

FILED

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**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos. 14-C-03389; 14-C-03391;
)	14-C-04989-YDR (Cons.)
ALEXANDER MICHAEL KAPLAN,)	
)	DECISION AND ORDER SEALING
A Member of the State Bar, No. 266669.)	CERTAIN DOCUMENTS
_____)	

Introduction

In this consolidated conviction referral proceeding, respondent Alexander Michael Kaplan (Respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that Respondent has successfully completed the ADP, the court will recommend that Respondent be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years with certain conditions.

Significant Procedural History

After the transmittal to the State Bar Court on July 9, 2014, of the records¹ of Respondent's November 1, 2012, conviction of violating Vehicle Code section 23152, subdivisions (a) [driving a vehicle under the influence of alcohol] and (b) [driving a vehicle with a blood-alcohol level of .08% or more], misdemeanors which may or may not involve moral turpitude, the Review Department of the State Bar Court issued an order on July 31, 2014, in

¹ These records included notice of the finality of the conviction.



case No. 14-C-03389, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violations of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

The Notice of Hearing on Conviction (NOH) in case No. 14-C-03389 was filed on August 6, 2014. The matter was originally assigned to the Honorable Donald F. Miles. Respondent filed his answer to the NOH on August 22, 2014.

On September 9, 2014, the State Bar of California, Office of the Chief Trial Counsel (OCTC), in case No. 14-C-03391, transmitted to the State Bar Court the records² of Respondent's July 31, 2014, conviction of violating Vehicle Code sections 23152, subdivisions (a) [driving a vehicle under the influence of alcohol] and (b) [driving a vehicle with a blood-alcohol level of .08% or more], and 20002, subdivision (a) (hit and run with property damage), misdemeanors which may or may not involve moral turpitude.

Respondent filed a motion to abate the proceedings in case No. 14-C-03389 on September 16, 2014, as Respondent was required to report on September 19, 2014, for a six-month jail sentence in a felony criminal case.³ Judge Miles consolidated and abated case Nos. 14-C-03386⁴ and 14-C-03389, due to respondent's incarceration.

² These records included notice of the finality of the conviction.

³ This felony criminal case was Orange County Superior Court case No. 14FN3153.

⁴ After the transmittal to the State Bar Court on July 16, 2014, of the records (including notice of finality) of Respondent's May 22, 2014, conviction of violating Vehicle Code section 23152, subdivisions (a) [driving a vehicle under the influence of alcohol] and (b) [driving a vehicle with a blood-alcohol level of .08% or more], misdemeanors which may or may not involve moral turpitude, the review department issued an order on August 6, 2014, in case No. 14-C-03386, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violations of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline. A NOH was filed in case No. 14-C-03386 on August 11, 2014, and the matter was assigned to Judge Miles. As in case No. 14-C-03389,

Respondent initially contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his alcohol problem on October 14, 2014.

After a supplemental transmittal to the State Bar Court on October 3, 2014, of the records⁵ of Respondent's July 31, 2014, convictions, the review department issued an order on October 23, 2014, in case No. 14-C-03391, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violations of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A NOH was filed in case No. 14-C-03391 on October 31, 2014, and the matter was assigned to Judge Miles.

On November 5, 2014, Respondent notified the court in case Nos. 14-C-03386; 14-C-03389 (Cons.) that he had been released from custody.

Respondent filed his answer to the NOH in case No. 14-C-03391 on November 5, 2014.

Respondent also filed requests for admission into the court's ADP in case Nos. 14-C-03386; 14-C-03389 (Cons.) and 14-C-03391 on November 5, 2014.

On November 5, 2014, OCTC, in case No. 14-C-04989, transmitted to the State Bar Court the records of Respondent's July 31, 2014, conviction of violating Vehicle Code sections

Respondent filed a motion to abate the proceedings due to his impending incarceration, which the court granted.

State Bar Court case No. 14-C-03386 concerns Respondent's misdemeanor convictions in *People v. Kaplan*, Orange County Superior Court case No. 14NM04313. Subsequent to his convictions, Respondent withdrew his guilty plea, and the court vacated his probation. Thereafter, the case was re-filed as *People v. Kaplan*, Orange County Superior Court case No. 14FN3153. State Bar Court case No. 14-C-04989 concerns this re-filed criminal case. As such, on March 30, 2015, OCTC filed a motion to dismiss case No. 14-C-03386 with prejudice. The court granted the motion on April 3, 2015. Case No. 14-C-03386 was dismissed with prejudice and was severed from the other matters (case Nos. 14-C-03389 and 14-C-03391) with which it was consolidated.

⁵ These records included notice of the finality of the conviction.

23152, subdivisions (a) [driving a vehicle under the influence of alcohol with three or more priors] and (b) [driving a vehicle with a blood-alcohol level of .08% or more with three or more priors], felonies which may or may not involve moral turpitude.

