

**State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p><b>Sherell N. McFarlane</b> Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1288</p> <p>Bar # 217357</p>	<p>Case Number(s): 14-C-01206 14-C-01224</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p>✓</p> <p>APR - 8 2015</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Thomas Patrick Brown, IV</b> Brown Gift Law Group ALC 300 North Lake Avenue, Suite 200 Pasadena, CA 91101 (626) 229-1919</p> <p>Bar # 97315</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>THOMAS PATRICK BROWN, IV</b></p> <p>Bar # 97315</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **January 21, 1981**.
- (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 **15** 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."



(Do not write above this line.)

- (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: **three billing cycles following the effective date of the discipline.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

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

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

(Do not write above this line.)

- (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 Stipulation Attachment at pages 10-11.**
- (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.

(Do not write above this line.)

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

**Additional mitigating circumstances:**

**No Prior Record of Discipline, Recognition of Wrongdoing and Pretrial Stipulation - See Attachment to Stipulation at page 11.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one (1) 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:
- (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 **thirty (30) days**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(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.

(Do not write above this line.)

- (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: Additional Probation Condition**

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

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

**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 at 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.**

**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.**



Boulevard in the City of Los Angeles and attempted to drive his vehicle out of the parking lot. While attempting to backup, respondent rear-ended a parked vehicle belonging to Gouzhu Liu. Respondent then proceeded to move forward, and when he backed-up again, he rear-ended a second parked vehicle belonging to Claudia Miklas. Respondent made a third attempt to leave the parking lot but drove into a telephone pole, which impeded further progress of his vehicle.

7. Los Angeles Police Department officers Swihart and Grossman responded to the scene to conduct an investigation. Respondent's breath smelled of alcohol and his speech was slurred as he spoke with the officers. Respondent's clothes were dirty and disheveled, his eyes were bloodshot and watery, his face was flush, and his gait was unsteady as he walked. Respondent was cooperative with the officers and admitted that he had been drinking French champagne all day long at Nizam Indian Cuisine. Respondent also admitted that he felt the effects of the alcohol and that he had previously been convicted of driving under the influence of alcohol.

8. The officers detained respondent on suspicion of driving under the influence of alcohol. Respondent was subsequently transported to the police station where officer Simmering administered a series of subjective field sobriety tests to him, which he failed to complete successfully. Thereafter, respondent was arrested for driving under the influence of alcohol in violation of Vehicle Code sections 23152 (a) and (b). Respondent submitted to a breath test. Respondent's blood alcohol content, as measured by the Intox EC/IR-II, was .26/.26 percent.

9. Respondent's conviction on June 19, 2014, was his fourth driving under the influence of alcohol conviction.

#### CONCLUSIONS OF LAW:

10. The facts and circumstances surrounding the above-described violation involved moral turpitude.

#### Case No. 14-C-01224 (Conviction Proceedings)

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

11. 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.

12. On June 22, 2012, the Pasadena City Prosecutor filed a criminal complaint in the Superior Court of California for the County of Los Angeles, case number 2PS02020, charging respondent with one count of violating Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, one count of violating Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol], a misdemeanor, and one count of violating Vehicle Code section 20002(a) [Hit and Run with Property Damage]. The complaint further alleged an enhancement – a violation of Vehicle Code section 23578 [Driving with a blood alcohol content in excess of 0.15 percent].

13. On September 10, 2012, respondent pled no contest to one count of a violation of Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol], and the remaining counts and the enhancement allegation were dismissed/stricken pursuant to Penal Code section 1385.



14. On September 10, 2012, the court accepted respondent's plea and found him guilty. On that date, the court suspended the imposition of sentence and placed respondent on informal probation for a period of three years with conditions, which included alcohol-related search terms, court-ordered restitution and fine payment, and the requirements that he attend and complete the first-time offender alcohol program.

