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State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM

Counsel For The State Bar Susan I. Kagan Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2037	Case Number (s) 12-C-15129; 14-C-03652; 14-C-03653; 15-C-11514	(for Court's use) PUBLIC MATTER FILED AUG 17 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Bar # 214209 In Pro Per Respondent Kevin A. Hughey 520 9th St Ste 102 Sacramento, CA 95814 (916) 596-0003	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW	
Bar # 197323 In the Matter Of: KEVIN ALAN HUGHEY Bar # 197323 A Member of the State Bar of California (Respondent)	<input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 7, 1998**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."



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- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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

Additional aggravating circumstances:

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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.
- (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 at p. 9.**
- (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:

No Prior Discipline. See Attachment at p. 9.
Pretrial Stipulation. See Attachment at p. 9.

FACTS:

6. On July 9, 2012, respondent and his wife got into a verbal and physical altercation in their home. Respondent's wife was nine months pregnant at the time and her toddler son was living with the couple. Prior to that night, the couple was having relationship problems stemming, in part, from the wife's relationship with her ex-husband and the stress of finances and a difficult pregnancy.

7. On July 9, 2012, the couple started arguing over a text message respondent's wife received from her ex-husband. The arguing continued off and on for hours. Respondent started drinking alcohol and became inebriated. After respondent's wife's son went to bed, the arguing intensified, with both parties shouting at each other. At one point during the argument, respondent grabbed his wife by the shoulders and forced her to sit down on the couch. Respondent's wife stood up and pushed respondent backwards. Respondent reacted by slapping his wife in the face. Immediately thereafter, respondent's wife called 911 and reported that respondent had attacked her. Respondent confronted his wife about the call and pushed her away from the telephone. Respondent's wife struck out at respondent and respondent grabbed her hair and pushed her back into a seated position on the couch. The couple then gained their composure and began discussing the possibility of respondent's wife moving out of the marital home.

8. Within a few minutes, officers from the West Sacramento Police Department responded to the 911 call. Respondent and his wife heard loud, forceful pounding on the front door. They did not know it was a police officer at the door. Respondent's wife stood up to go open the door. Respondent was concerned because it sounded like someone was trying to kick in the front door, so he stopped his wife before she unlocked the door and moved her to the side of the doorway. Respondent then reached to undo the deadbolt lock. As soon as respondent disengaged the deadbolt, the police officer kicked in the door. The lower lock and parts of the door shattered and the door flung open. Within seconds, the police officer shot respondent in the abdomen.

9. Respondent was arrested at the scene and taken to a hospital for emergency surgery.

10. The police officer claimed that the shooting occurred because respondent charged at him and tried to remove his firearm. Based on the officer's statements, respondent was initially charged with six counts of violating the Penal Code.

11. Respondent and his wife have filed a civil lawsuit against the officer and the West Sacramento Police Department for misconduct. In the lawsuit, respondent and his wife allege that the shooting was unprovoked and an excessive use of force. Respondent and his wife also allege that the responding police officer falsified evidence after the shooting to support his version of events. The lawsuit is currently pending.

12. After the incident, the West Sacramento Police Department conducted an investigation into the shooting and determined that the officer used excessive force. The officer did not complete his probationary period with the West Sacramento Police Department and no longer works for the department.

13. On December 4, 2013, the court entered respondent's plea of nolo contendere to a violation of Penal Code section 273.5 [infliction of corporal injury on spouse], which was reduced to a misdemeanor.

CONCLUSIONS OF LAW:

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

Case No. 14-C-03652 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

15. 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.

16. On January 21, 2011, the Sacramento County District Attorney filed a criminal complaint in the Sacramento County Superior Court, case no. 11T00474, charging respondent with one count each of violation of Vehicle Code section 23152(a) [Driving under the Influence] and Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol].

17. On March 21, 2011, the court entered respondent's plea of nolo contendere to a count of violation of Vehicle Code section 23152(a) [Driving under the Influence] and the court dismissed the remaining count in the furtherance of justice.

