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**State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p>Robert A. Henderson Supervising Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2385</p> <p>Bar # 173205</p>	<p>Case Number(s): 14-C-01414-PEM 14-C-01850; 14-C-01853; 14-C-01854; 14-C-02404; 14-C-02732</p> <p>PUBLIC MATTER</p>	<p>For Court use only</p> <p>FILED <i>llc</i></p> <p>FEB 11 2015</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Samuel James McKee, III 6054 Stostz Lane Sebastapol, CA 95472 (707) 874-1967</p> <p>Bar # 98198</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: SAMUEL JAMES MCKEE, III</p> <p>Bar # 98198</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 **May 29, 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 **16** 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
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment to Stipulation at p. 9.**
- (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.

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(13) No mitigating circumstances are involved.

Additional mitigating circumstances:

Pre-Hearing stipulation - See Attachment to Stipulation at p. 9.

No prior record of discipline - See Attachment to Stipulation at p. 9.

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 **five 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.

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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**

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: **October 22, 2014.**

(5) **Other Conditions:**

Section F. 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 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.

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: SAMUEL JOSEPH MCKEE, III

CASE NUMBERS: 14-C-01414-PEM [14-C-01850; 14-C-01853; 14-C-01854; 14-C-02404;
14-C-02732]

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 14-C-01414 (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 December 23, 2013, the Sonoma County District Attorney filed a criminal complaint in the Sonoma County Superior Court, case no. SCR-644143, charging respondent with one count of violation of Vehicle Code section 23152(a) [Driving Under the Influence with 2 enhancements of BAC of .15 or higher and three prior convictions of DUI within ten years], a felony, and one count of violation of Vehicle Code section 23152(b) [Driving under the Influence with a BAC of .08 or higher with 2 enhancements of BAC of .15 or higher and three prior convictions of DUI within ten years], a felony.
3. On March 20, 2014, the court entered respondent's plea of nolo contendere to the count of violation of Vehicle Code section 23152(b) [Driving under the Influence with a BAC of .08 or higher with 2 enhancements of BAC of .15 or higher and three prior convictions of DUI within ten years], a felony, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.
4. On May 5, 2014, the court suspended the imposition of sentence and placed respondent on formal probation for a period of sixty (60) months. The court ordered that respondent, among other things, that respondent was required to wear an alcohol monitoring device for three (3) years, that respondent's driving privileges were revoked for four (4) years, that an interlock device was to be installed on respondent's vehicle for three (3) years – until 5/5/17 and that respondent was to go through a residential treatment program for his alcohol abuse.
5. On September 12, 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.

FACTS:

6. On December 4, 2013, at approximately 11:25 a.m., the California Highway Patrol ("CHP") received a telephone call "citizen report" to be on the lookout for a possible DUI driver of a silver Mercedes Benz SL 550 with a California Personalized License Plate of "SJMESQ." The suspect vehicle was reported to be traveling to downtown Occidental.

7. On December 4, 2013, at approximately 11:25 a.m. Officer Blanco of the CHP received the "citizen report." Officer Blanco reported that he was out of position. Thereafter Officer Blanco responded to downtown Occidental. Officer Blanco located the suspect vehicle parked in front of a café at approximately 11:45 a.m.

8. On December 4, 2013, at approximately 12:05 p.m. respondent exited the café, entered the silver Mercedes Benz SL 550 with a license plate of "SJMESQ" and started driving onto Main St. and Occidental Rd. Officer Blanco first activated his emergency lights and then his siren to gain the attention of respondent. Officer Blanco effectuated the traffic stop. Respondent exhibited objective signs of alcohol intoxication including the strong odor of alcohol. Officer Blanco asked respondent whether respondent had been drinking, to which respondent replied "no." Officer Blanco conducted a series of field sobriety tests on respondent, which respondent failed to perform as demonstrated and explained.

9. On December 4, 2013, Officer Blanco placed respondent under arrest for driving under the influence. Officer Blanco transported respondent to Sonoma County Jail for respondent's blood alcohol test. Respondent's blood sample was taken by AMR Paramedic D. Rath.

10. On December 19, 2013, the blood sample was tested by the Department of Justice Bureau of Forensic Services. Respondent's blood sample tested positive for alcohol and contained .28% (W/V) alcohol.

CONCLUSIONS OF LAW:

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

Case No. 14-C-01850 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

12. 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.

