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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER	
Counsel For The State Bar Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000 Bar # 228137		Case Number(s): 11-H-13140 11-C-14605 - RAP		For Court use only <div style="text-align: center;"> FILED SEP 10 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center;"> kwiktag® 152 141 701  </div>
In Pro Per Respondent Brian D. Wirsching 184 Monroe St Eugene, OR 97402 (541) 497-0808 Bar # 189491		Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING		
In the Matter of: Brian David Wirsching Bar # 189491 A Member of the State Bar of California (Respondent)		ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED REMANDED BY SUPREME COURT ORDER S198360		

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 July 2, 1997.
- (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.

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- (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."
- (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: Costs to be paid in equal amounts prior to February 1 for three billing cycles following 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 [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 09-O-13593
 - (b) ☒ Date prior discipline effective October 1, 2010
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business & Professions Code section 6068(m) for failing to communicate with a client.
 - (d) ☒ Degree of prior discipline Public Reprimand.
 - (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.

- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (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. See Attachment.

- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See Attachment.

D. Discipline:

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of ONE YEAR.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of THREE 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 SIXTY (60) DAYS.
- 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:

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 1.4(c)(ii), 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 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: Respondent resides in Oregon and is not required to take State Bar Ethics School. In lieu of attending Ethics School, Respondent must complete 6 hours of continuing legal education courses, 3 hours of which must be in legal ethics.
- (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:
- | | |
|--|---|
| <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

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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.**

☐ 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:
- (5) ☒ **Other Conditions:**

CLE IN LIEU OF STATE BAR ETHICS SCHOOL:

Within 6 months of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory proof of completion of no less than 6 hours of self-study or live California Continuing Legal Education (CLE) approved courses, 3 hours of which **MUST** be in Legal Ethics. If Respondent provides proof of CLE courses completed between October 7, 2011 and within 6 months of the effective date of the discipline herein, Respondent shall receive credit towards this condition. Respondent may **NOT** receive MCLE compliance requirement credit for attending these courses.

Other Agreements:

Should Respondent take and pass the MPRE after the execution of this stipulation and prior to the effective date of discipline herein, it will be deemed to satisfy the MPRE requirement in this case (see page five, paragraph F.(1)).

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In the Matter of: Brian D. Wirsching	Case Number(s): 11-H-13140 11-C-14605 - RAP
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Substance Abuse Conditions

a. ☒ Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

b. ☒ Respondent must attend at least EIGHT (8) meetings per month of:

☒ Alcoholics Anonymous

☐ Narcotics Anonymous

☐ The Other Bar

☐ Other program

~~As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.~~

c. ☐ Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.

d. ☐ Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.

e. ☐ Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

Respondent must provide proof of attendance of eight (8) AA meetings per month with each quarterly report for the preceding calendar quarter and with his final report to the Office of Probation. (See page five, paragraph E.(4).)

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Brian David Wirsching

CASE NUMBERS: 11-H-13140 & 11-C-14605 - RAP

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 11-H-13140 (Reproval Violation Matter)

FACTS:

1. Respondent was employed at a law firm in January 2008. Respondent's official membership records address was listed at his employer's address. In July 2008, Respondent was terminated from employment with that law firm and his membership records address was no longer current as of July 1, 2008. Respondent did not update his membership records address within 30 days of any change. It was not until three years later, on July 8, 2011, that Respondent updated his membership records address with the Membership Records Office of the State Bar.
2. On March 29, 2010, a Notice of Disciplinary Charges was filed in State Bar Court case no. 09-O-13593.
3. On May 26, 2010, Respondent's default was entered in case no. 09-O-13593.
4. On August 26, 2010, the Hearing Department of the State Bar Court issued a Decision and Discipline Order in case no. 09-O-13593 ("Discipline Order") imposing a one-year public reproval on Respondent for a single violation of Business and Professions Code section 6068(m), effective on October 1, 2010. All notices sent to Respondent by the Hearing Department and the State Bar in case no. 09-O-13593 were returned to sender.
5. The Discipline Order imposed certain reproval conditions. As conditions of the public reproval, Respondent was ordered to contact the Office of Probation of the State Bar of California ("Probation Office") by October 31, 2010 to schedule a meeting with the Probation Office, to file quarterly reports with the Probation Office on January 10, 2011 and on April 10, 2011, respectively, and to report any change of address to the Probation Office within 10 days of the change.
6. On September 2, 2010, a probation deputy of the Probation Office mailed a letter to Respondent at his membership records address and included a description of the conditions attached to his reproval and the deadlines to meet those conditions. On September 16, 2010, the probation deputy's September 2, 2010 letter was returned to the Probation Office with the handwritten notations "Not here" and "return to sender."