18. On March 21, 2011, the court suspended the imposition of sentence and placed respondent on informal probation for a period of three years. The court ordered that respondent, among other things, serve three days in custody, pay fees and fines and attend a nine-month "DUI Program."

19. On June 10, 2015, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

20. On the evening of December 30, 2010, respondent was driving his automobile northbound on 21 Street at N Street in Sacramento, California. Respondent broke the cone pattern of a Sacramento Police Department DUI check point and drove eastbound through an alley.

21. Respondent's driving drew the attention of an officer working at a DUI check point. The police officer followed respondent and performed a traffic stop after observing that respondent was failing to maintain lanes. During the traffic stop, the police officer smelled the odor of alcohol on respondent. When questioned, respondent admitted to having a few beers. The officer conducted field sobriety tests. Respondent performed poorly on the tests. Respondent refused a Preliminary Alcohol Screening test and chemical breath test. A blood draw was performed and revealed that respondent had a blood alcohol level of .26 percent. Respondent was placed under arrest for violating Vehicle Code section 23152(a) [Driving under the Influence] and Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol].

22. On January 21, 2011, the Sacramento County District Attorney filed a criminal complaint in the Sacramento County Superior Court, case no. 11T00474, charging respondent with one count each of

violation of Vehicle Code section 23152(a) [Driving under the Influence] and Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol].

23. On March 21, 2011, the court entered respondent's plea of nolo contendere to a count of violation of Vehicle Code section 23152(a) [Driving under the Influence].

CONCLUSIONS OF LAW:

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

Case No. 14-C-03653 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

25. 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.

26. On August 16, 2012, the Sacramento County District Attorney filed a criminal complaint in the Sacramento County Superior Court, case no. 12T04157, charging respondent with one count each of violation of Vehicle Code section 23152(a) [Driving under the Influence], Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol], Vehicle Code section 22350 [Speeding] and Vehicle Code section 12500(b) [Driving a motorcycle without a valid driver's license]. The complaint further alleged that respondent had a prior conviction for violation of Vehicle Code section 23152(a) [Driving under the Influence] and Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol], committed on December 30, 2010.

27. On September 12, 2012, the court entered respondent's plea of nolo contendere to a count of violation of Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol] and the court dismissed the remaining counts in the furtherance of justice.

28. On September 12, 2012, the court suspended the imposition of sentence and placed respondent on informal probation for a period of four years. The court ordered that respondent, among other things, serve 31 days in custody with credit for two days served and the remainder to be served on home/medical detention, pay fees and fines and attend an 18-month "Multiple Offender DUI Program."

29. On March 4, 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 offense(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

30. On the evening of June 30, 2012, respondent was driving a motorcycle westbound on J Street in Sacramento. Respondent was observed by an officer of the Sacramento Police Department driving 55 miles per hour in an area with a 35-mile-per-hour speed limit. The officer performed a traffic stop. Respondent did not have a valid motorcycle license and the officer observed that respondent's eyes were making involuntary movements (Horizontal Gaze Nystagmus or HGN), a sign of intoxication.

Respondent refused a Preliminary Alcohol Screening test and chemical breath test. Respondent also refused to perform field sobriety tests. A forced blood draw was performed and revealed that respondent had a blood alcohol level of .26 percent.

31. Respondent was placed under arrest for violating Vehicle Code section 23152(a) [Driving under the Influence], Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol], Penal Code section 148(a) [Resisting Arrest] and Vehicle Code section 12500(b) [Driving a motorcycle without a valid driver's license].

32. On August 16, 2012, the Sacramento County District Attorney filed a criminal complaint in the Sacramento County Superior Court, case no. 12T04157, charging respondent with one count each of violation of Vehicle Code section 23152(a) [Driving under the Influence], Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol], Vehicle Code section 22350 [Speeding] and Vehicle Code section 12500(b) [Driving a motorcycle without a valid driver's license]. The complaint further alleged that respondent had a prior conviction for violation of Vehicle Code section 23152(a) [Driving under the Influence] and Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol], committed on December 30, 2010.

33. On September 12, 2012, the court entered respondent's plea of nolo contendere to a count of violation of Vehicle Code section 23152(b) [Driving with 0.08 or more blood alcohol].

