

ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM

PUBLIC MATTER

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| <p>Counsel For The State Bar</p> <p>Sherell N. McFarlane Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1288</p> <p>Bar # 217357</p> | <p>Case Number (s)</p> <p>14-C-03389 14-C-03391 14-C-04989</p> | <p>(for Court's use)</p> <p>FILED</p> <p>JUN 08 2015</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> |
| <p>Counsel For Respondent</p> <p>Marisol Ocampo Century Law Group LLP 5200 West Century Blvd., #345 Los Angeles, CA 90045 (310) 642-6900</p> <p>Bar # 198087</p> | <p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>In the Matter Of:</p> <p>ALEXANDER MICHAEL KAPLAN</p> <p>Bar # 266669</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 **December 1, 2009**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."



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

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

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment of Stipulation at pages 8-9.**
- (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.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial Stipulation and Recognition of Wrongdoing/Efforts Toward Rehabilitation. See Attachment to Stipulation at page 9.

FACTS:

6. On October 30, 2012, respondent drove a vehicle while intoxicated. On that date at approximately 5:00 p.m., near Interstate 405 and Seal Beach Boulevard in the County of Orange, respondent drove his vehicle off the roadway and got stuck in a nearby dirt embankment. A California Highway Patrol Officer responded to the scene to conduct an investigation.

7. Respondent's breath smelled of alcohol and his speech was slow and slurred as he spoke with the officer. Respondent's eyes were red and watery, and his gait was unsteady as he walked. Respondent was cooperative with the officer and admitted that he had two glasses of vodka and Captain Morgan earlier that day.

8. The officer detained respondent on suspicion of driving under the influence of alcohol and administered a series of subjective field sobriety tests to respondent, which respondent 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 Alco Senso IV, was 0.19/0.19 percent.

9. Respondent's conviction on November 1, 2012, in Superior Court of California for the County of Orange, case number 12WM10531, was his second 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-3391 (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 May 30, 2014, the Anaheim City Attorney filed a criminal complaint in the Superior Court of California for the County of Orange, case number 14NM06210, charging respondent in count one of violating Vehicle Code section 23152(a) [Driving under the influence of alcohol], a misdemeanor, in count two of violating Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol], a misdemeanor, in count three of violating Vehicle Code section 20002(a) [Hit and run with property damage], and in count four of violating Vehicle Code section 14603 [Driving in violation of the provisions of a restricted license], an infraction. The complaint alleged that respondent suffered a prior conviction, as to count one for violating Vehicle Code sections 23152(a) on May 5, 2011, in the Superior Court of California for the County of Orange, case number 10NM13698. The complaint further alleged that respondent suffered a prior conviction, as to count two for violating Vehicle Code sections 23152(b) on November 1, 2012, in the Superior Court of California for the County of Orange, case number 12WM10531.

13. On July 31, 2014, respondent pled guilty to one count of violating Vehicle Code section 23152(a) [Driving under the influence of alcohol], a misdemeanor, one count of violating Vehicle Code

section 23152(b) [Driving with 0.08 percent or more blood alcohol], a misdemeanor, one count of violating Vehicle Code section 20002(a) [Hit and run with property damage], and one count of violating Vehicle Code section 14603 [Driving in violation of the provisions of a restricted license], an infraction. Respondent also admitted his prior convictions for violating Vehicle Code sections 23152(a) and 23152(b).

14. On July 31, 2014, the court accepted respondent's plea and found him guilty. On that date, the court suspended the imposition of sentence as to counts one and three, and placed respondent on informal probation for a period of three years with conditions, which included incarceration in the county jail for 270 days, alcohol abstention terms, alcohol-related search terms, court-ordered restitution and fine payment, and the requirements that he attend and complete the multiple offender alcohol program. The court also designated respondent a habitual traffic offender pursuant to Vehicle Code 13350(b).

15. On October 23, 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:

16. On March 12, 2014, respondent drove a vehicle while intoxicated. On that date at approximately 12:04 a.m., while driving his vehicle northbound on South State College Boulevard in the City of Anaheim, County of Orange, respondent rear-ended another vehicle, which was stopped for a red light at the intersection of East Orangewood Avenue.