13. On August 21, 2007, the Sonoma County District Attorney filed a criminal complaint in Sonoma County Superior Court, case no. SCR-518812, charging respondent with one count violation of Vehicle Code section 23152(a) [Driving Under the Influence with an enhancement of 2 priors], a misdemeanor, one count of Vehicle Code section 23152(b) [Driving Under the Influence with BAC of .08 or higher with an enhancement of 2 priors], a misdemeanor, and one count of Vehicle Code 14601.5(a) [Driving with a Suspended License], a misdemeanor.

14. On September 18, 2007, the court entered respondent's plea of nolo contendere to the violation of Vehicle Code section 23152(b) [Driving Under the Influence with BAC of .08 or higher with an enhancement of 2 priors], a misdemeanor, and Vehicle Code section 14601.5(a) [Driving with a

Suspended License], a misdemeanor, and based thereon, the court found respondent guilty of those counts. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

15. On September 18, 2007, respondent waived time for sentencing. The court suspended the imposition of sentence and placed respondent on formal probation for a period of 36 months. The court ordered that respondent, among other things, serve nine (9) months in jail, 9 months suspended, commence counseling and other rehabilitation programs as directed, including residential treatment, submit to warrantless searches, submit to random chemical tests and to not possess or use any alcohol and not to drive with any alcohol in system.

16. On September 12, 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 offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

17. On August 18, 2007, at approximately 11:35 a.m., Officer Snyder of the California Highway Patrol ("CHP") was driving a marked black and white patrol vehicle in the town of Monte Rio, in the County of Sonoma. Officer Snyder was advised by a citizen of a possible DUI driver, driving a red and white Ford pickup truck in the town of Occidental. The pickup truck was further described as being an older Ford F-250 with a black lumber rack. Officer Snyder was informed by the citizen that the pickup truck was being driven by respondent.

18. Officer Snyder requested a driver's license check on respondent, which returned as "Suspended for 133532VC-DUI."

19. Officer Snyder patrolled eastbound on Graton Rd. Officer Snyder recognized the pickup truck from previous contacts with respondent over the prior three years. Officer Snyder advised CHP that he was behind the suspect vehicle and requested a rolling license plate check. The license plate check returned to respondent. Officer Snyder requested an additional unit prior to initiating a stop of respondent.

20. Officer Snyder observed respondent twice swerve over the solid double yellow lines by one to two feet for approximately 300 feet. Officer Snyder activated his emergency lights and siren and instructed respondent to find a safe location to stop. Respondent thereafter stopped at a county refuse facility on Stoetz Lane.

21. Officer Snyder advised respondent that he had been reported as possibly driving under the influence and that he had observed respondent twice swerving over the solid double yellow lines. Officer Snyder noted the odor of alcohol coming from the vehicle. Officer Snyder asked respondent how much alcohol he had consumed in the last 24 hours. Respondent stated that he had consumed some Vodka, but he could not remember how much or when. Officer Snyder advised respondent that his driving privileges had been suspended for a prior DUI arrest made by Officer Snyder in May 2007. Officer Snyder asked respondent to perform a series of field sobriety tests. Upon exiting the pickup truck, respondent was unsteady on his feet. Respondent failed the field sobriety tests.

22. Officer Snyder arrested respondent on August 18, 2007 at approximately 11:55 a.m. Officer Snyder advised respondent of his rights and Vehicle Code section 23612 [implied consent]. Respondent chose a breath test to determine his blood alcohol level. Respondent was seated in the patrol vehicle and the breath test (unit # ARRA-0332) was administered at approximately 12:19 p.m. Respondent's two (2) breath test results were positive for alcohol at .23/.21% respectively.

CONCLUSIONS OF LAW:

23. The facts and circumstances surrounding the above-described violations did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 14-C-01853 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

24. 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.

25. On January 12, 2004, the Sonoma County District Attorney filed a criminal complaint in Sonoma County Superior Court, case no. TCR-433347, charging respondent with one count violation of Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, and one count of Vehicle Code section 23152(b) [Driving Under the Influence with BAC of .08 or higher], a misdemeanor.

26. On February 25, 2004, the court entered respondent's plea of nolo contendere to the violation of Vehicle Code section 23152(b) [Driving Under the Influence with BAC of .08 or higher], a misdemeanor, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

27. On February 25, 2004, respondent waived time for sentencing. The court suspended the imposition of sentence and placed respondent on formal probation for a period of 36 months. The court ordered that respondent, among other things, have a restricted driver's license for a 18 months, commence counseling and other rehabilitation programs as directed, including residential treatment, submit to random chemical tests and to not possess or use any alcohol and not to drive with any alcohol in system.

