two, violating Penal Code section 243(B) [Battery on a Peace Officer], a misdemeanor, Count Three, violating Penal Code section 243(b) [Battery on a Peace Officer], a misdemeanor, Count Four, violating Penal Code section 148(a)(1) [Resisting or Obstructing a Peace Officer], a misdemeanor.

12. On April 18, 2013, the Monterey County Superior Court entered respondent’s no contest plea to Counts One and Two of the complaint filed in Monterey County Superior Court, case no. MS296604(A), which charged respondent with a violation of California Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, Count Two, violating Penal Code section 243(b) [Battery on a Peace Officer]. The remaining counts were dismissed.

13. On June 20, 2013, the Monterey County Superior Court sentenced respondent to 60 days in custody, five years probation, and standard probation conditions, such as refraining from the consumption of alcohol and obeying all rules of law and conditions of probation.

14. On March 13, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

15. On May 31, 2011, Officer Palma of the California Highway Patrol was dispatched to a single-car accident. When Officer Palma arrived at the scene, he found respondent’s car was involved in a single-vehicle accident on Las Palmas Parkway in Salinas. The two driver’s side tires were flat and

the driver's side airbag had been deployed. The vehicle was found abandoned in the middle of the west-bound lane. A witness observed respondent walking, swaying and stumbling down Las Palmas Parkway. A second witness stopped and gave respondent a ride home.

16. Officer Hernandez of the California Highway Patrol arrived on the scene to find the vehicle empty and in the above described state. Dispatch was able to find an address located in the immediate area. The officers located respondent at her home, which was less than a mile from the scene of the accident.

17. When respondent opened the door, the officers could smell a strong odor of alcohol coming from her. Respondent was incoherent, refused to identify herself, and refused to answer basic questions. Respondent explained she had been driving home, that her vehicle had suddenly died, that she had not consumed any alcohol prior to driving, and she had not consumed any alcohol since the collision. Officer Palma told respondent he could smell alcohol emitting from respondent, at which point respondent attempted to flee into the house.

18. After attempting to flee, respondent was placed in custody. Deputy Wood, from the Monterey County Sheriff's Department, also arrived on scene. As Officer Palma was trying to lock the handcuffs, respondent began kicking Officer Hernandez and Deputy Wood in the legs and yelling at the officers.

19. While being placed in the patrol car, respondent began kicking Officer Hernandez and Deputy Wood in the legs, striking them multiple times. Respondent was placed in the back of the patrol car; she then began to kick the back of the front passenger seat and the gun rack mounted in the patrol car.

20. Eventually, respondent agreed to a Preliminary Alcohol Screening ("PAS") which resulted in readings of .28% and .26%.

21. Respondent did not submit to field sobriety tests. Due to the objective signs of alcohol intoxication, respondent was placed under arrest for DUI.

#### CONCLUSIONS OF LAW:

22. The facts and circumstances surrounding the above-described violation did not involve moral turpitude, due to respondent's improperly treated mental health condition, but did involve other misconduct warranting discipline.

#### Case No. 12-C-13965

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

23. On May 16, 2012, the Monterey County District Attorney's Office filed a criminal complaint in Monterey County Superior Court case number MS304610A, charging respondent with Count One, violating Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, and violating Vehicle Code section 23577(a) [Refusal to Submit to a Chemical Test], Count Two and Three, violating Penal Code section 243(b) [Battery on a Peace Officer], a misdemeanor, Count Four, violating Penal Code section 148(a)(1) [Resisting or Obstructing a Peace Officer], a misdemeanor, Count Five, violating

Vehicle Code section 14601.5(a) [Driving When License Suspended for Refusal of a Chemical Test or Excessive Blood Alcohol], Count Six, violating Vehicle Code section 23222(a) [Possession of an Open Container While Driving], an infraction, and Count Seven, violating Vehicle Code section 16028(a) [Failing to Provide Evidence of Financial Responsibility], an infraction.

24. On April 18, 2013, the Monterey County Superior Court entered respondent's no contest plea to Count One violating Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, Count Two, violating Vehicle Code section 23577(a) [Refusal to Submit to a Chemical Test], and Count Three, violating Penal Code section 243(b) [Battery on a Peace Officer], a misdemeanor. The remaining counts were dismissed.

25. On June 20, 2013, the Monterey County Superior Court sentenced respondent to 98 days in custody and five years formal probation with standard probation conditions, such as refraining from the consumption of alcohol and to obey all rules of law and conditions of probation.

