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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  <b>Nina Sarraf-Yazdi</b> Deputy Trial Counsel 845 South Figueroa Los Angeles, California 90017 (213) 765-1277  Bar # 278877	Case Number(s): <b>13-C-15091- LMA</b>	For Court use only  <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED </div> <div style="text-align: center; font-weight: bold;">JUN 25 2015</div> <div style="text-align: center; font-size: 0.8em; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel For Respondent  <b>Richard A. Moss, SBN 42329</b> <b>William C. Fleming, Jr., SBN 208176</b> 255 South Marengo Avenue Pasadena, California 91101 (626) 796-7400  Bar #	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: <b>ANDREW MICHAEL VOGELBACH</b>  Bar # 258259  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 1, 2008**.
- (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 **13** 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."

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- (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: (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 **13-O-11226**
  - (b)  Date prior discipline effective **October 3, 2014**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6106.3; Business and Professions Code section 6106; Rules of Professional Conduct, rule 4-100(B)(3); and Rules of Professional Conduct, rule 3-700(D)(2)**
  - (d)  Degree of prior discipline **One (1) year suspension, execution of suspension stayed, two (2) years of probation with conditions including a sixty (60) day actual suspension**
  - (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.
- (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.

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- (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:**

**Cooperation/Pretrial Stipulation: See attachment to Stipulation, Page 9**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **three (3) 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 (3) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **two (2) years**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (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:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

#### F. Other Conditions Negotiated by the Parties:

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National 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**

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**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: **January 7, 2015.**
- (5)  **Other Conditions:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      ANDREW MICHAEL VOGELBACH

CASE NUMBER:                          13-C-15091

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 13-C-15091 (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 February 15, 2013, the San Bernardino County District Attorney filed a criminal complaint in the San Bernardino County Superior Court, case no. FWV1202360, charging respondent with one count of violation of Health and Safety Code section 11352(a), transportation of a controlled substance, to wit, cocaine, a felony, and one count of violation of Health and Safety Code section 11351, possession for sale of a controlled substance, to wit, cocaine, a felony.
3. On August 29, 2014, the complaint was amended to add a third count, violation of Health and Safety Code section 11350(a), possession of a controlled substance, to wit, cocaine, a felony. The same day, the court entered respondent's plea of nolo contendere to the count of violation of Health and Safety Code section 11350(a), possession of a controlled substance, to wit, cocaine, a felony, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining counts in light of the negotiated disposition.
4. At the time of the entry of the plea, the court sentenced respondent to one (1) year and four (4) months in County Prison pursuant to Penal Code section 1170(h). Respondent surrendered on October 1, 2014 to serve the term of his sentence.
5. On November 5, 2014, Proposition 47 went into effect, which mandates misdemeanors instead of felonies for non-serious, nonviolent crimes. Possession of illegal drugs is one of the crimes that was affected by this law. On December 19, 2014, in light of Proposition 47 and Penal Code section 1170.18, respondent's conviction was reduced from a felony to a misdemeanor violation of Health and Safety Code section 11350, subsection (a). Respondent was released from custody with credit for one hundred and eighty (180) days in custody. For purposes of this discipline proceeding, respondent's conviction is still treated as a felony pursuant to California Business and Professions Code section 6102, subsection (b).
6. On December 18, 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 for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

7. On December 18, 2014, the Review Department also ordered that respondent be placed on interim suspension due to his felony conviction, effective January 7, 2015.

**FACTS:**

8. On June 26, 2012 at approximately 7:00 p.m., someone placed a brick-like, saran-wrapped package of a controlled substance in the trunk of respondent's car, a gray Cadillac, with respondent's knowledge, while respondent was present. At the time, undercover law enforcement officers were observing respondent and his passenger as part of a sting operation.

9. Thereafter, respondent knowingly transported the brick-like, saran-wrapped package containing a controlled substance.

10. On June 26, 2012 at approximately 7:45 p.m., Detective T. O'Dell observed respondent driving westbound on the 210 freeway, east of Carnelian, in a gray Cadillac. Respondent was traveling in the number two (2) lane of the freeway. Respondent turned on his turn signal and changed lanes to the number three (3) lane. Officer O'Dell pulled respondent over and told respondent that the reason he was pulling respondent over was because the duration of respondent's turn signal for the lane change was approximately twenty (20) to twenty-five (25) feet. The duration of the turn signal is supposed to be one hundred (100) feet. Detective O'Dell told respondent that he pulled respondent over for a violation of Vehicle Code section 22108.

11. Detective O'Dell's partner, Officer M. Martinez, contacted respondent and asked him to exit the vehicle. Officer Martinez advised respondent of the traffic violation and told him he would not be getting a ticket. Respondent began to walk back towards the driver's side door of his vehicle when Officer Martinez asked respondent if Officer Martinez could ask him a couple more questions. Officer Martinez asked respondent for consent to search the vehicle. Respondent said "no." Detective O'Dell asked respondent if he could walk his canine around respondent's vehicle. Respondent stated that he could. Respondent's front seat passenger was asked to step out of the vehicle and was directed to stand near respondent during the canine walk around.