A status conference was held in case No. 14-C-03391 on December 1, 2014. On December 3, 2014, Judge Miles filed an order consolidating case No. 14-C-03391 with case Nos. 14-C-03386; 14-C-03389 (Cons.). All three cases were unabated and referred to the undersigned judge for ADP evaluation.

On December 16, 2014, the parties stipulated that a nexus exists between Respondent's charged misconduct and his issues with alcohol. A Nexus Statement Stipulation for ADP was submitted to the court in case Nos. 14-C-03386; 14-C-03389; 14-C-03391 (Cons.) and case No. 14-C-04989 on that same date.

As a result of his felony convictions, on December 18, 2014, the review department filed an order in case No. 14-C-04989 suspending Respondent from the practice of law effective January 7, 2015, pending final disposition of this matter. Respondent was also ordered to comply with California Rules of Court, rule 9.20.⁶

Respondent filed a notice with the review department on January 22, 2015, in case No. 14-C-04989 waiving finality on the criminal conviction and requesting that the matter be transmitted to the hearing department so he could try to resolve all matters pending before the court.

After a supplemental transmittal to the State Bar Court on January 23, 2015, of the records⁷ of Respondent's July 31, 2014, convictions, the review department issued an order on

⁶ Respondent filed his rule 9.20 compliance declaration in case No. 14-C-04989 on February 10, 2015. An earlier rule 9.20 compliance declaration was filed by Respondent on February 4, 2015, but it did not bear a case number.

⁷ These records included notice of the finality of the conviction.

February 11, 2015, in case No. 14-C-04989, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violations of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A NOH in case No. 14-C-04989 was filed on February 12, 2015, and the matter was assigned to the undersigned judge.

On February 13, 2015, Respondent executed a long-term Participation Plan with the LAP.

Respondent filed his answer to the NOH in case No. 14-C-04989 on February 25, 2015.

In March 2015, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case Nos. 14-C-03389; 14-C-03391 (Cons.) and 14-C-04989.

On April 17, 2015, Respondent filed his brief regarding the appropriate discipline in case Nos. 14-C-03391; 14-C-03389 (Cons.) and 14-C-04989. The OCTC filed its brief regarding discipline in these same matters on April 20, 2015.

The court filed an order on May 1, 2015, consolidating case Nos. 14-C-03389; 14-C-03391; and 14-C-04989 for all purposes.

The court executed its Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) on June 8, 2015, setting forth the discipline the court would recommend if Respondent successfully completed the ADP and the discipline the court would recommend if Respondent was terminated from, or failed to successfully complete, the ADP. Also, on June 8, 2015, the parties' Stipulation was filed, and Respondent and his attorney executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). Respondent was accepted

into the ADP commencing on June 10, 2015.⁸ Thereafter, Respondent participated successfully in the ADP and the LAP.

On June 30, 2015, Respondent filed a motion in the review department to vacate his interim suspension. The review department filed an order on July 15, 2015, granting Respondent's motion to vacate his interim suspension, and Respondent's interim suspension was vacated on that date.

Respondent completed State Bar Ethics School on August 4, 2016.

On February 3, 2017, the court received a certificate from LAP dated that same date, setting forth that the LAP is not aware of the use of any unauthorized substances by Respondent for one year prior to February 3, 2017.⁹

Thereafter, on May 3, 2017, Respondent filed a request for early completion of the ADP. The OCTC filed a response to the request on May 9, 2017, setting forth that it did not oppose the request.

On June 13, 2017, the court filed an order finding that Respondent has successfully completed the ADP. This matter was submitted for decision on that same date.

Findings of Fact and Conclusions of Law

Culpability Findings

The parties' Stipulation filed on June 8, 2015, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

⁸ The Confidential Statement and Contract were lodged on June 8, 2015.

⁹ Rule 5.385(B) of the Rules of Procedure of the State Bar sets forth, in pertinent part, "No member may successfully complete the [ADP] unless the [LAP] certifies that he . . . has been substance-free for at least one year"

Case No. 14-C-03389–Driving Under the Influence of Alcohol

In this conviction referral matter, Respondent pleaded guilty and was convicted of violating Vehicle Code section 23152, subdivisions (a) [driving a vehicle under the influence of alcohol] and (b) [driving with a blood-alcohol level of .08% or more], both misdemeanors. Respondent also admitted to a prior conviction of violating Vehicle Code section 23152, subdivision (a) on May 5, 2011. He also admitted that he violated Vehicle Code section 23578 by driving with a blood-alcohol content that exceeded 0.15 percent.