26. On November 8, 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 offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

#### FACTS:

27. On May 6, 2012, Officer Robinson of the Monterey County Sheriff's Department saw respondent in the driver's seat of her vehicle stopped in the middle of the intersection of Las Palmas Parkway and River Road.

28. Respondent then passed Officer Robinson's vehicle and crossed over to the east-bound lanes and continued to head west-bound at a high rate of speed. Respondent, after some time, came back in to the west-bound lane almost hitting Officer Robinson's vehicle. Respondent then turned down a side street that did not have an outlet. Officer Robinson followed respondent, who stopped at the end of the side street.

29. Officer Robinson, off duty and not in uniform, approached respondent's vehicle and identified himself as an officer. Officer Robinson saw a partially consumed wine bottle in the passenger-side floor board and smelled alcohol coming from respondent. He called dispatch and had a uniformed officer sent to the scene.

30. Respondent got out of her vehicle and kicked Officer Robinson in the groin. Officer Robinson restrained respondent and placed her on the ground. Respondent continued to struggle with Officer Robinson.

31. Deputy Vowinkel of the Monterey County Sheriff's Office arrived and placed respondent in handcuffs. Respondent refused to cooperate with the officers. The officers placed her on the ground. Respondent refused to get into the patrol car, at which point it took both officers to get her secured in the patrol car.

32. Officer Freshwater of the California Highway Patrol arrived to conduct the DUI investigation. Respondent refused to answer any questions regarding basic identifying information. Respondent answered the basic DUI investigation questions with inappropriate and foul language. Respondent exhibited all the objective symptoms of being intoxicated.

33. At the time of the incident, respondent was driving on a suspended license and refused to submit to a chemical test. Respondent was placed under arrest for suspected DUI.

#### CONCLUSIONS OF LAW:

34. The facts and circumstances surrounding the above-described violation did not involve moral turpitude, due to respondent's improperly treated mental health condition, but did involve other misconduct warranting discipline.

#### Case No. 12-C-15131

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

35. On July 9, 2012, the Monterey County District Attorney's Office filed a criminal complaint in Monterey County Superior Court case number MS305864A, charging respondent with two counts of violating Penal Code section 273a(b) [Cause or Permit Cruelty to a Child], both misdemeanors.

36. On April 18, 2013, the Monterey County Superior Court entered respondent's no contest plea to Count One violating Penal Code section 273a(b) [Cause or Permit Cruelty to a Child], a misdemeanor.

37. On June 20, 2013, the Monterey County Superior Court sentenced respondent to 30 days in custody and four years formal probation with standard probation conditions.

38. On March 13, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

#### FACTS:

39. On July 4, 2012, one of respondent's six-year-old sons called 911 and reported his mother was on the floor unresponsive. Other than her twin sons, respondent was the only person in the house.

40. Deputy Mitchell and Deputy Ramos of the Monterey County Sheriff's Department arrived at the home and found respondent on the floor of the living room. Respondent was unconscious. Once respondent regained consciousness, respondent was disorientated, aggressive, and hostile to the responding emergency personnel.

41. Respondent admitted to being drunk and the officers found an empty 1.75ml bottle of red wine on the kitchen counter. The oven was turned on and there were no other adults in the residence. The officers determined respondent had been unconscious for approximately 45 minutes.

42. Respondent was placed under arrest for Contributing to the Delinquency of a Minor and a violation of probation (Possessing Alcohol).

43. After being placed under arrest, respondent was consistently aggressive, hostile, and belligerent. Respondent attempted to kick the windows out of the patrol car, threatened the officer by identifying herself as a lawyer, and then started crying.

#### CONCLUSIONS OF LAW:

44. The facts and circumstances surrounding the above-described violation did not involve moral turpitude, due to respondent's improperly treated mental health condition, but did involve other misconduct warranting discipline.

#### Case No. 12-C-16973

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

45. On October 4, 2012, the Monterey County District Attorney's Office filed a criminal complaint in Monterey County Superior Court case number SS121878A, charging respondent with Count One, violating Penal Code section 243(c)(2) [Battery with injury on a Peace Officer], a felony, Count Two, Three, and Four, violating Penal Code section 243(b) [Battery on a Peace Officer], a misdemeanor, Count Five, violating Vehicle Code section 664/23152(a) [Attempted Driving Under Influence], a misdemeanor, Count Six, violating Penal Code section 242 [Battery], a misdemeanor, Count Seven, violating Penal Code section 240 [Assault], a misdemeanor, Count Eight, violating Penal Code section 647(f) [Public Intoxication], a misdemeanor, and Count Nine, violating Penal Code section 148(a)(1) [Resisting or Obstructing a Peace Officer], a misdemeanor.