28. On September 12, 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.

FACTS:

29. On January 9, 2004, at approximately 5:45 p.m., Officer Graham of the California Highway Patrol ("CHP") stopped respondent at Harrison Grade Rd. and Stoetz Lane for driving under the influence.

30. Officer Graham advised respondent of his rights. Respondent elected to take a breath test, which was thereafter administered. The results of respondent's two breath tests were positive for alcohol at .22/.219% respectively. Subsequent to his arrest, respondent was administered a drug test. The two samples tested came back positive for alcohol at .16/.17% respectively.

CONCLUSIONS OF LAW:

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

Case No. 14-C-01854 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

32. 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.

33. On July 5, 2007, the Sonoma County District Attorney filed a criminal complaint in Sonoma County Superior Court, case no. SCR-514980, charging respondent with one count violation of Vehicle Code section 14601.5(a) [Driving with a Suspended License], a misdemeanor.

34. On September 18, 2007, the court entered respondent's plea of nolo contendere to the violation of Vehicle Code section 14601.5(a) [Driving with a Suspended License], a misdemeanor, and based thereon, the court found respondent guilty of that count.

35. On September 18, 2007, respondent waived time for sentencing. The court suspended the imposition of sentence and placed respondent on formal probation for a period of 36 months. The court ordered that respondent, among other things, submit to warrantless searches of person, property or vehicle at any time, submit to random chemical tests, to not possess or use alcohol, to not drive with alcohol in system and not to drive without California Driver's License and Insurance in effect.

36. On September 12, 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.

FACTS:

37. On July 2, 2007, respondent was stopped while driving without a valid California Driver's License. Respondent was subsequently cited for the offense.

CONCLUSIONS OF LAW:

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

Case No. 14-C-02404 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

39. 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.

40. On June 8, 2007, the Sonoma County District Attorney filed a criminal complaint in Sonoma County Superior Court, case no. SCR-513356, charging respondent with one count of violation of Vehicle Code section 23152(a) [Driving Under the Influence with 2 priors], a misdemeanor, and one count of violation of Vehicle Code section 23152(b) [Driving with a BAC of .08 or higher with an enhancement of 2 priors], a misdemeanor.

41. On September 18, 2007, the court entered respondent's plea of nolo contendere to the violation of Vehicle Code section 23152(b) [Driving with a BAC of .08 or higher with an enhancement of 2 priors], a misdemeanor, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

42. On September 18, 2007, respondent waived time for sentencing. The court suspended the imposition of sentence and placed respondent on formal probation for a period of 36 months. The court ordered that respondent, among other things, commence/continue counseling and other rehabilitation programs, submit to warrantless searches of person, property or vehicle at any time, submit to random chemical tests, to not possess or use alcohol, to not drive with alcohol in system.

43. On September 12, 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.

FACTS:

44. On May 29, 2007, at approximately 11:34 a.m., Officer Snyder of the California Highway Patrol ("CHP") stopped respondent at Green Valley Road for driving under the influence.

45. Officer Snyder advised respondent of his rights. Respondent elected to take a breath test, which was thereafter administered. The result of respondent's breath test was positive for alcohol at .18%.

CONCLUSIONS OF LAW:

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

Case No. 14-C-02732 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

47. 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.

48. On December 4, 2003, the Sonoma County District Attorney filed a criminal complaint in Sonoma County Superior Court, case no. TCR-431443, charging respondent with one count of violation of Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, and one count of violation of Vehicle Code section 23152(b) [Driving with a BAC of .08 or Higher], a misdemeanor.

49. On February 25, 2004, the court entered respondent's plea of nolo contendere to the violation of Vehicle Code section 23152(b) [Driving with a BAC of .08 or Higher with a Vehicle Code section 23578 enhancement], a misdemeanor, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

50. On February 25, 2004, respondent waived time for sentencing. The court suspended the imposition of sentence and placed respondent on formal probation for a period of 36 months. The court ordered that respondent, among other things, submit to random chemical tests, not possess or use any alcohol, not drive with any alcohol in system, not drive without California Driver's License and Insurance in effect and a restricted driver's license for a period of 18 months.

