

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Erin McKeown Joyce Senior Trial Counsel 845 South Figueroa Street Los Angeles, California 90071 (213) 765-1356 Bar # 149946	Case Number(s): 13-C-14336-PEM 13-C-14497 13-C-14499 13-C-14517 13-C-14518 14-J-03441 (INV)	For Court use only PUBLIC MATTER FILED OCT 29 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Edward O. Lear Century Law Group LLP 5200 W Century Blvd #345 Los Angeles, CA 90045 (310) 642-6900 Bar # 132699	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: KARL WESLEY KIME Bar # 143696 A Member of the State Bar of California (Respondent)		

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 11, 1989**.
- (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 **23** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (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 (2) billing cycles immediately following the effective date of the Supreme Court Order in this matter.** (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 **94-C-11516, et al. See page 19 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of Respondent's prior imposition of discipline.**
 - (b) ☒ Date prior discipline effective **April 3, 1995**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **One count of California Vehicle Code section 23152(a) (driving under the influence of alcohol), one count of Penal Code section 273.5 (spousal abuse), and one count of California Vehicle Code section 23152(b) (driving a vehicle with a blood-alcohol level of .08% or more with a prior).**
 - (d) ☒ Degree of prior discipline **Private reproof.**
 - (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 page 19 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of this aggravating circumstance.**
- (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.
- (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.
- (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:

Pre-trial Stipulation. See page 20 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of this mitigating circumstance.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law 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:
- (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 **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 1.2(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 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:
 - ☐ Substance Abuse Conditions ☐ Law Office Management Conditions
 - ☐ Medical Conditions ☐ 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.**
- ☐ 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:**

Respondent recognizes that his repeat convictions for DUI suggest an alcohol and 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.

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.

Respondent must provide to the Office of Probation satisfactory proof of attendance of the meetings set forth herein with each Quarterly Report submitted to the Office of Probation. Respondent may not sign as the verifier of his or her own attendance.

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Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program, to abstain from alcohol and illegal drugs, and to undergo random urinalysis testing to complement abstinence.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: KARL WESLEY KIME

CASE NUMBERS: 13-C-14336, 13-C-14497, 13-C-14499, 13-C-14517
 13-C-14518, 14-J-3441

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offenses for which he was convicted involved other misconduct warranting discipline.

Case No. 13-C-14336 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING

1. 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.

2. On August 9, 2012, in Idaho First Judicial District Court for the County of Kootenai, case no. CR-M12-8980, Respondent was convicted of violating Idaho Code section 18-8004 (driving under the influence - third or subsequent offense), which is analogous to a violation of California Vehicle Code section 23152(a) and 23550(a), a crime which may or may not involve moral turpitude as in *In re Kelley* (1990) 52 Cal.3d 487.

3. Respondent was found to have been driving his car while under the influence of a narcotic analgesic on May 31, 2012. He was arrested on I-90 in Idaho by the State Police close to the Washington border.

4. Respondent did not appeal his conviction, and his conviction in case no. CR-M12-8980 is final.

5. On September 14, 2012, Respondent was sentenced to incarceration for one year fixed and six years indeterminate, for a unified sentence of seven years. The judgment was suspended, and Respondent was placed on two years' probation and ordered to serve nine days in jail.

6. Under the terms of his probation, Respondent was required to (1) pay court costs, (2) pay a fine of \$1,000; (3) pay additional costs for the prosecution of \$150 and for the defense of \$150; (4) pay for the costs of IDOC, costs of supervision and costs of PSI; (5) serve 20 days in the Sheriff's Labor Program to be completed within two years; (6) attend rehab, educational and vocational programs; (7) obtain and maintain full-time employment or education program; (8) undergo a substance abuse evaluation if required by Probation; (9) complete substance abuse/mental health counseling if requested by Probation; (10) comply with the rules and regulations of the Idaho Department of Corrections; (11) commit no other violations of local, state or federal law; consume no alcohol during his probation; (12) enter no establishment where alcohol is sold; (13) enter no home, business or other premises containing drugs or occupied by drug users; (14) discontinue association with individuals identified by Probation;

(15) consent to analysis of blood, breath or urine at his expense upon request; (16) refrain from purchasing, possessing or using substances which alter testing for drugs or alcohol; and (17) consent to searches of property, car and residence.

7. In October 2012, Respondent violated his criminal probation and was incarcerated. Respondent had violated the terms of his probation by continuing to consume alcohol. In January 2013, he began a 90-day treatment program through the Correctional Alternative Placement Program (CAPP) in Kuna, Idaho.

8. On April 3, 2013, Respondent completed CAPP and was released on supervised probation. The terms of that probation prohibited him from consuming or possessing alcohol and required him to submit to testing for alcohol though April 3, 2015.

FACTS

9. At about 5:45 pm the afternoon of May 31, 2012, an Idaho State trooper was dispatched to a call of a possibly impaired driver traveling east on I-90 near milepost 2. Another driver reported that a brown SUV was weaving from one lane to another and driving with the hazard lights on. The trooper located the brown SUV and observed it weave heavily within its own lane then over the right fog line onto the shoulder. The driver, who was later identified as Respondent, was slow to respond to the traffic stop and drove several hundred yards before stopping the vehicle.