Respondent drove a vehicle while he was intoxicated on October 30, 2012. Respondent drove his vehicle off the roadway and got stuck in a dirt embankment which was nearby. As he spoke with a California Highway Patrol (CHP) officer who responded to the scene, Respondent's speech was slurred and slow and his breath smelled of alcohol. His gait was unsteady when he walked, and his eyes were watery and red. Respondent cooperated with the officer and admitted that earlier that day he had had two glasses of vodka and Captain Morgan. Respondent failed to successfully complete a series of subjective field sobriety tests. Respondent was arrested. He submitted to a breath test which reflected a blood-alcohol content of 0.19/0.19 percent. Respondent stipulated that the facts and circumstances surrounding his convictions involved moral turpitude.

Case No. 14-C-03391–Driving Under the Influence of Alcohol

In this conviction referral matter, Respondent pleaded guilty and was convicted of violating Vehicle Code sections 23152, subdivisions (a) [driving a vehicle under the influence of alcohol] and (b) [driving with a blood-alcohol level of .08% or more], 20002, subdivision (a) [hit and run with property damage], all misdemeanors, and 14603 [driving in violation of provisions of a restricted license], an infraction. Respondent also admitted his prior convictions of violating

Vehicle Code sections 23152, subdivision (a) on May 5, 2011, and subdivision (b) on November 1, 2012.

This case involves Respondent's third driving under the influence of alcohol conviction. Respondent drove a vehicle while he was intoxicated on March 12, 2014. On that date, while driving his vehicle, respondent rear-ended another vehicle which was stopped at a red light at an intersection. The passenger of the vehicle which Respondent rear-ended exited the vehicle and made contact with Respondent. When Respondent spoke with the passenger, Respondent's breath smelled strongly of alcohol. Respondent: (1) handed his driver's license to the passenger; (2) inspected the vehicle for damage; (3) wiped scuffmarks from the vehicle; and (4) informed the passenger that there was no damage to the vehicle. Respondent also argued with the passenger and offered money to the passenger. Respondent then re-entered his vehicle. The passenger asked Respondent whether he needed paramedics but Respondent did not reply. Rather, Respondent drove away, leaving his license with the passenger. Respondent stipulated that the facts and circumstances surrounding his conviction involved moral turpitude.

Case No. 14-C-04989–Driving Under the Influence of Alcohol

In this conviction referral matter, Respondent pleaded guilty and was convicted of violating Vehicle Code sections 23152, subdivisions (a) [driving a vehicle under the influence of alcohol with three or more priors] and (b) [driving with a blood-alcohol level of .08% or more with three or more priors], both felonies, and 23154, subdivision (a) [driving with a blood-alcohol content of 0.01 percent or more], an infraction. Respondent also admitted his three previous convictions of violating Vehicle Code section 23152, subdivisions (a) and (b) on May 5, 2011, November 1, 2012, and July 31, 2014, and that he drove with a blood-alcohol content greater than 0.15 percent in violation of Vehicle Code section 23578. This was Respondent's fourth conviction of driving under the influence of alcohol.

Respondent drove a vehicle while he was intoxicated on March 12, 2014. Respondent, while driving his vehicle on that date, struck several objects on Rose Drive in Placentia before he caused a single vehicle, rollover accident. Respondent's vehicle ended up on its roof on the top of a cinder block wall (which was the rear retaining wall of homes on a block of Pasteur Place) in an embankment adjacent to Rose Drive. Police officers responded to the scene. When officers made contact with Respondent, he was trapped inside his overturned vehicle and was seated upright on the roof of the vehicle. Respondent's speech was slurred as he spoke with officers, and his breath smelled of alcohol. His eyes were watery and bloodshot, and his face was flush. Respondent cooperated with the officers and admitted consuming two beers earlier. Respondent further admitted that he did not remember the events that led up to the collision or having a collision. After paramedics extracted Respondent from his vehicle and he was transported and released from the hospital, Respondent was taken to the local jail where he failed to successfully complete subjective field sobriety tests. Respondent was thereafter arrested. A breath test measured Respondent's blood-alcohol content as 0.15/0.14. A blood test revealed Respondent's blood-alcohol content to be 0.16 percent. Respondent stipulated that the facts and circumstances surrounding his convictions involved moral turpitude.

Aggravation

Multiple Acts (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Former Std. 1.5(b).)¹⁰

Respondent was convicted of alcohol-related offenses on November 1, 2012, and, in two separate criminal matters, on July 31, 2014. Respondent also had a prior alcohol-related

¹⁰ All further references to standard(s) or std.(s) are to this source. The standards were revised effective July 1, 2015. However, as the standards effective January 1, 2014, were the operative standards at the time the parties entered into the Stipulation and at the time Respondent entered the ADP, the court will apply those standard in this matter and will make reference to them as former standards.

conviction on May 5, 2011. Respondent's multiple acts of misconduct are an aggravating circumstance.