CONCLUSIONS OF LAW:

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

Case No. 15-C-11514 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

35. 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.

36. On November 24, 2014, the Napa County District Attorney filed a criminal complaint in the Napa County Superior Court, case no. CR173502, charging respondent with one count each of violation of Penal Code section 602.5(b) [Aggravated Trespass], a misdemeanor, and Penal Code section 647(f) [Public Intoxication], a misdemeanor.

37. On March 15, 2015, the court entered respondent's plea of no contest to a count of violation of Penal Code section 602.5(b) [Aggravated Trespass], a misdemeanor, and the court dismissed the remaining count in the furtherance of justice.

38. On March 15, 2015, the court suspended the imposition of sentence and placed respondent on informal probation for a period of two years. The court ordered that respondent, among other things, serve 2 days in custody with credit for time served and pay restitution of \$150 and pay fees and fines.

39. On June 10, 2015, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the

offense(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

40. In the early morning of October 23, 2014, respondent was intoxicated and unaware of his surroundings. Respondent approached a house he believed was owned by a friend and attempted to open the front door. The owner of the house approached the door and warned respondent to stay out. Respondent began kicking the door. The victim opened the door and told respondent to leave. Respondent entered the residence and was punched by the victim. Thereafter, the victim forced respondent out of the house and called the police.

41. Respondent was placed under arrest for violating Penal Code section 602.5(b) [Aggravated Trespass], a misdemeanor, and Penal Code section 647(f) [Public Intoxication], a misdemeanor.

42. On November 24, 2014, the Napa County District Attorney filed a criminal complaint in the Napa County Superior Court, case no. CR173502, charging respondent with one count each of violation of Penal Code section 602.5(b) [Aggravated Trespass], a misdemeanor, and Penal Code section 647(f) [Public Intoxication], a misdemeanor.

43. On March 15, 2015, the court entered respondent's plea of no contest to a count of violation of Penal Code section 602.5(b) [Aggravated Trespass], a misdemeanor.

CONCLUSIONS OF LAW:

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

AGGRAVATING CIRCUMSTANCES.

Multiple Acts (Std. 1.5(b)). Respondent's four convictions represent multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

Good Character (Std. 1.6(f)). Respondent submitted 25 character letters from people aware of the full extent of respondent's misconduct and attest to his integrity, honesty and professionalism. The reference letters are from attorneys, friends and family.

No Prior Record of Discipline: Although respondent's misconduct is serious, he is entitled to mitigation for having practice law for approximately 14 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 11, 2015, the prosecution costs in this matter are \$9,788. 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.

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.)

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In the Matter of: KEVIN ALAN HUGHEY	Case number(s): 12-C-15129-PEM; 14-C-03652; 14-C-03653; 15-C-11514
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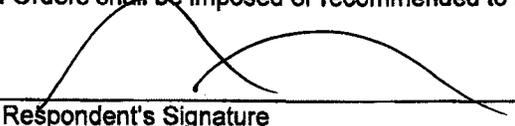
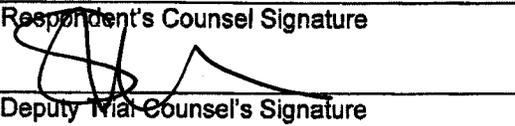
SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

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

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

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

<u>6/12/15</u> Date	 Respondent's Signature	<u>Kevin A. Hughey</u> Print Name
<u> </u> Date	<u> </u> Respondent's Counsel Signature	<u>N/A</u>
<u>6/15/15</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I Kagan</u>

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In the Matter of: KEVIN ALAN HUGHEY	Case Number(s): 12-C-15129-LMA; 14-C-03652; 14-C-03653; 15-C-11514
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ALTERNATIVE DISCIPLINE PROGRAM ORDER

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

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date Aug 17, 2015



LUCY ARMENDARIZ
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 August 17, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

By personally delivering a copy of said document(s) to:

KEVIN A. HUGHEY
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

SUSAN I. KAGAN
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 17, 2015.



Mazie Yip
Case Administrator
State Bar Court