10. The trooper contacted Respondent, whom he identified from the Idaho driver's license picture Respondent presented him at the traffic stop. At the time of the traffic stop, Respondent was very incoherent and displayed several signs of narcotic analgesic intoxication. The trooper asked Respondent to perform several field sobriety evaluations and subsequently arrested Respondent.

11. After reading the ALS (Administrative License Suspension) advisory to Respondent, Respondent agreed to provide a breath sample. Following the 15 minute observation period, during which the trooper never left Respondent's presence, Respondent provided two breath samples on the trooper's issued Lifeloc. Respondent's BAC (blood alcohol concentration) was .000/.000.

12. Due to signs of impairment the trooper observed, the trooper contacted police dispatch center, and requested a drug recognition expert. A Post Falls officer who was a certified drug recognition expert performed a drug recognition evaluation on Respondent and found him to be under the influence of narcotic analgesics and unable to operate a motor vehicle safely. The trooper also learned from dispatch that Respondent had a prior conviction for DUI in Idaho on December 21, 2011 and that his driving privileges had been suspended from May 9, 2012 to May 9, 2013. The trooper charged Respondent with violating Idaho Code section 18-8004, and driving without privileges and booked him into Kootenai County Jail.

CONCLUSIONS OF LAW

13. The facts and circumstances surrounding Respondent's conviction in August 2012 for violating Idaho Code section 18-8004 (driving under the influence - third or subsequent offense) do not constitute moral turpitude, but do constitute other misconduct warranting discipline.

Case No. 13-C-14497 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING

14. On April 24, 2012, in Idaho First Judicial District Court for the County of Kootenai, case no. CR-2012-002093, Respondent pleaded guilty and was convicted of three criminal violations in the State of Idaho as follows: (1) one count of violating Idaho Code section 18-8004 (driving under the influence – second offense), which is analogous to a violation of California Vehicle Code section 23152(a), a crime which may or may not involve moral turpitude as in *In re Kelley* (1990) 52 Cal.3d 487; (2) one count of violating Idaho Code section 18-8001(3) (driving without privileges), a misdemeanor analogous to California Vehicle Code section 12500(a) which may or may not involve moral turpitude; and (3) one count of violating Idaho Code section 123-505 (unlawful transport or open container of alcohol), a misdemeanor analogous to California Vehicle Code section 2322 which may or may not involve moral turpitude or other misconduct warranting discipline.

15. Respondent was found to have been driving his car while under the influence of a narcotic analgesic, driving with a suspended license and driving with an open container of alcohol on February 3, 2012.

16. Respondent did not appeal his conviction, and his conviction in case no. CR-2012-002093 is final.

17. On September 28, 2012, Respondent was sentenced for violating Idaho Code section 18-8004 (driving under the influence – second offense) to serve 365 days in jail, with 300 days of the sentence suspended, and with credit for 35 days. Respondent was placed on unsupervised probation for two years and ordered to pay a fine of \$1,000. Respondent was sentenced for violating Idaho Code section 18-8001(3) (driving without privileges) to 180 days in jail, with 145 days of the sentence suspended, and credited with 35 days. Respondent was fined \$1,000 for the violation of Idaho Code section 18-8001(3). The two year unsupervised probation for the second violation was to run concurrently with the probation for violating Idaho Code section 18-8004. Respondent was sentenced for violating Idaho Code section 123-505 (alcoholic beverage – unlawful transport or open container violation) to 35 days in jail, with credit for 35 days. The court waived the fines for the violation of Idaho Code section 123-505.

18. Under the terms of his probation in Case No. CR-2012-002093, Respondent was required to (1) commit no similar offenses; (2) violate no federal, state or local laws more serious than an infraction; (3) maintain liability insurance on any vehicle he drives; (4) refrain from operating any motor vehicle with any alcohol or controlled substance in his bloodstream; (5) submit to any blood alcohol concentration test requested of him, with reasonable cause, by a peace officer; (6) enroll in and complete an in-patient substance abuse treatment program and file proof of successful completion of the program within six months; (7) notify the court, within 10 days, of any change of address and agree to accept service by mail at the last known address; (8) install an Interlock ignition device on his vehicle; and (9) report to jail on time.

FACTS

19. On February 3, 2012, at about 8:50 pm, a Kootenai County Sheriff Deputy was traveling eastbound on Seltice Lane, when he saw Respondent's vehicle, also traveling eastbound, swerving in the

road, and continually driving over the fog line. The deputy tried to get Respondent to pull over, but Respondent did not stop for the emergency lights. The deputy sounded his siren, finally gaining the attention of the driver, prompting Respondent to slow down his vehicle. Respondent did not stop his vehicle for another few blocks.

20. The deputy contacted Respondent and told him why he was being stopped, and Respondent denied having crossed over the fog line. He was then asked why he did not stop when the deputy first turned on his emergency lights, and Respondent claimed he did. Respondent was asked to produce his license and registration, which he did, albeit slowly.

21. As Respondent was looking for his registration, the deputy noticed a clear liquid leaking from the glove compartment. The deputy asked Respondent what was leaking, but Respondent did not acknowledge any leak. The deputy asked Respondent if he had been drinking, since there was a strong odor of alcohol coming from Respondent's car, and Respondent denied it. As he talked to Respondent, the deputy observed Respondent place something, which later turned out to be gum, in his mouth. When asked, Respondent refused to tell the deputy what he put in his mouth.