46. On April 18, 2013, the Monterey County Superior Court entered respondent's no contest plea to Count One and Two, violating Penal Code section 243(c)(2) [Battery with injury on a Peace Officer], a felony, and violating Penal Code section 243(b) [Battery on a Peace Officer], a misdemeanor.

47. On June 20, 2013, the Monterey County Superior Court sentenced respondent to three years in state prison, suspended, and to serve 30 days in custody.

48. On March 13, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

#### FACTS:

49. On September 30, 2012, Deputy Moran of the Monterey County Sheriff's Department responded to a call of a battery in progress at the Whole Enchilada Restaurant in Moss Landing. Upon his arrival, Deputy Moran was told respondent was the perpetrator and that respondent was currently in her vehicle.

50. Deputy Moran approached the vehicle and found respondent sitting in the driver's seat. Respondent opened her door and Deputy Moran could smell a strong odor of alcohol coming from her. Respondent's eyes were bloodshot and glossy, her words were slurred, and her sentences were nonsensical.

51. Respondent stated she had not consumed any alcohol. Respondent at first denied having any identification and then when asked a second time, produced her driver's license. Deputy Moran ran her license and found it to be suspended.

52. Deputy Moran explained to respondent that she was going to be arrested, at which point she exited her vehicle and punched Deputy Moran twice in the chest. Deputy Schumacher came over to assist and they placed respondent in hand cuffs. Respondent then kicked Deputy Schumacher in his right shin. While being escorted to the patrol car, respondent attempted to kick Deputy Moran but instead fell to the ground. Both Deputies carried respondent to the car and while placing her in the back seat, she kicked Deputy Schumacher in the groin causing him extreme pain and injury.

53. Respondent continued to scream while being placed in the car. While en route to the jail, respondent screamed obscenities, yelled, and kicked the metal divider behind the driver's seat of the patrol car.

#### CONCLUSIONS OF LAW:

54. The facts and circumstances surrounding the above-described violation did not involve moral turpitude, due to respondent's improperly treated mental health condition, but did involve other misconduct warranting discipline.

#### Case No. 13-C-10720

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

55. On January 30, 2013, the Monterey County District Attorney's Office filed a criminal complaint in Monterey County Superior Court case number MS310452A, charging respondent with Count One, violating Penal Code section 273.6(a) [Disobeying a Domestic Relations Court Order], a misdemeanor, Count Two and Three violating Penal Code section 273a(b) [Cause or Permit Cruelty to a Child], both misdemeanors, Count Four violating Penal Code section 243(b) [Battery on a Peace Officer], a misdemeanor.

56. On April 18, 2013, the Monterey County Superior Court entered respondent's no contest plea to Count Four, violating Penal Code section 243(b) [Battery on a Peace Officer], a misdemeanor.

57. On June 20, 2013, the Monterey County Superior Court sentenced respondent to three years formal probation and to serve 30 days in custody.

58. On March 13, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

## FACTS:

59. On January 23, 2013, respondent telephoned her former husband, in violation of a temporary restraining order. Respondent's former husband called the police to make a report. Respondent's former husband reported that respondent sounded intoxicated and due to her bail and probation provisions, she was not allowed to consume alcohol. Respondent's former husband stated that respondent claimed she was at home alone with their minor twin sons. Respondent's former husband requested a welfare check for the two boys.

60. Officer Wood of the Monterey County Sheriff's Department went to respondent's home to perform the welfare check. He knocked on the door and rang the doorbell with no answer. He could see in the window and saw one of the children sleeping on the downstairs couch. Respondent then came out on the balcony above the front door, nude from the waist down. Officer Wood identified himself and asked respondent to come downstairs. Officer Wood could see respondent's eyes were bloodshot and she was slurring and mumbling her words. Respondent ignored the officer's request and went back inside.

61. The front door was unlocked, so the officers went in and found respondent in the second-floor master bedroom. Respondent was still nude from the waist down and was trying to put a shirt on, as if it was a pair of pants. Respondent had a strong odor of alcohol coming from her and she was slurring her words. The officers asked respondent to put on a pair of pants and respondent tried to leave the room.

62. Respondent was eventually placed under arrest for violations of probation, child endangerment, and violation of the temporary restraining order. As respondent was being escorted to the patrol vehicle she stumbled and almost fell. Respondent was placed in the back seat of the patrol car. Respondent became combative by kicking the windows and doors of the vehicle.