7. Respondent did not contact the Probation Office by October 31, 2010 to schedule a meeting, did not file any quarterly reports with the Probation Office by January 10, 2011 or by April 10, 2011, and did not report any change of address to the Membership Records Office of the State Bar or the Probation Office within 10 days of the change.

8. On June 20, 2011, a Notice of Disciplinary Charges was filed in State Bar Court case no. 11-H-13140.

9. On July 13, 2011, Respondent received his first actual notice of the existence of a public reproof when he made contact with the assigned Deputy Trial Counsel in relation to case no. 11-H-13140.

10. Respondent had a meeting with the Probation Office on August 8, 2012 and belatedly complied with his quarterly reporting requirements attached to the public reproof on August 14, 2012.

CONCLUSIONS OF LAW:

11. By failing to update his membership records address within 30 days of any change, Respondent intentionally, recklessly, or repeatedly failed to keep his membership records address current in willful violation of Business and Professions Code section 6068(j)

12. By not timely contacting the Probation Office to schedule a meeting, not timely filing two quarterly reports, and by not timely reporting his change of address to the Membership Records Office of the State Bar or to the Probation Office, Respondent failed to comply with conditions attached to a public reproof in violation of Rules of Professional Conduct, rule 1-110.

Case No. 11-C-14605 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

13. 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.

14. On July 16, 2008, a Misdemeanor Complaint was filed alleging misdemeanor violations of California Vehicle Code section 23152(a) – driving a vehicle while under the influence of alcohol and section 23152(b) – driving with blood alcohol .08% or more in a matter entitled *People v. Wirsching*, Los Angeles County Superior Court case no. 8WA12135.

15. On August 26, 2008, Respondent pled nolo contendere and was convicted of violation Vehicle Code section 23152(b), a misdemeanor, for driving with Blood Alcohol Level of .08% or more. Respondent was sentenced to 60-months of summary probation and 9-days in jail in lieu of payment of fines and penalties. Respondent was required to complete an 18-month licensed second-offender alcohol education counseling program, pay \$1,400 in restitution, and complete the HAM, VIP, and MADD programs. Also, Respondent's driver's license was suspended for one year commencing August 26, 2008.

16. On August 24, 2011, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: 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 Respondent's misdemeanor violation involved moral turpitude or other misconduct warranting discipline.

FACTS AND CIRCUMSTANCES SURROUNDING CONVICTION:

17. On March 25, 2004, Respondent was convicted of his first DUI which occurred December 20, 2003. Respondent successfully completed criminal summary probation without incident on March 25, 2007.

18. From January 2008 through May 2008, Respondent was drinking excessively. Respondent's alcoholism adversely impacted his relationship with his employer resulting in his termination in July 2008. After Respondent was laid off, he was only able to find intermittent work which culminated in his financial decline and heavy alcohol consumption. Respondent failed to report his MCLE compliance and failed to pay bar dues resulting in his inactive enrollment as of July 1, 2008. Respondent is not eligible to practice law, to date.

19. On the evening of May 31, 2008, Respondent attended a social event in Marina del Rey, California. Respondent consumed alcohol at the event. Shortly after leaving the event, Respondent was arrested for driving while under the influence of alcohol. Respondent's blood alcohol content was 0.121%.

20. Respondent was cooperative during the arrest and criminal proceeding. Respondent was not on probation when the second DUI occurred.

21. After Respondent's drivers license was suspended on August 26, 2008, Respondent was unable to find gainful employment. Respondent became homeless in November 2008 because he was unable to maintain rental payments.

22. Respondent's sobriety date is December 24, 2008.

23. In August 2009, Respondent relocated to Eugene, Oregon.

24. On January 20, 2011, Respondent successfully completed the terms of his criminal probation in relation to his second DUI and the conviction matter concluded.

25. On July 13, 2011, Respondent voluntarily self-reported the existence of his second DUI to the State Bar of California Office of the Chief Trial Counsel which triggered the commencement of this conviction matter.