22. Then the deputy had Respondent exit the vehicle and walk to the back of the vehicle. Respondent told the deputy he was a lawyer, and that he was taking several medications for depression. Respondent denied having any physical problems. The deputy asked Respondent to remove the gum in his mouth, but Respondent refused.

23. During the interchange, the deputy could still smell a strong odor coming from Respondent's mouth. He also observed that Respondent's eyes were bloodshot and watery and that Respondent was slurring his speech.

24. The deputy ran several field sobriety evaluations on Respondent, during which he became so off-balance that the deputy had to grab Respondent to keep him from falling over. By that point, the deputy formed the opinion that Respondent was under the influence and could not safely operate a motor vehicle.

25. Respondent was arrested, handcuffed, and placed in the back seat of the patrol car. The deputy played a recording of the Administrative License Advisory to Respondent and after the correct amount of time he had Respondent take a breath test. The results of that test were .204/.183/.182 BAC (blood alcohol concentration).

26. After the test was administered, the deputy searched Respondent's vehicle and in the glove box, found an open container of vodka, most of which had leaked all over the glove compartment. There was an identical (but empty) vodka bottle lying on the floor board.

27. While checking Respondent's driving status, the deputy discovered that Respondent had a court suspension for his driver's license. Based on his arrest for driving under the influence, the deputy formed the opinion that Respondent's Idaho driver's license was not valid. The deputy also found that Respondent had a previous conviction for driving under the influence in Idaho on December 21, 2011.

28. Upon arrival at the station, Respondent was booked for violating (1) Idaho Code section 18-8004 (driving under the influence – second offense); (2) one count of violating Idaho Code section 18-8001(3) (driving without privileges); and (3) one count of violating Idaho Code section 23-505 (unlawful transport or open container of alcohol).

29. When he was searched at the jail, Deputy No. 2 found four white pills on Respondent, which Respondent told the deputies were "Antabuse," a medicine given to persons who are attempting to stop drinking. The medicine, if taken correctly, makes a person sick to their stomach if they take the Antabuse, and then drink alcohol.

30. Respondent was released from jail on a bond on the charges and supplied with the administrative license suspension paperwork. The deputies kept Respondent's Idaho driver's license due to Respondent having been in possession of a license while it was suspended and violating his restricted driver's license. The licenses, along with the pills taken from Respondent, were placed into evidence.

CONCLUSIONS OF LAW

31. The facts and circumstances surrounding Respondent's conviction on April 24, 2012, for three criminal violations in the State of Idaho for (1) one count of violating Idaho Code section 18-8004 (driving under the influence – second offense), (2) one count of violating Idaho Code section 18-8001(3) (driving without privileges), and (3) one count of violating Idaho Code section 123-505 (unlawful transport or open container of alcohol), do not constitute moral turpitude, but do constitute other misconduct warranting discipline.

Case No. 13-C-14499 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING

32. On April 25, 2012, in Idaho First Judicial District Court for the County of Kootenai, case no. CR-2012-003983, Respondent pleaded guilty and was convicted of one criminal violation in the State of Idaho of violating Idaho Code section 18-8004 (driving under the influence – second offense), which is analogous to a violation of California Vehicle Code section 23152(a), a crime which may or may not involve moral turpitude as in *In re Kelley* (1990) 52 Cal.3d 487.

33. Respondent was found to have been driving his car while under the influence of a narcotic analgesic on March 3, 2012.

34. Respondent did not appeal his conviction, and his conviction in case no. CR-2012-003983 is final.

35. On September 28, 2012, Respondent was sentenced to serve 365 days in jail, with credit for 22 days. The judgment was suspended, and Respondent was placed on two years' probation. Respondent was also ordered to pay a fine of \$2,000 (of which \$1,000 was suspended) and ordered to spend 30 days in jail starting October 4, 2012.

36. Under the terms of his probation, Respondent was required to (1) commit no similar offenses; (2) violate no federal, state or local laws more serious than an infraction; (3) maintain liability insurance on any vehicle he drives; (4) refrain from operating any motor vehicle with any alcohol or controlled substance in his bloodstream; (5) submit to any blood alcohol concentration test requested of him, with reasonable cause, by a peace officer; (6) enroll in and complete an in-patient substance abuse treatment program and file proof of successful completion of the program within six months; (7) notify

the court, within 10 days, of any change of address and agree to accept service by mail at the last known address; (8) install an Interlock ignition device on his vehicle; and (9) report to jail on time.

FACTS

37. On March 3, 2012, an off-duty officer was following a silver SUV on Hwy. 95 at Canfield Avenue. The off-duty officer observed the SUV swerving on the highway and crossing over the fog line. At one point the SUV almost hit another vehicle. The off-duty officer reported the incident to police dispatch center. A second person also reported the erratic driving of the silver SUV.