15. On January 30, 2015, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

#### FACTS:

16. On May 20, 2012, respondent drove a vehicle while intoxicated and left the scene of an accident, which he caused, without stopping to exchange the information required under the Vehicle Code. On that date, at approximately 7:42 p.m., respondent drove his vehicle erratically in the parking lot of the Whole Foods Market, located at 3751 East Foothill Boulevard in the City of Pasadena, and stuck at least two vehicles as he attempted to exit. Respondent first struck the right, rear of a green SUV belonging to an unknown subject. Respondent then proceeded to move forward and drove into another parking row where he crashed into a second parked vehicle belonging to Amy Law. Respondent then drove out of the parking lot without stopping to check on the damage that he had caused, and without leaving his information at the scene.

17. A witness heard the sound of the first collision, and saw that respondent had collided with the green SUV, heard the sound of the collision as respondent crashed into the second vehicle belonging to Law, and saw respondent drive out of the parking lot without stopping. This witness relayed the aforementioned information, a description of respondent, and the make, model and license plate number of the vehicle respondent was driving to Pasadena Police dispatch. A Pasadena Police Department helicopter was able to locate respondent and followed respondent as he drove away from the scene of the accident, until he was detained.

18. Pasadena Police officers Herrera and Baecker conducted a traffic stop and detained respondent on suspicion of driving under the influence of alcohol and being involved in a hit-and-run accident. Respondent's breath smelled of alcohol and his speech was slow and slurred as he spoke with the officers. Respondent's eyes were droopy, bloodshot and watery. Respondent admitted that he had consumed a bottle of wine, but was unable to answer the remaining questions the officers asked him. The officers then found two wine bottles inside of respondent's vehicle; one was empty and the other was half-full.

19. Respondent was uncooperative with the officers and had to be assisted out of his vehicle by them. Respondent staggered as the officers assisted him out of his vehicle and to the curb. Due to respondent's level of intoxication, subjective field sobriety tests were not administered to him. Instead, the Pasadena Fire Department was summoned to transport respondent to a nearby hospital where he submitted to a blood test. Prior to being transported to the hospital, respondent consented to a blood test to measure his blood alcohol content, stating, "Yes, I'll give you blood, I'll give you anything you need. I'll give you a liver if you want me to."

20. Respondent's conviction on September 10, 2012, was his third driving under the influence of alcohol conviction

#### CONCLUSIONS OF LAW:

21. The facts and circumstances surrounding the above-described violation involved moral turpitude.

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent was convicted of driving under the influence of alcohol on September 10, 2012 and on June 19, 2014. This is an aggravating factor. In addition to his 2012 and 2014 driving under the influence of alcohol convictions, respondent has suffered three separate prior alcohol-related convictions. On March 9, 1998, in Los Angeles Municipal Court, case number 801481, respondent was convicted of violating Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol] after he was arrested on January 23, 1998 on suspicion of driving under the influence of alcohol. No disciplinary charges were brought against respondent as a result of his 1998 conviction for driving under the influence of alcohol.

Respondent was again arrested on suspicion of driving under the influence of alcohol on March 26, 2002, after California Highway Patrol officers observed respondent driving in excess of 100 miles per hour in a posted 65 miles per hour zone. When the officers made contact with respondent, his eyes were glassy, his breath smelled of alcohol and his speech was slurred as he spoke with the officers. Respondent admitted that he drank three glasses of wine and had smoked marijuana earlier that day. A search of respondent's vehicle revealed a plastic bag containing marijuana and a metal and rubber pipe containing burnt marijuana residue. At the time of driving, respondent's blood alcohol content measured 0.10/0.11 percent. Thereafter, on April 26, 2002, misdemeanor charges were filed against respondent in Inyo County Superior Court of California case number 02-30561, alleging violations of Vehicle Code section 23152(a), Vehicle Code section 23152(b), and Vehicle Code section 23222(b), as well as a prior conviction on March 9, 1998, for violating Vehicle Code sections 23152(b).