63. The officers tried to remove respondent from the vehicle so she could be transported, at which time respondent started kicking at the officers and eventually kicked one in the thigh.

64. A probation search of respondent's residence was conducted, revealing numerous empty wine bottles and receipts for the purchase of alcohol, all in violation of her probation

## CONCLUSIONS OF LAW:

65. The facts and circumstances surrounding the above-described violation did not involve moral turpitude, due to respondent's improperly treated mental health condition, but did involve other misconduct warranting discipline.

## AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent plead no contest to one felony battery on a peace officer with injury, and to 11 misdemeanors: four counts of Battery on a Police Officer; two counts of Driving While under the Influence; one count of driving with a blood alcohol level higher than .08%; two counts of refusing to submit to a chemical test; one count of driving on a suspended license;

one count of causing or permitting cruelty to a child. These 12 acts of misconduct from June 2008 to January 2013 constitute multiple acts of misconduct.

### MITIGATING CIRCUMSTANCES.

**Extreme Emotional Difficulties (Std. 1.6(d)):** Respondent's treating psychiatrist reports that respondent was misdiagnosed with major depression and improperly prescribed Pristiq. Respondent actually suffers from bi-polar disorder. Pristiq can cause mania if prescribed to those with bi-polar disorder. During the period of misconduct, respondent was taking the prescribed Pristiq. Respondent is now taking properly prescribed medication, which has to date proved successful in controlling respondent's mental health issues, completed an inpatient substance abuse program, and has been incident-free for over a year, thus demonstrating that respondent does not pose a risk for further misconduct. Since the January 23, 2013 incident, respondent has had no further arrests. (*In re Naney* (1990) 51 Cal.3d 186, 197 [A psychological disorder that has caused or contributed to misconduct is mitigating only if the attorney establishes rehabilitation.]; *Porter v. State Bar* (1990) 52 Cal.3d 518, 528 [We consider psychiatric evaluations where "successful therapeutic rehabilitation or a strong prognosis for future rehabilitation is established".]; *Hawes v. State Bar* (1990) 51 Cal.3d 587 [A mental disorder is entitled to mitigating weight if it causally contributed to the misconduct and if the disorder has since been cured or so controlled that it is unlikely to again lead to misconduct.]])

**Good Character (Std. 1.6(f)):** Respondent provided eight good character declarations signed under penalty of perjury. Four declarations are from attorneys, one is from a family friend, one is from respondent's mother, one is from a law student/employee, and one is from a former client. The writers are aware of respondent's misconduct and her struggle with alcohol.

### ADDITIONAL MITIGATING CIRCUMSTANCES.

**Pre-trial Stipulation:** Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickie* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.)

### AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.)

The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the Standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring

consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) Any discipline recommendation that deviates from the Standards must include clear reasons for the departure. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Respondent was misdiagnosed with major depression and improperly prescribed Pristiq. Respondent actually suffers from bi-polar disorder, which when prescribed Pristiq can cause manic episodes. Beginning in June of 2008 and continuing through January of 2013, respondent was convicted of one felony battery on a peace officer with injury, and 11 misdemeanors including: four counts of Battery on a Police Officer; two counts of Driving While under the Influence; one count of driving with a blood alcohol level higher than .08%; two counts of refusing to submit to a chemical test; one count of driving on a suspended license; one count of causing or permitting cruelty to a child.

In *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, the State Bar Court classified battery on a peace officer (Penal Code §243(c)) as a crime that *may or may not involve moral turpitude*. However, in *People v. Lindsay* (1989) 209 Cal. App.3d 849, 857, the Court of Appeal classified battery on a peace officer as a crime that necessarily involves moral turpitude (albeit for purposes of witness impeachment): "There is no doubt the intentional, willful and unlawful use of force upon a peace officer, however slight, coupled with actual knowledge the victim is a peace officer in the performance of his or her duties, is clearly a crime of moral turpitude and demonstrates a readiness to do evil. However, even where the knowledge element is measured by a standard of reasonableness (should have known the victim was a police officer and should have known the victim was involved in his or her duties as a peace officer), moral turpitude or a readiness to do evil is present, inasmuch as the perpetrator's acts demonstrate a disregard for what is reasonably expected of ordinary people. (*People v. Rodriguez* (1986) 42 Cal.3d 730, 780, 230 Cal. Rptr. 667, 726 P.2d 113.)" In our case, the convictions, on their face, appear to include facts and circumstances involving moral turpitude. But respondent's mental health condition and the impact they had on her behavior must be taken into account. Respondent did not act with the requisite intent because respondent's mental health issues negate the mens rea established under *Lindsay* and *Rodriguez*. Thus, moral turpitude cannot be found on these facts.