CONCLUSION OF LAW:

26. The facts and circumstances surrounding the misconduct did not involve moral turpitude but did constitute other misconduct warranting discipline.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline: Respondent received a one-year public reproof after default in case no. 09-O-13593, effective October 1, 2010 and ending October 1, 2011, for a single violation of Business and Professions Code section 6068(m) for failing to communicate with a client in a bankruptcy matter in July, August, and September 2008.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Good Character: Standard 1.2(e)(vi) provides for mitigation where an extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct shall be considered mitigation. Respondent has seventeen character references consisting of two attorneys, Respondent's ex-wife, seven friends, Respondent's current wife, two letters from Respondent's Alcoholics Anonymous colleagues-one of whom is his sponsor, two work-related colleagues through Respondent's current employment, a past employer, and Respondent's current employer; all of whom expressed their belief in Respondent's integrity and honesty even with the knowledge of Respondent's misconduct and attest that the conduct will not recur.

Additional Mitigating Circumstances:

Respondent has been cooperative throughout these disciplinary proceedings. Respondent willingly agreed to stipulate to the culpability and misconduct without necessitating a trial thereby conserving resources. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.) Also, Respondent self-reported the existence of his second DUI in July 2011 even though he was not required to do so.

Respondent recognizes his wrongdoing as to the reproof matter. Respondent did not fail to comply with conditions attached to his reproof out of any maleficent intent. Concerted, though recent, efforts to satisfy conditions, albeit late, are better than utter non-compliance. Although no mitigation is given for Respondent's doing what he was already legally required to do (*In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231, 249), Respondent's efforts reflect a positive attitude toward rehabilitation.

The misconduct in Respondent's prior discipline and the misconduct in the conviction matter occurred while in the throes of his alcohol abuse problem in 2008. Respondent has spent the past three-and-a-half years since becoming sober on December 24, 2008, focusing his energy on maintaining his sobriety and alcohol recovery. Respondent has found a steady job as an office assistant since his move to Oregon in August 2009 and began a course of counseling and therapy in early 2010. According to his psychotherapist, his prognosis is excellent, and he maintains a stable home, gainful employment, attends Alcoholics Anonymous meetings regularly, continues with weekly therapy sessions, and has a strong support system.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing three acts of professional misconduct. Standard 1.6(a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts (*see* Standards 2.6(a), 2.9 and 3.4), the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.6(a), which applies to Respondent’s violation of Business and Professions Code section 6068(j).

Standard 2.6(a) provides that culpability of a member of a violation of section 6068 of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Although the misconduct in the reprobation violation matter did not result in harm to any client or victim, Respondent’s failure to update his official membership records address with the State Bar for three years is serious and directly resulted in Respondent’s default in the prior disciplinary proceedings, caused his lack of actual notice of the discipline imposed and non-compliance with the reprobation conditions. Although it did not involve moral turpitude, Respondent’s misdemeanor DUI conviction demonstrated that his abuse of alcohol not only caused substantial harm to Respondent but also presented a danger to the public.

The misconduct is aggravated by Respondent’s prior record of discipline. However, the aggravating weight is tempered because the misconduct in the prior matter occurred during the same time period as Respondent’s initial failure to report a change of address and his DUI conviction in the summer and fall of 2008. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal.State Bar Ct. Rptr. 602, 619.) The present misconduct is mitigated by Respondent’s evidence of current good character, his efforts to cooperate

with the State Bar beginning in July 2011, and his continuing efforts to recover from his alcohol abuse. Respondent's alcohol abuse was a common factor in all of the misconduct, and he has shown substantial progress during the past three-and-a-half years in recovering from that abuse. Respondent has found steady employment as an office assistant and began a regular course of counseling and therapy in early 2010. According to his psychotherapist, Respondent's prognosis is excellent because he maintains a stable home, gainful employment, attends abstinence meetings regularly, and has a strong support system.

Actual suspension here is required to meet the purposes of discipline and to comply with the requirement of the standards that the discipline be greater than that imposed in the prior proceedings. (Std. 1.7(a).) Respondent, who resides in Oregon, is not presently practicing law. A sixty-day actual suspension and a three-year probation is appropriate to protect the public, maintain high professional standards on attorneys and preserve public confidence in the legal profession and is the appropriate sanction to ensure Respondent's future adherence to the rules governing attorneys.

PENDING PROCEEDINGS.

The disclosure date referred to on page two, paragraph A.(7), was August 23, 2012.


COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 23, 2012, the prosecution costs in this matter are \$3,179. 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.


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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, Conclusions of Law, and Disposition.

6/27/12
 Date


 Respondent's Signature

Brian D. Wirsching
 Print Name

Date	Respondent's Counsel Signature	Print Name
9/4/12		Jean Cha
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: Brian D. Wirsching	Case Number(s): 11-H-13140-RAP; 11-C-14605-RAP
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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.