Mitigation

Candor/Cooperation (Former Std. 1.6(e).)

Respondent cooperated with the OCTC by entering into a pre-trial stipulation.

Recognition of Wrongdoing (Former Std. 1.6(g)/Alcohol Use - Rehabilitation (Former Std. 1.6(d).)

Respondent voluntarily entered the LAP and voluntarily enrolled in a chemical dependency recovery program at Kaiser Permanente.

In accordance with Supreme Court case law, an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant mitigating weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.) Respondent's abuse was clearly addictive in nature; causally contributed to his misconduct; and Respondent has successfully participated in the LAP and has successfully completed ADP. It is therefore also appropriate to consider Respondent's successful completion of the ADP as a further mitigating circumstance.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if Respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the

ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered former standards 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7 and 2.11(b) and *In re Kelley* (1990) 52 Cal.3d 487, *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, *In re Carr* (1988) 46 Cal.3d 1089, and *In re Alkow* (1966) 64 Cal.2d 838. Because Respondent has now successfully completed the ADP, this court, in turn, now orders the imposition of the lower level of discipline, set forth more fully below.

Discipline Recommendations

It is hereby recommended that respondent Alexander Michael Kaplan, State Bar No. 266669, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation¹¹ for a period of two years subject to the following conditions:

1. During the probation period, Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California.
2. Within 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.
3. Within 30 days after 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

¹¹ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

4. 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 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 20 days before the last day of the period of probation and no later than the last day of the probation period.

5. Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

6. Respondent must comply with all conditions of probation imposed in the underlying criminal matters and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

7. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation

Plan/Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of Respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.¹²

Multistate Professional Responsibility Examination

It is further recommended that Alexander Michael Kaplan be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

It is recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and such costs are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Direction Re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) of the Rules of Procedure of the State Bar, all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.


It is further ordered that protected and sealed material will only be disclosed to:

¹² The court will not order Respondent to provide proof of attendance at State Bar Ethics School and passage of the test given at the end of that session, as Respondent successfully completed Ethics School on August 4, 2016.

(1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: August 21, 2017


YVETTE B. ROLAND
Judge of the State Bar Court

ORIGINAL

(Do not write above this line.)

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

PUBLIC MATTER

<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: 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."

MSL

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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:

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.

(Do not write above this line.)

In the Matter of: Alexander Michael Kaplan	Case number(s): 14-C-3389 14-C-3391 14-C-4989
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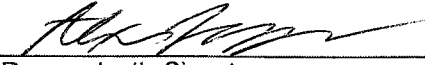

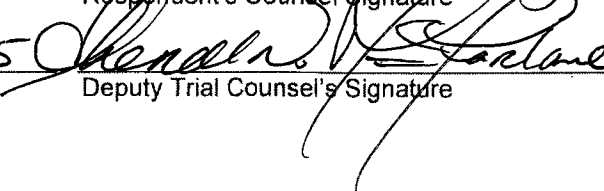
SIGNATURE OF THE PARTIES

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.

<u>3/24/15</u> Date	 Respondent's Signature	<u>Alexander Michael Kaplan</u> Print Name
<u>3/26/15</u> Date	 Respondent's Counsel Signature	<u>Marisol Ocampo</u> Print Name
<u>March 27, 2015</u> Date	 Deputy Trial Counsel's Signature	<u>Sherell N. McFarlane</u> Print Name

(Do not write above this line.)

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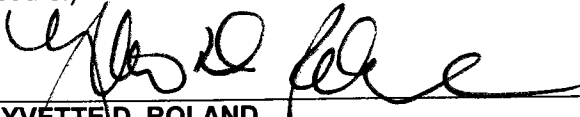
ALTERNATIVE DISCIPLINE PROGRAM ORDER

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:

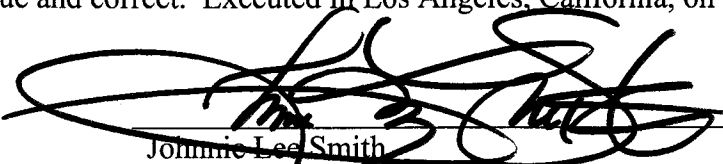
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**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

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 August 22, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS;
STIPULATION RE FACTS AND CONCLUSIONS OF LAW FILED 6/8/15

in a sealed envelope for collection and mailing on that date as follows:

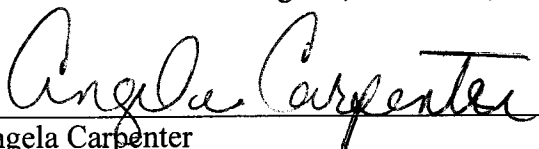
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

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 August 22, 2017.



Angela Carpenter
Case Administrator
State Bar Court