38. A Coeur d'Alene police officer responded to the call from the off-duty officer. The officer was driving his patrol vehicle east on Canfield Avenue and passed the SUV in the 600 block of Canfield Avenue. He turned the patrol car around and noticed the SUV drifting into the opposite lane. The police officer activated his overhead lights. The SUV continued as though the driver did not see the patrol car's lights. The SUV driver finally pulled over in the 1100 block of Canfield Avenue.

39. The officer identified the SUV driver as Respondent from his Idaho driver's license. Respondent was acting lethargically and was slow to answer the officer's questions. The officer asked Respondent several times if he needed medical attention, and Respondent said he did not. Respondent's finger dexterity was so poor it took several attempts for Respondent to unfold a single piece of paper which was the vehicle registration form. Respondent was slurring his words, and his eyes were very watery. When asked, Respondent denied taking drugs or alcohol. Respondent could not explain why he was driving erratically.

40. The officer formed the opinion Respondent was on drugs. Respondent stated he did not suffer diabetes or epilepsy. He was not under a doctor's care. He rated his health a 9 out of 10 with 1 being the worst and 10 being the best.

41. The officer performed several field sobriety tests, which Respondent failed.

42. Respondent was arrested, handcuffed, and transported to jail. The arresting officers took an inventory of his car, and discovered in the center console an open pill bottle prescribed to Respondent, labeled Naproxen 500 mg. Four more pill bottles were located in the vehicle. All of the bottles were labeled with prescriptions for Respondent. The pills were as follows: Simastatin 20 mg., Alprazolam 1 mg, Lovothiroyxine 100 mg., Hydrocodone 10 mg./325 mg.

43. At the scene of the arrest, the officer interviewed two witnesses who called in a report of a silver SUV driving erratically on Hwy. 95. The witnesses both confirmed that Respondent's SUV was the vehicle they saw swerving on the road, which had almost hit them just before they called the police to report the dangerous condition.

44. Once in custody, a Drug Recognition Expert State Trooper from Idaho State Police evaluated Respondent and determined that he was under the influence of a CNS depressant and unable to safely operate a motor vehicle.

CONCLUSIONS OF LAW

45. The facts and circumstances surrounding Respondent's conviction on April 25, 2012 for violating Idaho Code section 18-8004 (driving under the influence – second offense) do not constitute moral turpitude, but do constitute other misconduct warranting discipline.

Case No. 13-C-14517 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING

46. On December 21, 2011, in Idaho First Judicial District Court for the County of Kootenai, case no. CR-2011-19056, Respondent pleaded guilty and was convicted of one criminal violation in the State of Idaho of violating Idaho Code section 18-8004 (driving under the influence), which is analogous to a violation of California Vehicle Code section 23152, a crime which may or may not involve moral turpitude as in *In re Kelley* (1990) 52 Cal.3d 487.

47. Respondent was found to have been driving his car while under the influence of a narcotic analgesic on October 23, 2011.

48. Respondent did not appeal his conviction, and his conviction in case no. CR-2011-0019056 is final.

49. On December 21, 2011, Respondent was sentenced to serve 10 days in jail, with a reporting date of February 23, 2012, or in the alternative, to perform 40 hours of service in the Sheriff's Community Labor Program in lieu of jail and provide evidence of completion of the service hours by February 21, 2012. The judgment was suspended, and Respondent was placed on two years' probation. Respondent was also ordered to pay a fine of \$800 and had his driving privileges suspended for 90 days, commencing on November 22, 2011, and granted temporary driving privileges commencing on December 23, 2011, to drive to, from for work purposes, required medical care, court ordered alcohol program, or community service. He was required to carry proof of his work schedule and liability insurance at all times. His temporary driving privileges were not valid if his liability insurance expired.

50. Under the terms of his probation, Respondent was required to (1) commit no similar offenses; (2) violate no federal, state or local laws more serious than an infraction; (3) maintain liability insurance on any vehicle he drives; (4) refrain from operating any motor vehicle with any alcohol or controlled substance in his bloodstream; (5) submit to any blood alcohol concentration test requested of him, with reasonable cause, by a peace officer; (6) enroll in and complete an in-patient substance abuse treatment program and file proof of successful completion of the program within ten months; and (7) notify the court, within 10 days, of any change of address and agree to accept service by mail at the last known address.

FACTS

51. On October 23, 2011, at about 8:30 pm, a deputy from the Kootenai Sheriff's Department responded to the area of E. Prairie Avenue based on a report of an unknown injury crash made by a witness. Police dispatch center advised that a vehicle crashed into the rock barriers on the northeast corner of the intersection, and further advised that the driver of the vehicle was slurring his words and may need medical attention.

52. Upon his arrival, the deputy observed a red Volvo in the grass on the northeast corner of the intersection of E. Prairie Avenue and N. Loch Haven Drive. The Volvo appeared to have struck several of the rocks which were placed near the roadway as barriers.

53. The deputy contacted Respondent, who identified himself as the driver of the Volvo. Respondent said he was uninjured. The deputy observed Respondent's glassy, bloodshot eyes and his slurred speech.

54. The deputy requested Respondent's driver's license and insurance information. He observed that as Respondent returned to his Volvo, he displayed poor balance and slow, lethargic movements. The deputy smelled alcohol on Respondent's breath, but Respondent denied drinking any alcoholic beverages.