17. The passenger of the vehicle that respondent's rear-ended ("the vehicle") exited the vehicle and made contact with respondent. Respondent's breath smelled strongly of alcohol as he spoke with the passenger. Respondent handed his driver's license to the passenger, inspected the vehicle for damage, wiped scuffmarks off the vehicle, and told the passenger that there was no damage to the vehicle.

18. Respondent argued with the passenger and even offered the passenger money. Thereafter, respondent reentered his vehicle. The passenger then inquired of respondent whether he needed paramedics. Respondent did not respond to the passenger. Instead, he drove away leaving his license behind with the passenger.

19. Respondent's conviction on July 31, 2014, in Superior Court of California for the County of Orange, case number 14NM06210, was his third driving under the influence of alcohol conviction.

CONCLUSIONS OF LAW:

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

Case No. 14-C-4989 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

21. 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.

22. On July 31, 2014, the Orange County District Attorney filed a criminal complaint in the Superior Court of California for the County of Orange, case number 14NF3153, charging respondent in count one of violating Vehicle Code section 23152(a) [Driving under the influence of alcohol], a felony, in count two of violating Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol], a felony, and in count three of violating Vehicle Code section 23154(a) [Driving with 0.01 percent or more blood alcohol content], an infraction. The complaint alleged that respondent suffered three prior convictions, as to counts one and two, for violating Vehicle Code sections 23152(a) and (b) on May 5, 2011 in the Superior Court of California for the County of Orange, case number 10NM13698, on November 1, 2012 in the Superior Court of California for the County of Orange, case number 12WM10531, and on July 31, 2014 in the Superior Court of California for the County of Orange, case number 14NM06210. 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].

23. On July 31, 2014, respondent pled guilty to one count of violating Vehicle Code section 23152(a) [Driving under the influence of alcohol], a felony, one count of violating Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol], a felony, and one count of violating Vehicle Code section 23154(a) [Driving with 0.01 percent or more blood alcohol content], an infraction. Respondent also admitted his three prior convictions for violating Vehicle Code sections 23152(a) and 23152(b), and the allegation that he drove with a blood alcohol content in excess of 0.15 percent in violation of Vehicle Code section 23578.

24. On July 31, 2014, the court accepted respondent's plea and found him guilty. On that date, the court suspended the imposition of sentence as to counts one and two, and placed respondent on formal probation for a period of three years with conditions, which included incarceration in the county jail for 365 days, alcohol abstention terms, alcohol-related search terms, firearm restriction terms, court-ordered restitution and fine payment, and the requirements that he attend and complete the multiple offender alcohol program.

25. On December 18, 2014, the Review Department of the State Bar Court issued an order suspending respondent from the practice of law effective January 7, 2015, and pending resolution of this matter, because of respondent's felony convictions for violating Vehicle Code sections 23152(a) and 23152(b) with three or more priors.

26. On February 11, 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 offenses for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

27. On March 12, 2014, respondent drove a vehicle while intoxicated. On that date at approximately 12:19 a.m., while driving his vehicle northbound on Rose Drive in the City of Placentia, County of Orange, respondent struck several objects on Rose Drive before causing a single vehicle, rollover accident. Respondent's vehicle came to rest on its roof on the top of a cinder block wall in an embankment adjacent to Rose Drive. The cinder block wall on which respondent's vehicle came to rest was the rear retaining wall to homes in the 200 block of Pasteur Place in the City of Placentia. Placentia Police Department officers responded to the scene to conduct an investigation.

28. Respondent was trapped inside his overturned vehicle and was seated upright on the roof of his vehicle when the officers made contact with him. Respondent's breath smelled of alcohol and his speech was slurred as he spoke with the officers. Respondent's face was flush and his eyes were bloodshot and watery. Respondent was cooperative with the officers and admitted that he had consumed two beers earlier. Respondent also admitted that he did not remember having a collision or the events that led up to the collision. The officer detained respondent on suspicion of driving under the influence of alcohol.

29. Thereafter, Orange County Fire Authority paramedics arrived on scene, extricated respondent from his vehicle and transported him to a local hospital via ambulance. Respondent was subsequently released from the hospital and transported to the local jail where a series of subjective field sobriety tests were administered to him. Respondent failed to successfully complete the subjective field sobriety tests. 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 and blood test. Respondent's blood alcohol content, as measured by the Alco Senso IV, was 0.15/0.14 percent. Respondent's blood alcohol content, as revealed by the blood test, was 0.16 percent.