12. Detective O'Dell then walked Police Service Dog Andre ("Andre") around respondent's vehicle. Andre and Detective O'Dell had previously attended a two hundred (200) hour course in the detection of narcotic odors through Alderhorst International. Andre was certified by Alderhorst International in the detection of the odors for marijuana, heroin, cocaine, methamphetamine, and their derivatives.

13. When Detective O'Dell walked Andre around respondent's car, Andre scratched at the driver door handle and the passenger door handle. Detective O'Dell placed Andre inside the vehicle and there were no alerts. Detective O'Dell placed Andre in the trunk of the vehicle and Andre alerted to a gym bag in the trunk. Detective O'Dell asked respondent and the passenger whose gym bag was in the trunk that Andre had alerted to. Respondent stated that it was his.

14. Detective O'Dell searched the bag. Inside, wrapped in a black jacket, was a heavily saran-wrapped, brick-like package of cocaine.



15. Upon respondent's arrest, Officer O'Dell and Officer Martinez did a preliminary NIK Test, which is a narcotics field drug test, and determined that the saran-wrapped package contained cocaine.

16. The saran-wrapped package was again tested by the crime lab and it was determined to contain one (1) kilogram of cocaine.

#### CONCLUSIONS OF LAW:

17. The facts and circumstances surrounding the offense for which respondent was convicted did not involve moral turpitude, but did involve other misconduct warranting discipline.

#### AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Effective October 3, 2014, the California Supreme Court ordered in State Bar Case No. 13-O-11226, that respondent be suspended for one (1) year, execution of suspension be stayed, and that respondent be placed on two (2) years of probation, with conditions including a sixty (60) day actual suspension. Respondent stipulated to violating Business and Professions Code sections 6106.3 and 6106; and Rules of Professional Conduct, rules 4-100(B)(3) and 3-700(D)(2). The facts of the misconduct are as follows: on July 22, 2011, respondent was retained by a client to pursue a loan modification on her behalf. At the time of the retention, the subject property was not in foreclosure, no notice of default had been filed and no notice of trustee sale had been filed. Prior to entering into a retainer agreement, respondent failed to provide the client with a separate written statement notifying her that it was not necessary to pay a third party to arrange for a loan modification as required by Civil Code section 2944.6, in willful violation of Business and Professions Code section 6106.3. Respondent requested, and the client paid, advanced attorney's fees related to the loan modification services totaling three thousand dollars (\$3,000.00) in violation of Civil Code section 2944.7(a)(1) and Business and Professions Code section 6106.3. On February 8, 2013, respondent prepared a request for mortgage assistance. As part of this request, respondent signed under penalty of perjury, simulating the client's signature, a hardship letter, financial worksheet and request for transcript of tax return. These documents contained inaccurate information, had not been reviewed or signed by the client, and were submitted to the client's lender. By the foregoing, respondent committed acts of moral turpitude in violation of Business and Professions Code section 6106. Respondent also failed to render an appropriate accounting to the client after the client demanded it in violation of Rules of Professional Conduct, rule 4-100(B)(3). Finally, in 2013, the client asked for a refund of all fees. Respondent did not make a refund to the client until April 2014 and thereby failed to refund promptly any part of a fee paid in advance that has not been earned in violation of Rules of Professional Conduct, rule 3-700(D)(2). Respondent's harm to the client and multiple acts of misconduct constituted aggravating circumstances. Respondent's lack of prior discipline and pretrial stipulation were mitigating factors.

#### MITIGATING CIRCUMSTANCES.

**Cooperation/Pretrial Stipulation:** Respondent voluntarily submitted to a deposition under penalty of perjury by the State Bar. Respondent answered all of the State Bar's questions and provided detail as requested. In addition, respondent has cooperated with the State Bar in entering into a stipulation of facts, conclusions of law and disposition without the necessity of a trial, thereby preserving State Bar time and resources. (*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 level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high 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 sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

The Standard for assessing discipline for a criminal conviction not involving moral turpitude is found in Standard 2.12. Standard 2.12(a) states:

Actual suspension is appropriate for a final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline.

Here, respondent was convicted of felony possession of a controlled substance, to wit, cocaine. Although respondent was initially charged with possession with intent to sell, to wit, cocaine, the San Bernardino District Attorney’s Office determined that there was insufficient evidence to prove that respondent possessed the cocaine with the intent to sell it. While the facts and circumstances surrounding respondent’s possession of cocaine are aggravated because respondent possessed a significant quantity of cocaine, one (1) kilogram, and transported it in his vehicle, they do not amount to moral turpitude. (*In re Higbie* (1972) 6 Cal.3d 572) The facts and circumstances do, however, amount to significant other misconduct warranting discipline given the amount and weight of the cocaine in question and given the impact of respondent’s conviction upon public confidence in the legal profession.