55. Respondent told the deputy that he was under the care of a doctor for depression and on antidepressants. He told the deputy that he took his prescribed dose of Wellbutrin and Pristiq at about 6:30 am that morning. He denied taking any other drugs or alcohol that day.

56. The deputy conducted several field sobriety tests which Respondent failed. Based on Respondent's odor of alcoholic beverage, lethargic movements, slurred speech, glassy, bloodshot eyes, and his performance on the field sobriety tests, the deputy formed the opinion that Respondent was under the influence of alcohol or drugs and could not safely operate a motor vehicle.

57. The deputy interviewed the witness who reported the crash. The witness stated that Respondent rapidly accelerated from the stop sign at E. Prairie Avenue and N. 4th Street, before Respondent missed the turn and ran into the rocks on N. Loch Haven Drive. The witness called law enforcement because he spoke with Respondent after the accident and noticed his slurred speech.

58. The deputy placed Respondent in the back of the patrol car, checked his mouth for foreign matter, and then monitored him for 15 minutes as he read him the current Idaho Administrative License Suspension advisory form. Respondent then provided two breath samples into Lifeloc 90204598. His readings were .220 and .208 BAC respectively.

59. At Respondent's request, his car was towed by an AAA approved towing company. Respondent was transported to jail and booked for violating Idaho Code section 18-8004(C) (Excessive Driving Under the Influence of Alcohol).

CONCLUSIONS OF LAW

60. The facts and circumstances surrounding Respondent's conviction on December 21, 2011 for violating Idaho Code section 18-8004 (driving under the influence) do not constitute moral turpitude, but do constitute other misconduct warranting discipline.

Case No. 13-C-14518 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING

61. On October 19, 2009, in Idaho First Judicial District Court for the County of Kootenai, case no. CR-2009-0021711, Respondent pleaded guilty and was convicted of one criminal violation in the State of Idaho of violating Idaho Code section 18-918(3)(b) (battery – domestic violence, first offense),

which is a misdemeanor analogous to a violation of California Penal Code section 243(e)(1), a crime which may or may not involve moral turpitude or other misconduct warranting discipline.

62. Respondent was arrested on October 18, 2009, after the police were called by his wife Carol Kime, who reported a domestic violence incident at the Kime home in Coeur d'Alene. Respondent was cited for a violation of Idaho Code section 18-918 that day, taken into custody, and spent the night in jail.

63. Carol Kime reported to the responding officer, Coeur d'Alene Police Officer Craft, who arrived at the Kime home at approximately 3:36 pm, that there were two domestic violence incidents. The first occurred on October 17, 2009, when Respondent pulled Carol Kime's fingers out of her ears and she bit Respondent on the arm to make him let go of her, since he had her pinned up against the wall. The second occurred on October 13, 2009, when Respondent had a verbal fight with his wife first upstairs in the hallway to their bedroom, and then in the laundry room, where Respondent kicked Carol Kime's leg. The fight continued downstairs where Respondent placed his head up against the bridge of Carol Kime's nose, knocking off her glasses and pushing the back of her head against the wall. The downstairs incident was witnessed by a friend who was visiting the family, Donald Warren. Respondent's two children, Kayla Kime and Christopher Kime, were present at both domestic violence incidents.

64. The next day, on October 19, 2009, Respondent made his first appearance at his arraignment, pleaded guilty to the domestic battery charge, and was sentenced to serve 90 days in jail and to pay a fine of \$300. 80 days of the sentence were suspended. Respondent was credited with one day and ordered to report to jail on December 20, 2009 for nine days. He was ordered to serve 40 hours in the Sheriff's Community Labor Program by December 19, 2009, in lieu of jail.

65. Respondent was also placed on two years of unsupervised probation. During the probation period, Respondent was ordered to (1) commit no similar offenses; (2) violate no federal, state or local laws more serious than an infraction; (3) obtain a battery evaluation and file proof of the evaluation within 90 days; (4) enroll in and complete any recommended program and file proof of completion within one year; and (5) have no contact with Carol Kime for six months.

CONCLUSIONS OF LAW

66. The facts and circumstances surrounding Respondent's conviction on October 19, 2009 for violating Idaho Code section 18-918(3)(b) (battery – domestic violence, first offense) do not constitute moral turpitude, but do constitute other misconduct warranting discipline.

Case No. 14-J-03441 (Discipline in Other Jurisdiction – State Bar of Idaho)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION

67. On June 8, 2011, Respondent was admitted to the practice law in the State of Idaho.

68. In Respondent's first Idaho discipline matter, Idaho State Bar No. FC 13-10, Idaho Supreme Court Docket No. 41163-2013, Respondent admitted that he violated I.B.C.R. (Idaho Bar Commission Rule) 505(b) (conviction of a serious crime) and agreed to a stipulated resolution which included a period of stayed suspension and disciplinary probation. On July 19, 2013, the Supreme Court for the State of Idaho entered a disciplinary order against Respondent, finding the appropriate sanction was a

one year stayed suspension. The disciplinary order of July 19, 2013, was based on Respondent's four criminal DUI convictions in Idaho in 2011 and 2012.