Respondent was subsequently convicted of violating Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol] on May 15, 2002. The prior conviction was found to be true and the remaining counts were dismissed, and respondent was placed on informal probation for a period of three years on conditions, which included incarceration in the county jail for five days, alcohol-related search terms, court-ordered restitution and fine payment, and the requirements that he attend and complete the second-time offender alcohol program. The court also ordered respondent to report to jail on July 3, 2002, to serve his jail commitment, with no measurable amount of alcohol or other intoxicants in his system.

However, on July 3, 2002 at approximately 4:25 p.m., respondent reported to the jail with intoxicants in his system. Respondent submitted to a breath test, which showed that his blood alcohol content was 0.19/20 percent. When the officer asked respondent if he was aware of the court's order that he was to report for commitment with no measurable amount of alcohol in his system, respondent stated that he was not, and that he thought that most people had a little to drink before coming to jail. Respondent was subsequently issued a misdemeanor citation for contempt of court. On September 10, 2002, in Inyo County Superior Court on case number 02-031150-1, respondent was convicted of one count of a violation of Penal Code section 166(a)(4) [Contempt of Court], and he was sentenced to 48 hours in the county jail, and ordered to pay a fine of \$100. Respondent's conviction for contempt of

court constituted a violation of his probation in case number 02-30561 and he was sentenced to an additional 48 hours in the county jail for this probation violation in that case.

Respondent's May 15, 2002 conviction for driving under the influence of alcohol and his September 10, 2002 conviction for contempt of court resulted in conviction referral proceedings against respondent in State Bar case numbers 02-C-13066 and 02-C-14051, respectively. Respondent was ultimately accepted into the State Bar's Alternative Discipline Program ("ADP") and successfully completed ADP, which resulted in dismissal of cases 02-C-13066 and 02-C-14051 on or about October 18, 2006.

#### **MITIGATING CIRCUMSTANCES.**

**No Prior Record of Discipline:** Although respondent's misconduct is serious, respondent's many years in practice with no prior discipline is entitled to significant weight in mitigation. Respondent's bar history is not completely unblemished, however, considering his participation in and completion of ADP in 2006 in State Bar case numbers 02-C-13066 and 02-C-14051 following his convictions on May 15, 2002 and September 10, 2002. At the time of the misconduct in 2012, respondent had remained crime-free for approximately eleven years, and had practiced law for more than 31 years without a prior imposition of discipline. (See *Friedman v. State Bar* (1990) 50 Cal.3d 235, 242 [20 years in the practice of law without discipline is afforded significant weight in mitigation]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal State Bar Ct. Rptr. 41 [attorney's many years in practice with no prior discipline considered mitigating even when misconduct at issue was serious].)

**Recognition of Wrongdoing:** On or about December 14, 2013, shortly after his fourth driving under the influence of alcohol arrest in November 2013, respondent voluntarily enrolled in and moved into the Gooden Center, a rehabilitative and sober living facility in Pasadena, California, and resided there for one year. Respondent participated in the programs offered by the Gooden Center, including mandatory, random drug and alcohol testing, a twelve-step program, and group and individual counseling sessions.

By voluntarily enrolling himself into and completing the Gooden Center's rehabilitative and sober living program, respondent has demonstrated recognition of his wrongdoing. (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519 [voluntary confession of misconduct to client may be considered a mitigation circumstance as a recognition of wrongdoing, but this mitigating circumstance is entitled to reduced weight in mitigation because the confession came one year after the misconduct and was, therefore, not an objective step promptly taken spontaneously demonstrating remorse and the recognition of wrongdoing].) Like the attorney in *Spaith*, respondent here enrolled in the Gooden Center rehabilitative and sober living facility on December 14, 2013, approximately one month after his arrest on November 17, 2013, and with imminent criminal charges looming over him.

**Pretrial Stipulation:** Respondent has stipulated to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible, prior to trial, thereby avoiding the necessity of a trial and saving State Bar and State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].) By entering into this stipulation, respondent has accepted responsibility for his misconduct.