Respondent does have a prior record of discipline, which is usually considered a significant aggravating circumstance. However, respondent’s prior misconduct and the criminal conduct which resulted in his

conviction occurred in the same time period and prior to disciplinary charges being filed in either case. Pursuant to the rationale in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, the aggravating force of respondent's prior discipline is diminished and the totality of the findings in the two cases must be considered to determine what the discipline would have been if all the charged misconduct in this period have been brought in one case. (*Id.* at 619.)

In his prior matter, respondent admitted to committing professional misconduct consisting of violations of Business and Professions Code sections 6106 and 6106.3 and Rules of Professional Conduct, rules 3-700(D)(2) and 4-100(B)(3). In the current matter, respondent admits that the facts and circumstances surrounding his criminal conviction involve other misconduct warranting discipline. Standard 1.7(a) requires that where an attorney "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction is imposed."

The most severe sanction applicable to respondent's misconduct in both the prior and current matters is found in Standard 2.7, which applies to respondent's violation of Business and Professions Code section 6106.

Standard 2.7 provides:

Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

Respondent's misconduct in the prior matter was serious, involved acts of moral turpitude, and related directly to the practice of law. In that matter, respondent forged his client's signature to several documents and provided inaccurate information to a bank related to a client's loan modification, failed to provide notice to the client as required by statute that an attorney was not necessary for loan modification services, collected upfront fees for loan modification work in violation of statute, and failed to promptly provide an accounting to the client. During the same period as the prior misconduct, respondent also engaged in the possession and transportation of one (1) kilogram of cocaine, which ultimately led to his criminal conviction addressed in the current matter. The magnitude of the totality of respondent's misconduct is quite serious and impacts both the integrity of the legal profession and the public's confidence in the legal profession. The misconduct in the prior matter was aggravated by the harm to the client and multiple acts of misconduct but was mitigated by the fact that respondent entered into a comprehensive stipulation to resolve the matter. Similarly, the misconduct in the current matter is mitigated by the fact that respondent has entered into a comprehensive stipulation.

Given the totality of respondent's misconduct in both the prior and current matters, and in light of the aggravating and mitigating circumstances, discipline including a significant period of actual suspension is appropriate and consistent with Standard 2.7. A three (3) year period of stayed suspension coupled with a three (3) year period of probation with conditions including a two (2) year actual suspension and until respondent demonstrates to the State Bar Court his rehabilitation, fitness to practice law and current learning and ability in the law will serve the purposes of imposing discipline pursuant to Standard 1.1: to protect the public, courts and the legal profession, maintain the highest professional standards, and preserve public confidence in the legal profession.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 1, 2015, the prosecution costs in this matter are \$7,059.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**EXCLUSION FROM MCLE CREDIT**

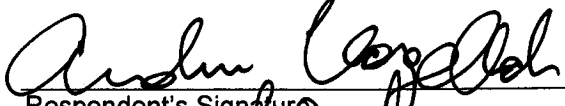
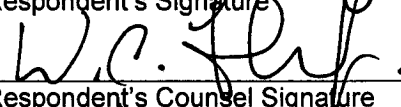
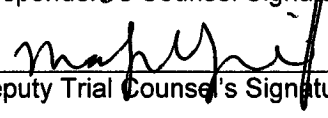
Pursuant to rule 3201, respondent may not receive MCLE credit for completion of State Bar Ethics to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: ANDREW MICHAEL VOGELBACH	Case number(s): 13-C-15091
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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.

<u>6/5/15</u> Date	<u></u> Respondent's Signature	<u>Andrew Michael Vogelbach</u> Print Name
<u>6/5/15</u> Date	<u></u> Respondent's Counsel Signature	<u>Richard Moss/William Fleming</u> Print Name
<u>6/8/15</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Nina Sarraf-Yazdi</u> Print Name

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In the Matter of: ANDREW MICHAEL VOGELBACH	Case Number(s): 13-C-15091
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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.

1. On page 2 of the Stipulation, at paragraph B.(1)(b), "October 3, 2014" is deleted, and in its place is inserted "October 4, 2014".
2. On page 9 of the Stipulation, under "Aggravating Circumstances," line 1, "October 3, 2014" is deleted, and in its place is inserted "October 4, 2014".
3. On page 12 of the Stipulation, under "Exclusion From MCLE Credit," line 1, "School" is inserted after "Ethics" and before "to". Also, in line 2 of that same paragraph, "suspension" is deleted, and in its place is inserted "probation".

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.)**

June 24, 2015  
Date

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, 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 June 25, 2015, 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:

RICHARD ALAN MOSS  
255 S MARENGO AVE  
PASADENA, CA 91101 - 2719

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

NINA SARRAF-YAZDI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 25, 2015.



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Bernadette C.O. Molina  
Case Administrator  
State Bar Court