69. On January 29, 2014, Idaho Bar Counsel filed a Motion for Order to Show Cause Pursuant to I.B.C.R. 507, seeking the immediate imposition of the one-year stayed suspension based on Respondent's failure to comply with the conditions of his disciplinary probation as set forth in the July 19, 2013 Disciplinary Order. This probation violation matter, Respondent's second discipline matter in Idaho (14-03), is the subject of California State Bar Case No. 14-J-03441.

70. Respondent and Idaho Bar Counsel entered into negotiations for a stipulation to lift the stayed suspension of one year on Respondent, retroactive to January 1, 2014, and impose a one year period of actual suspension. The parties executed the stipulation on March 24, 2014 and March 25, 2014, wherein Respondent acknowledged that he violated I.B.C.R. 507, by failing to comply with the terms of his disciplinary probation, and stated that he "took steps to transfer files to other attorneys to protect the interests of clients" and has not practiced law in Idaho since November 8, 2013. Respondent admitted that his conduct (described in detail below) violated his disciplinary probation and agreed to the imposition of the one year period of actual suspension. The parties agreed that the suspension would be imposed retroactively to January 1, 2014.

71. On April 8, 2014, the Hearing Committee of the Professional Conduct Board of the Idaho State Bar reviewed the stipulation to impose actual suspension, and agreed that the resolution of Respondent's violation of the terms of his disciplinary probation (which constituted a violation of I.B.C.R. 507) (Idaho State Bar Case No. FC 14-03) should be resolved by the agreement of the parties, and that the appropriate sanction for Respondent's misconduct was imposition of the one year of actual suspension.

72. On May 8, 2014, the Supreme Court of the State of Idaho, in Idaho State Bar Case No. 14-03, Idaho Supreme Court Docket No. 42037-2014, approved the recommendation of the Professional Conduct Board of the Idaho State Bar, and imposed a one year actual suspension on Respondent, retroactive to January 1, 2014, as the appropriate sanction for Respondent's violation of I.B.C.R. 507, failure to comply with the terms of his disciplinary probation in Idaho State Bar No. FC 13-10.

73. Thereafter the May 8, 2014 order became final.

74. The disciplinary proceedings in Idaho (both Idaho State Bar Case Nos. 13-10 and 14-03) provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION

75. As a condition of Respondent's disciplinary probation, based on the July 19, 2013 disciplinary order, Respondent was required to submit to alcohol testing through at least April 3, 2015. The terms of the disciplinary probation included the following:

- a. Respondent shall avoid any alcohol or drug-related criminal acts or alcohol or drug-related traffic violations. A violation of this condition will result in the imposition of the stayed suspension;
- b. Respondent Kime shall continue to comply with all the terms and conditions of his criminal probation. During the period of his disciplinary probation, Respondent shall comply fully

with all terms and conditions of the court or Idaho Department of correction criminal probation and shall provide Idaho Bar Counsel with a report on Respondent's compliance with those terms and conditions on a monthly basis.

- c. The terms and conditions of Respondent's criminal probation currently require that he submit to random urinalysis ("UA") testing at the direction of his probation officer. During the period of his disciplinary probation in Idaho, Respondent shall assure that the results of the UA testing and any other panel of tests conducted at the direction of his probation officer are timely provided to Idaho Bar Counsel. If for any reason during the period of his disciplinary probation Respondent is no longer required to submit to random UA testing as a term and condition of his criminal probation, Respondent shall, at his own expense, enroll in a program of random urinalysis testing through FirstLab until April 3, 2015. The FirstLab testing shall test for alcohol, including EtG testing, and any other panel of tests FirstLab believes is appropriate. Respondent shall agree to and comply with all conditions required by the FirstLab contract and shall assure the test results are timely provided to Idaho Bar Counsel. If at any time prior to April 3, 2015, Respondent tests positive for alcohol or any other tested substance, or misses a random urinalysis test without prior approval of his probation officer or the relevant testing agency, the entire stayed suspension shall be immediately imposed and served by Respondent.

76. On August 19, 2013, consistent with the terms of his disciplinary probation in Idaho, Respondent filed with Idaho Bar Counsel a monthly status report, dated August 12, 2013. In that report, Respondent stated that he was in compliance with the terms of his criminal probation, that he had completed his required aftercare, and that his UAs through Absolute Drug Testing, LLC ("ADT") had been negative since April 1, 2013.

77. On September 5, 2013, Respondent provided urine for analysis at ADT that tested positive for alcohol.

78. On September 11, 2013, Respondent provided urine for analysis at ADT that tested positive for alcohol.

79. On September 16, 2013, Respondent provided urine for analysis at ADT that tested positive for alcohol.

80. Also on September 16, 2013, Respondent sent Idaho Bar Counsel a monthly status report, which was filed upon receipt on September 18, 2013. In that report, Respondent stated that he was "in full compliance with all the terms" of his criminal and disciplinary probation and had "passed" all of his random UAs.

81. On October 15, 2013, Respondent provided urine for analysis at ADT that tested positive for alcohol.

82. On October 16, 2013, Respondent signed a Standard Statement Form for the Idaho Department of Correction ("IDOC") acknowledging that over the previous month, he had consumed alcohol on multiple occasions.