## 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).)

Respondent’s culpability in these proceeding is conclusively established by the record of his convictions. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) Respondent is presumed to have committed all of the elements of the crimes of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.) The facts and circumstances surrounding respondent’s conviction herein involved moral turpitude. Respondent was convicted of driving under the influence of alcohol in 1998 and again in 2002. In 2012 respondent was again convicted of driving under the influence of alcohol, and in the events leading up to this conviction, he struck several vehicles and fled the scene of the accident. Thereafter, respondent was convicted of yet another driving under the influence of alcohol offense in 2014 in which he was found to have been driving with a blood alcohol content of .26/.26 percent, more than three times the legal limit, with one prior, while he was still on probation for driving under the influence of alcohol. In the events leading up to his 2014 conviction, respondent drank French champagne all day long before getting into his vehicle and driving it into two cars and a telephone pole. Therefore, Standard 2.11(c) is applicable and provides in relevant part as follows: “Disbarment or actual suspension is appropriate for final conviction of a misdemeanor involving moral turpitude.”

The Supreme Court recently discussed the moral turpitude standard in the context of criminal convictions:

Moral turpitude is a concept that “defies exact description” (*In re Mostman* (1989) 47 Cal.3d 725, 736, 254 Cal. Rptr. 286, 765 P.2d 448) and “cannot be defined with precision” (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815, fn. 3, 263 Cal. Rptr. 798, 781

P.2d 1344). We have noted, however, that in attorney discipline cases, moral turpitude should be defined with the aim of protecting the public, promoting confidence in the legal system, and maintaining high professional standards. (*Lesansky*, at p. 16, 104 Cal.Rptr.2d 409, 17 P.3d 764.).

*Lesansky* was convicted of attempting to commit a lewd act on a child age 14 or 15. (*Lesansky, supra*, 25 Cal.4th at p. 13, 104 Cal.Rptr.2d 409, 17 P.3d 764.) We explained that “[c]riminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession. [Citations.]” (*Id.* at p. 16, 104 Cal.Rptr.2d 409, 17 P.3d 764.) *In re Craig* (1938) 12 Cal.2d 93, 97, 82 P.2d 442, described moral turpitude as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty.” Moreover, we have noted that “[c]onviction of some crimes establishes moral turpitude on its face ... includ[ing] particular crimes that are extremely repugnant to accepted moral standards such as ... serious sexual offenses.” (*In re Fahey* (1973) 8 Cal.3d 842, 849, 106 Cal. Rptr. 313, 505 P.2d 1369, citations omitted, citing *In re Boyd* (1957) 48 Cal.2d 69, 307 P.2d 625; *In re Duggan* (1976) 17 Cal.3d 416, 423, 130 Cal. Rptr. 715, 551 P.2d 19.).

(*In re Grant* (2014) 58 Cal.4th 469, 475-476.) While not all driving under the influence of alcohol offenses involve moral turpitude, an offender can cross the line by committing repeated and aggravated offenses. Here, respondent’s driving under the influence of alcohol offenses involve moral turpitude as respondent has committed repeated and aggravated driving under the influence of alcohol offenses.

Respondent was first convicted of driving under the influence in 1998. Then, in 2002 respondent suffered two additional alcohol-related criminal convictions, one of which included driving under the influence of alcohol. Thereafter, in September 2012 and June 2014, respondent suffered two more driving under the influence of alcohol convictions. Respondent’s conviction on June 19, 2014 was his fourth driving under the influence of alcohol conviction, which he suffered while he was still on criminal probation for his third driving under the influence conviction, and his fifth alcohol-related conviction. Respondent was convicted of his third driving under the influence of alcohol offense on September 10, 2012, but received a disposition equivalent to a first time driving under the influence of alcohol offense because more than ten years had elapsed between this offense and the May 15, 2002 and March 9, 1998 driving under the influence of alcohol convictions and were therefore stale for criminal charging purposes.