51. On September 12, 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.

FACTS:

52. On November 13, 2003, respondent was stopped for Driving Under the Influence of alcohol.

CONCLUSIONS OF LAW:

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

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's multiple criminal convictions for Driving Under the Influence and Driving without a Valid License constitute multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent has entered into a stipulation as to facts and culpability prior to the hearing, thereby saving State Bar 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].)

No Prior Record of Discipline: Respondent was admitted to the State Bar on May 29, 1981 and has no prior record of discipline. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

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).)

In this matter, respondent admits to violating the laws of the state as they relate to driving under the influence of alcohol and driving without a valid license. The six criminal convictions involved multiple acts of professional misconduct. Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to respondent’s misconduct is found in Standard 2.12(a), which applies to respondent’s felony conviction for Driving Under the Influence in violation of Vehicle Code section 23152(b). Standard 2.12(a) provides that: “Actual suspension is appropriate for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline.” In this matter, respondent has been convicted on five (5) occasions of driving under the influence of alcohol. Therefore, respondent has demonstrated he is unwilling or unable to conform to ethical responsibilities

in the future and the level of discipline should be on the higher end of the actual suspension range as called for in Standard 1.7(b).

In a conviction referral proceeding, "discipline is imposed according to the gravity of the crime and the circumstances of the case." (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.) Although respondent's conduct is extremely serious, he has not so far caused injury or property damage.

The closest analogous case to respondent's is *In re Carr* (1988) 46 Cal.3d 1089, where the attorney was convicted of two separate violations of driving under the influence of alcohol. The Supreme Court determined that the convictions did not involve moral turpitude, but suspended Carr for two years, stayed with a five year probationary period, including a six month actual suspension.

Respondent's misconduct is more pervasive than that of *Carr* and therefore a greater level of discipline is warranted. Likewise the multiple acts in aggravation outweigh the mitigation of no prior discipline and a pre-hearing stipulation. Although respondent's conduct does not rise to the level of moral turpitude, it is close call in that respondent has re-offended on multiple occasions, albeit with years between most offenses. Also, although not worthy of mitigation, as it was court ordered, respondent has attempted to gain control of his alcohol abuse by going to residential treatment programs. Balancing the aggravating and mitigating factors, the Standard and case law, on balance a one year actual suspension, two years stayed suspension and five years on probation will adequately protect the public and maintain the highest professional standards for attorneys.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of January 12, 2015, the prosecution costs in this matter are \$11,655. 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

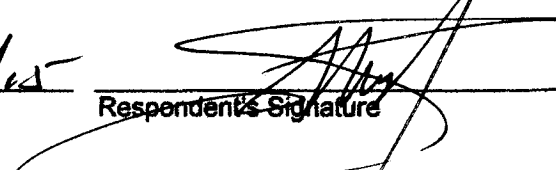
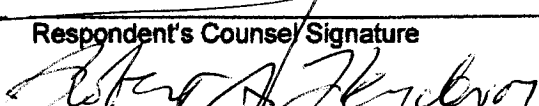

Pursuant to rule 3201, respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: SAMUEL JAMES MCKEE, III	Case number(s): 14-C-01414-PEM [14-C-01850; 14-C-01853; 14-C-01854; 14-C-02404; 14-C-02732]
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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>1/22/15</u> Date	 Respondent's Signature	<u>Samuel James McKee, III</u> Print Name
<u>2/2/15</u> Date	 Respondent's Counsel Signature	<u>Robert A. Henderson</u> Print Name
<u>2/2/15</u> Date	 Deputy Trial Counsel's Signature	<u>Robert A. Henderson</u> Print Name

(Do not write above this line.)

In the Matter of: SAMUEL JAMES MCKEE, III	Case Number(s): 14-C-01414-PEM [14-C-01850; 14-C-01853; 14-C-01854; 14-C-02404; 14-C-02732]
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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.)

Date

Feb 11, 2015


LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On February 11, 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:

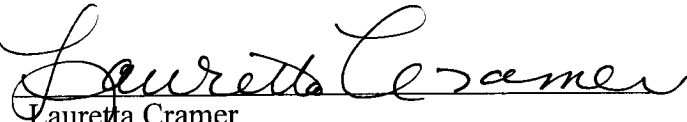
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

SAMUEL JAMES MCKEE, III
6054 STOETZ LN
SEBASTOPOL, CA 95472

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

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 11, 2015.


Laurretta Cramer
Case Administrator
State Bar Court