30. Respondent's conviction on July 31, 2014, in Superior Court of California for the County of Orange, case number 14NF3153, was his fourth driving under the influence of alcohol conviction.

CONCLUSIONS OF LAW:

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

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent was convicted of driving under the influence of alcohol on November 1, 2012 and in two separate criminal cases on July 31, 2014. This is an aggravating factor. In addition to his 2012 and 2014 driving under the influence of alcohol convictions, respondent also suffered a prior driving under the influence of alcohol conviction on May 5, 2011.

Respondent was arrested on suspicion of driving under the influence of alcohol on October 16, 2010, after several citizens observed him driving erratically and impeding the flow of traffic near Orangewood Avenue and South Harbor Boulevard in the City of Anaheim, County of Orange. When Anaheim Police Department officers responded to the scene to investigate, they found respondent seated behind the driver's wheel of his vehicle, which was stopped in the middle of the road and impeding traffic. Respondent's eyes were watery, his breath smelled of alcohol and his speech was slurred as he

spoke with the officers. Respondent admitted that he drank three shots of vodka earlier. The officers administered series of subjective field sobriety tests to respondent, which he failed to successfully complete. At the time of driving, respondent's blood alcohol content measured 0.20 percent.

Thereafter, on November 10, 2010, the Anaheim City Attorney filed a criminal complaint in the Superior Court of California for the County of Orange, case number 10NM13698, charging respondent with one count each of violating Vehicle Code section 23152(a), Vehicle Code section 23152(b), and alleging that respondent's blood alcohol content measured 0.20 percent and greater at the time of driving within the meaning of Vehicle Code section 23538(b)(2). Respondent was subsequently convicted of violating Vehicle Code section 23152(a) [Driving under the influence of alcohol] on May 5, 2011. The remaining count was dismissed, and respondent was placed on informal probation for a period of three years on conditions, which included incarceration in the county jail for 2 days, alcohol-related search terms, court-ordered restitution and fine payment, and the requirements that he attend and complete a nine-month alcohol program.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Pre-trial 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.

Recognition of Wrongdoing/Efforts Toward Rehabilitation: Respondent voluntarily enrolled in the Kaiser Permanente Chemical Dependency Recovery Program ("Kaiser Program") on or about March 18, 2014, and participated in group and individual counseling sessions through July 2014. Respondent also voluntarily entered the Lawyer Assistance Program ("LAP"). By voluntarily enrolling himself into the Kaiser Program and LAP, respondent has demonstrated recognition of his wrongdoing and has taken steps toward rehabilitation. (*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 himself into the Kaiser Program and LAP, after his March 12, 2012 driving under the influence of alcohol and hit-and-run incidents, and with imminent criminal charges looming over him or already commenced. Therefore, respondent is entitled to limited weight in mitigation for recognition of wrongdoing and his efforts toward rehabilitation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 9, 2015, the prosecution costs in this matter are approximately \$5,200. 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.

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| In the Matter of: Alexander Michael Kaplan | Case number(s): 14-C-3389 14-C-3391 14-C-4989 |
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

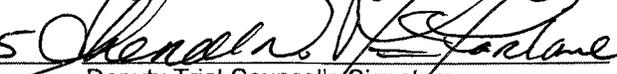
Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

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

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

3/24/15  Alexander Michael Kaplan
Date Respondent's Signature Print Name

3/26/15  Marisol Ocampo
Date Respondent's Counsel Signature Print Name

March 27, 2015  Sherell N. McFarlane
Date Deputy Trial Counsel's Signature Print Name

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| In the Matter of: Alexander Michael Kaplan | Case Number(s): 14-C-3389 14-C-3391 14-C-4989 |
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ALTERNATIVE DISCIPLINE PROGRAM ORDER

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

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

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

June 8, 2015
Date


YVETTE D. ROLAND
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 Los Angeles, on June 9, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW

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 Los Angeles, California, addressed as follows:

**MARISOL OCAMPO
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045**

- 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 Los Angeles, California, on June 9, 2015.


Jommie Lee Smith
Case Administrator
State Bar Court