Respondent’s misconduct is mitigated by the fact that respondent has, with this stipulation, acknowledged the wrongfulness of the misconduct, and had more than 31 years in practice with no prior imposition of discipline at the time that the misconduct occurred in 2012. Respondent also receives some weight in mitigation for voluntarily enrolling himself in the Gooden Center’s rehabilitative and sober living facility following his arrest for driving under the influence of alcohol in November 2013. However, these mitigating factors are not sufficiently compelling to warrant deviation from the range of discipline set forth in Standard 2.11(c), but rather, suggest that discipline at the low range of Standard

2.11(c) is appropriate. While respondent's conduct in these conviction matters did not involve the practice of law, his multiple acts of misconduct constitute an aggravating circumstance. Moreover, respondent's misconduct involves moral turpitude and is serious because it demonstrates a disregard for the law and public safety. Respondent's conduct in repeatedly driving with high blood alcohol levels, endangers the public, as evidenced by the multiple vehicular collisions that he caused in both his 2012 and 2013 drunk-driving crimes, and violates societal norms of morality.

Therefore, in order to protect the public, the courts and the legal profession, to maintain the highest professional standards, and to preserve public confidence in the legal profession, and in consideration of the mitigating and aggravating circumstances, discipline consisting of a one year suspension, stayed, three years of probation, with a period of actual suspension during the first 30 days of his probation, on the remaining terms and conditions set forth herein, is appropriate.

Case law also supports this result. In *In re Kelley* (1990) 32 Cal.3d 487, the Supreme Court publicly reprimanded an attorney and placed her on disciplinary probation for a period of three years subject to conditions which included her referral to the State Bar's Program on Alcohol Abuse. The attorney was convicted of drunk driving on two occasions over a 31-month period. The second incident constituted a violation of her criminal probation in the first case. The attorney's blood alcohol level in the second case was between 0.16 percent and 0.17 percent. Respondent here was also on probation for his third driving under the influence of alcohol conviction when he committed his fifth alcohol-related criminal offense and fourth driving under the influence of alcohol offense. Respondent's five prior alcohol-related criminal convictions demonstrate his conscious disregard for the law. Because respondent's misconduct is more serious than the misconduct in *Kelley*, a higher level of discipline than that imposed in *Kelley* is appropriate here.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 20, 2015, the prosecution costs in this matter are approximately \$6,890. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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

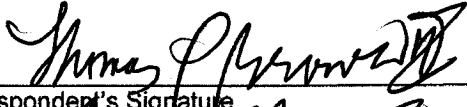

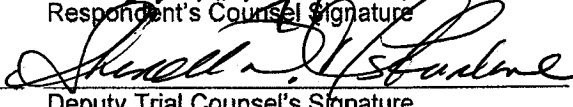
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: Thomas Patrick Brown, IV	Case number(s): 14-C-01206 14-C-01224
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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>3/14/15</u> Date	 Respondent's Signature	Thomas Patrick Brown, IV Print Name
<u>3/14/15</u> Date	 Respondent's Counsel Signature	 Print Name
<u>March 14/15</u> Date	 Deputy Trial Counsel's Signature	Sherell N. McFarlane Print Name
<u>March 16/15</u> Date		

(Do not write above this line.)

In the Matter of: Thomas Patrick Brown, IV	Case Number(s): 14-C-01206 14-C-01224
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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.)**

4-7-15  
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 April 8, 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:

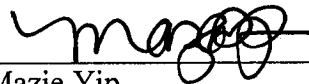
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

THOMAS PATRICK BROWN IV  
BROWN GITT LAW GROUP ALC  
300 N LAKE AVE STE 200  
PASADENA, CA 91101

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

SHERELL N. McFARLANE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 8, 2015.



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Mazie Yip  
Case Administrator  
State Bar Court