See attached Modifications to Stipulation.

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.)**

9/7/12

Date


RICHARD A. HONN
Judge of the State Bar Court

MODIFICATIONS TO STIPULATION

1. In the caption on page 1 of the Stipulation, "Remanded" is deleted, and in its place is inserted "Returned".
2. On page 3 of the Stipulation, an "X" is inserted in the box at paragraph B.(7) and "or demonstrates a pattern of misconduct" is deleted.
3. On page 6 of the Stipulation, under the heading "CLE in Lieu of State Bar Ethics School," line 4, "within 6 months of" is deleted, and in its place is inserted "6 months after".
4. On page 6 of the Stipulation, the heading "Other Agreements" and the paragraph under this heading is deleted in its entirety.
5. On page 7 of the Stipulation, under the heading "Other", line 3, "paragraph E.(4)" is deleted, and in its place is inserted "paragraph E.(5)".
6. On page 9 of the Stipulation, numbered paragraph 11 is deleted in its entirety, and all paragraphs thereafter on pages 9 and 10 are renumbered accordingly.
7. On page 12 of the Stipulation, the heading "Authorities Supporting Discipline" is deleted, and in its place is inserted "Discussion".
8. On page 12 of the Stipulation, third full paragraph, line 1, "three" is deleted, and in its place is inserted "two".
9. On page 12 of the Stipulation, third full paragraph, line 3, "2.6(a)," is deleted.
10. On page 12 of the Stipulation, fourth full paragraph, line 1, "2.6(a)" is deleted, and in its place is inserted "2.9".
11. On page 12 of the Stipulation, fourth full paragraph, line 2, "Business and Professions Code section 6068(j)" is deleted, and in its place is inserted "rule 1-110 of the Rules of Professional Conduct".
12. On page 12 of the Stipulation, delete the fifth full paragraph in its entirety, and in its place insert, "Standard 2.9 provides that a member's culpability of rule 1-110 of the Rules of Professional Conduct must result in suspension."
13. On page 12 of the Stipulation, the seventh paragraph at the bottom of the page, lines 2-4, "tempered because the misconduct in the prior matter occurred during the same time period as Respondent's initial failure to report a change of address and his DUI conviction in the summer and fall of 2008" is deleted, and in its place is inserted, "somewhat tempered because the currently charged misconduct in the DUI matter predated the misconduct in respondent's prior disciplinary matter such that respondent was not put on notice of his disciplinary misconduct in the DUI matter by his prior discipline. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) However, respondent clearly has a prior record of discipline with respect to the matter involving his violation of the conditions of his reproof, as that misconduct occurred after the imposition of discipline in the prior disciplinary matter."
14. On page 13 of the Stipulation, at the end of the first full paragraph which ends, "adherence to the rules governing attorneys," the following citations are added: "(*In re Kelley* (1990) 52 Cal.3d 487 [public reproof for attorney twice convicted of driving with a blood-alcohol level over .10 percent; second conviction occurred while attorney on probation for first offense]; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 [two years' stayed suspension; three years' probation; 90-day actual suspension for attorney with two prior records of discipline (plus other aggravating circumstances and no mitigating circumstances) for failing to comply with two conditions attached to a prior private reproof (not timely filing two probation reports and not timely providing proof of completion of required continuing legal education)]".

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 Los Angeles, on September 10, 2012, 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:

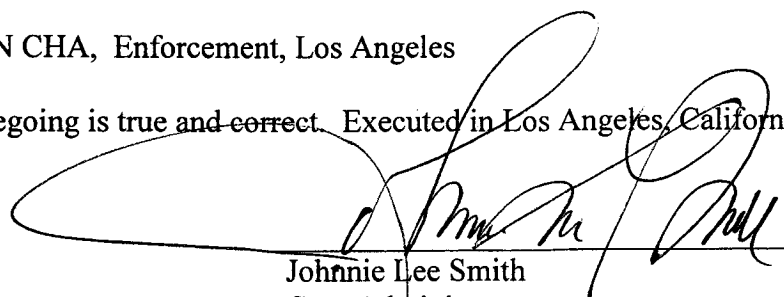
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRIAN D. WIRSCHING
184 MONROE ST
EUGENE, OR 97402

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

JEAN CHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 10, 2012.



Johnnie Lee Smith
Case Administrator
State Bar Court