Standard 1.7(a) requires that where an attorney "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed." In this matter, respondent was convicted of 12 criminal convictions as set forth above, including felony battery on a peace officer (Pen. Code §243(C)(2)). The most severe sanction applicable to respondent's misconduct – disbarment or two years actual suspension – is found in standard 2.12(a).

Standard 2.12(a) provides "Actual suspension is appropriate for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline." Here respondent was convicted of one felony battery on a peace officer with injury and eleven misdemeanors including: four

convicted of one felony battery on a peace officer with injury and eleven misdemeanors including: four counts of Battery on a Police Officer; two counts of Driving While under the Influence; one count of driving with a blood alcohol level higher than .08%; two counts of refusing to submit to a chemical test; one count of driving on a suspended license; one count of causing or permitting cruelty to a child. The severity and volume of the convictions warrants an actual suspension. However, the facts and circumstances in this case do not support a finding of moral turpitude.

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, respondent has 12 criminal convictions which constitutes multiple acts of misconduct. In mitigation, respondent was suffering from extreme emotional difficulties which she has been able to control for 19 months through proper medication and treatment, has presented eight good character declarations, and entered into this pretrial stipulation.

Case law is instructive. The Supreme Court in, *In re Kelley* (1990) 52 Cal. 3d 487, where the Supreme Court imposed a public reproof for the conviction of a second DUI while the attorney was still on probation for the first DUI. The Supreme Court noted that though Kelley's convictions did not cause specific harm to the public or the courts, there were several significant mitigating factors, and concluded that "relatively minimal discipline is warranted in this case, even though petitioner's crimes were serious and involved a threat of harm to the public." (*Id.* at p. 498.) The present case is much more egregious than *Kelley* in that respondent has three DUI convictions, two of which occurred while she was on criminal probation. Respondent has four convictions for battery on a peace officer, two convictions for refusing to submit to a chemical test, and one conviction for permitting cruelty to a child, all of which occurred while she was on probation for her first DUI. Therefore, discipline more severe than a public reproof is warranted in this case. Due to the extreme nature and number of criminal convictions a lengthy actual suspension is appropriate.

In light of the aggravation, mitigation, and case law, a four-year suspension stayed, with a two-year actual suspension and until proof of rehabilitation, five years probation with substance abuse/mental health conditions, including at least semi monthly (twice a month) substance abuse and mental health meetings, and monthly sessions with a psychiatrist who can prescribe medication and monitor its effect would best protect the public and serve the purpose of attorney discipline.

#### **EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

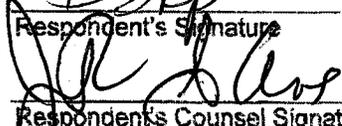
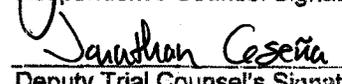
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 1, 2014, the prosecution costs in this matter are \$4,945.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: BARBARA SEHNAL SOUKUP	Case number(s): 11-C-13996-LMA 11-C-13997 12-C-13965 12-C-15131 12-C-16973 13-C-10720
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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 Facts, Conclusions of Law, and Disposition.

10-24-2014 Date	 Respondent's Signature	Barbara Soukup Print Name
October 28 2014 Date	 Respondent's Counsel Signature	Jonathan I. Arens Print Name
10/29/14 Date	 Deputy Trial Counsel's Signature	Jonathan Ceseña Print Name

(Do not write above this line.)

In the Matter of: BARBARA SEHNAL SOUKUP	Case Number(s): 11-C-13996; 11-C-13997; 12-C-13965; 12-C-15131; 12-C-16973; 13-C-10720
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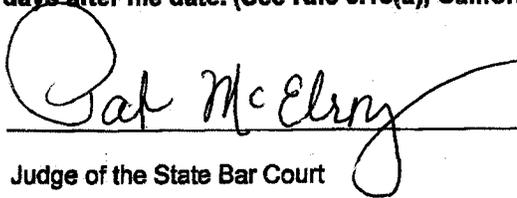
### ACTUAL SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)

Nov. 13, 2014  
Date

  
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 November 13, 2014, 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:

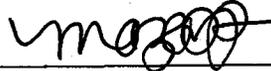
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JONATHAN IRWIN ARONS  
LAW OFC JONATHAN I ARONS  
100 BUSH STREET, SUITE 918  
SAN FRANCISCO, CA 94104

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

JONATHAN R. CESENA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 13, 2014.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court