83. Also on October 16, 2013, Respondent sent Idaho Bar Counsel a monthly status report, which was filed upon receipt on October 18, 2013. In that report, Respondent stated that he was "in full

compliance with all the terms” of his criminal and disciplinary probation and had “passed” all of his random UAs. Respondent did not send Idaho Bar Counsel any monthly status reports after October 16, 2013.

84. On October 17, 2013, the Court in Respondent’s criminal case ordered him to serve discretionary jail time based on his consumption of alcohol in violation of his probation.

85. On November 8, 2013 Respondent appeared at the Kootenai County jail to serve his discretionary jail time. At the time he appeared at that jail, he was under the influence of alcohol.

86. On December 2, 2013, Respondent appeared for a dispositional hearing in his criminal case and admitted that he again violated his criminal probation by consuming alcohol.

87. On December 4, 2013, the Court entered a Judgment revoking Respondent’s criminal probation and imposing a unified sentence of seven years, with one year fixed and six years indeterminate. The Court retained jurisdiction and committed Respondent to the custody of the IDOC to complete therapy. Thereafter, Respondent was transferred to CAPP (see paragraph 7 above) for treatment.

88. After Respondent was incarcerated, as explained above, Respondent entered a second disciplinary stipulation with the Idaho State Bar, concerning his violation of his disciplinary probation in Idaho State Bar Case No. 13-10.

89. Respondent’s violation of I.B.C.R. 507, failure to comply with the terms of his disciplinary probation in Idaho State Bar No. FC 13-10, is analogous to a violation of California Business and Professions Code section 6068(k), failing to comply with all conditions attached to any disciplinary probation.

CONCLUSIONS OF LAW

90. As a matter of law, Respondent’s culpability for professional misconduct determined in the proceedings in Idaho warrant the imposition of discipline under the laws and rules binding upon Respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1(a).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a) and 1.8(b)): Respondent has one prior imposition of discipline in California. Effective April 3, 1995, Respondent received a private reproof in case nos. 94-C-11516 (for Respondent’s misdemeanor conviction for violating California Vehicle Code section 23152(a) – driving under the influence of alcohol), 94-C-15341 (for Respondent’s misdemeanor conviction for violating California Penal Code section 273.5 – spousal abuse) and 94-C-15344 (for Respondent’s misdemeanor conviction for violating California Vehicle Code section 23152(b) -- driving a vehicle with a blood-alcohol level of .08% or more with a prior). Respondent’s three criminal convictions were consolidated, and resulted in the imposition of a private reproof.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed multiple acts of misconduct that resulted in five criminal convictions and in attorney discipline in Idaho. This is considered serious

aggravation. (See e.g. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar of California 498, 555; *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Court Rptr. 139.)

MITIGATING CIRCUMSTANCES.

Pretrial stipulation: Respondent met with the State Bar trial counsel, admitted his misconduct, and entered this Stipulation fully resolving these matters. Respondent's cooperation has saved the State Bar significant resources and time. Respondent's stipulation to the facts, culpability, and discipline is a mitigating circumstance. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigating credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "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 the level of discipline. (*In re Silvertown* (2005) 36 Cal. 4th 81, 92, quoting *In re Brown* (1995) 11 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 end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary 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 greater or lesser sanction than that specified in a given Standard, in addition to the factors specified in a given 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).)

Under Standard 2.12(a), actual suspension is appropriate for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline. Respondent has five criminal convictions, the most serious of which constitutes a felony, driving under the influence, third or subsequent offense in violation of Idaho Code section 18-8004. This serious, and dangerous conviction, is analogous to a violation of California Vehicle Code section 23152(a).

The Supreme Court in California has classified driving under the influence as a crime which may or may not involve moral turpitude, and which may, in certain circumstances, result in professional discipline. (*In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260.) Drunk driving is not a crime which constitutes moral turpitude *per se*. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.) Depending on the facts and circumstances surrounding the driving under the influence offense, the misconduct could constitute moral

turpitude or other misconduct warranting discipline. In analyzing whether a driving under the influence conviction involves moral turpitude, factors such as prior convictions, violation of criminal probation and high blood alcohol content alone have proven insufficient to establish moral turpitude. (*Id.*). Here, Respondent's multiple driving under the influence violations were not surrounded by dishonesty, concealment or other indicia of moral turpitude. However, Respondent's crimes do constitute other misconduct warranting discipline. Similarly, Respondent's conviction for misdemeanor spousal abuse in Idaho is not moral turpitude, but remains conduct warranting discipline. (*In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52 [where the attorney was convicted of misdemeanor battery on a police officer, the attorney's provocation of the police confrontation during a domestic disturbance was not considered moral turpitude, but was misconduct which warranted the imposition of a 60 day actual suspension].)

In this case, because of Respondent's prior record of discipline in California, Standard 1.8 needs to be considered. Standard 1.8 (a) provides that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

Respondent's misconduct involves four convictions for driving under the influence, and a conviction for spousal abuse, but none of his convictions involve moral turpitude (as explained above). Respondent's prior discipline for similar misconduct was not remote in time. Similar to Respondent's present misconduct, his prior misconduct involved criminal convictions for driving under the influence and spousal abuse in the 1990s, when Respondent resided with his then-wife in California, before moving to Idaho. Respondent's successive drunk driving convictions, including in one case his driving without a valid license, demonstrate Respondent's disrespect of the legal system and demonstrate a long-standing substance abuse problem from which he has been unable to fully rehabilitate himself. Respondent's failure to comply with the terms of his disciplinary probation in Idaho, the state where he now lives, reflects his inability or unwillingness to conform to his ethical responsibilities. His failure to comply with the terms of his disciplinary probation in Idaho resulted in imposition of the entire one year period of stayed suspension. This same discipline in California should be sufficient to ensure that Respondent meets his ethical responsibilities in the future.

While Respondent engaged in multiple acts of misconduct, which is a serious aggravating factor, his actions should not be considered a pattern. Respondent had four driving under the influence arrests in short succession from the end of 2011 into mid-2012. He had two prior driving under the influence convictions from 1994, almost 17 years earlier. There is no indication of any intervening criminal acts between the arrests and convictions in California in 1994, and the spate of arrests in Idaho in 2011 and 2012. The earlier domestic abuse conviction in California was also remote in time from the 2009 misdemeanor conviction in Idaho. Accordingly, there is no basis to claim that Respondent engaged in a pattern of criminal acts.

Imposition of a one year actual suspension coupled with a three year probation is consistent with comparable, published case law. In *In re Kelley* (1990) 52 Cal.3d 487, the Supreme Court imposed a public reproof for an attorney's multiple convictions for driving under the influence, not involving moral turpitude. The attorney in *In re Kelley* was twice convicted of drunk driving following two arrests in a 31-month period. Both convictions occurred within the attorney's first four years of practice as an attorney and the second violation occurred while the attorney was on probation for the first conviction. The attorney was agitated and uncooperative with law

enforcement during the arrest. The Supreme Court found that this conduct was disrespectful to the legal system. (*Id.* at p. 495.) Mitigating factors were no prior record, community service, and cooperation. The Supreme Court concluded that the misconduct warranted “relatively minimal discipline” even though [the attorney’s] crimes “were serious and involved a threat of harm to the public.” (*Id.* at p. 498.) and that a public reproof was “sufficient to protect the public from the threat of future professional misconduct.” (*Ibid.*)

In a pre-Silverton Review Department case involving successive drunk driving convictions, *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, the attorney received a 60-day actual suspension for five drunk-driving convictions not involving moral turpitude, aggravated by two prior reprovals for inattention to clients’ needs. Here, Respondent has a prior discipline (as in *Anderson*), and his violation of his Idaho disciplinary suspension (analogous to a violation of Business and Professions Code section 6068(k)), coupled with the five criminal conviction referrals, warrants one year actual suspension.

In a Supreme Court case from 1988, *In re Carr* (1988) 46 Cal.3d 1089, the attorney received a six-month actual suspension with a two-year stayed suspension and a five-year probation for two separate convictions for driving under the influence of alcohol not involving moral turpitude. The attorney was on criminal probation for a federal felony drug offense, which resulted in lengthy disciplinary suspension, at the time of his second drunk driving offense. The attorney also had prior discipline from two recent consolidated cases, which was considered by the Supreme Court on the issue of degree of discipline.

In this case, Respondent has successive criminal convictions, and a violation of the resulting disciplinary suspension imposed by the State of Idaho. Respondent was also found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, Respondent’s violation of I.B.C.R. 507, failure to comply with the terms of his disciplinary probation in Idaho State Bar No. FC 13-10 is analogous to a violation of Business and Professions Code section 6068(k), failing to comply with all conditions attached to any disciplinary probation.

Under Standard 2.10, which related to violations of conditions attached to discipline, “[a]ctual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member’s unwillingness or inability to comply with disciplinary orders.”

Here, Idaho lifted the entire period of stayed suspension and imposed an actual suspension of one year on Respondent. Imposition of a one year actual suspension in California is the appropriate level of discipline for Respondent’s five criminal convictions, and the reciprocal discipline case resulting from his violation of the disciplinary suspension in Idaho.

Considering the extent of Respondent’s misconduct, the aggravating factors and the mitigating factors, the appropriate discipline to impose is one year actual suspension. which will protect the public, the legal profession, and uphold the purposes of attorney discipline.

EXCLUSION FROM MCLE CREDIT


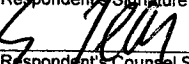
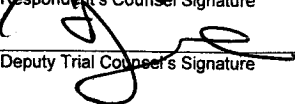
Pursuant to rule 3201 of the Rules of Procedure of the State Bar, Respondent may not receive MCLE credit for completion of the educational courses to be ordered as a condition of suspension.

(Do not write above this line.)

In the Matter of: KARL WESLEY KIME	Case number(s): 13-C-14336, 13-C-14497, 13-C-14499, 13-C-14517 13-C-14518, 14-J-03441
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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.

9-28-14		Karl Wesley Kime
Date	Respondent's Signature	Print Name
10/7/14		Edward Lear
Date	Respondent's Counsel Signature	Print Name
10-6-14		Erin McKeown Joyce
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: KARL WESLEY KIME	Case Number(s): 13-C-14336 et al.
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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.)**

OCTOBER 27, 2014
Date


GEORGE E. SCOTT, JUDGE PRO TEM
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 October 29, 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:
- EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 29, 2014.


George Hue
Case Administrator
State Bar Court