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JUL 25 2018

STATE BAR COURT OF CALIFORNIA

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 15-C-10263-LMA
)	
MELINA SHALYSSE BENNINGHOFF,)	DECISION AND DISCIPLINE
)	ORDER; ORDER SEALING CERTAIN
A Member of the State Bar, No. 167711.)	DOCUMENTS
_____)	

Introduction

In this conviction referral proceeding, respondent Melina Shalysse Benninghoff (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 order Respondent privately reprovved with a reprovall condition period for one year.

Significant Procedural History

Following the transmittal to the State Bar Court of the records of Respondent's misdemeanor conviction, including notice of the finality of the conviction, the Review Department of the State Bar Court issued an order on May 5, 2016, in case No. 15-C-10263, 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 Respondent's violation of Vehicle Code section 23103/23103.5¹ (reckless driving involving alcohol) involved moral turpitude or other misconduct warranting discipline.

On May 10, 2016, a Notice of Hearing on Conviction (NOH) was filed against Respondent, and the matter was assigned to the Honorable Pat McElroy. Respondent filed an answer to the NOH on May 25, 2016.

On June 20, 2016, Judge McElroy filed an order referring this matter to the State Bar Court's ADP for evaluation of Respondent's eligibility for participation in that program. A status conference was scheduled in this matter with the undersigned judge.

Respondent initially contacted the State Bar's Lawyer Assistance Program (LAP) on June 27, 2016, to assist her with her substance abuse issue.

The parties thereafter entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case No. 15-C-10263. The Stipulation sets forth the factual findings, legal conclusions, and mitigating circumstances in this matter. The Stipulation was received by the court on August 16, 2016.

On September 19, 2016, the court received Respondent's original Nexus Statement, which established a nexus between Respondent's substance abuse issue and her misconduct in this matter.

Respondent was accepted into the LAP on October 12, 2016, and entered into a long-term Participation Plan with the LAP on October 18, 2016.²

¹ Although the Review Department's referral order states that Respondent was convicted of violating Vehicle Code section 23103/23103.5, the superior court plea form signed by Respondent reflects that she pleaded guilty to Vehicle Code section 23103.5 with DUI terms.

² This is the date that Respondent signed the Participation Plan.

On November 14, 2016, the parties submitted their recommendations to the court regarding the appropriate level of discipline (1) if Respondent successfully completed the ADP, and (2) if Respondent was terminated from, or failed to successfully complete, the ADP.

On December 19, 2016, the court lodged its Confidential Statement of Alternative Disposition and Orders (Confidential Statement) setting forth the discipline to be imposed or recommended to the Supreme Court if Respondent successfully completed the ADP, or if Respondent was terminated from, or failed to successfully complete, the ADP. Thereafter, Respondent and her counsel executed a Contract and Waiver for Participation in the State Bar Court's ADP (Contract);³ the court signed an order approving the parties' Stipulation; the parties' Stipulation was filed; and the court accepted Respondent for participation in the ADP.⁴ Respondent's period of participation in the ADP commenced on December 19, 2016.

Respondent thereafter participated successfully in the both the LAP and the State Bar Court's ADP.

On May 3, 2018, the court received a Certificate of One Year of Participation in the Lawyer Assistance Program – Substance Use, which reflects that for at least one year prior to May 2, 2018, the LAP is not aware of the use of any unauthorized substances by Respondent.

The court filed an order on July 2, 2018, finding that Respondent has successfully completed the ADP, and the matter was submitted for decision on that date.

Findings of Fact and Conclusions of Law

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

³ The Contract was lodged on December 19, 2016.

⁴ The order approving the parties' Stipulation was signed by the court on December 19, 2016; the parties' Stipulation was filed on December 19, 2016; and the court accepted Respondent for participation in the ADP on December 19, 2016.

Factual Findings

Case No. 15-C-10263

In this conviction referral matter, Respondent entered a plea of guilty to a violation of Vehicle Code section 23103.5 [reckless driving involving alcohol], a misdemeanor, on December 16, 2015, and the Madera County Superior Court found Respondent guilty of that offense. The court suspended the imposition of sentence, and Respondent was placed on informal probation for two years.

Respondent was drinking at her home with others on October 11, 2014. Respondent, while driving under the influence of alcohol, at approximately 8:42 p.m., allowed her car to drift across the double yellow lines directly into oncoming traffic, to wit, a Chowchilla police officer in a marked patrol unit. The police officer avoided a collision by pulling off of the roadway onto the shoulder. When the police officer stopped Respondent, her eyes were watery and bloodshot, she emitted an odor of alcohol, and her speech was slurred. Respondent, when asked why she crossed the double yellow line nearly hitting the officer, replied that her dog had jumped on her head causing her to swerve. She admitted to consuming two glasses of wine, which she described as a ““little bit””⁵ of alcohol. A preliminary alcohol screening device recorded a blood alcohol content of .225%. When the officer asked Respondent to take a second such test, she refused. After being arrested and admonished that she was required to submit to a chemical test, a breath test was administered which recorded a blood alcohol content of .19% and .18%.

Respondent also has a prior offense related to driving under the influence of alcohol. On May 18, 2010, Respondent was driving her automobile at approximately 11:30 p.m. after she had been drinking and drove her vehicle into an electric pole which was located close to her home. After the accident, Respondent left the scene and went to her home. The California Highway

⁵ Stipulation, page 6, numbered paragraph 4, line 5.

Patrol responded to the scene. The hood of the vehicle was warm, the inside of the vehicle emitted a strong odor of alcohol, and Respondent's personal effects were on the roadway by the driver's side door. A DMV registration inquiry revealed the registered owner's address, which was that of Respondent. The officer went to Respondent's residence and observed her looking through the window at the collision scene. A wine glass with residual wine was observed by the officer in the yard of Respondent's home. The officer knocked on Respondent's door, and, after approximately two minutes, Respondent answered the door wearing a t-shirt with what appeared to be a wine stain. Respondent's eyes were watery and red, she smelled of alcohol, her speech was slurred, and she was not steady on her feet. She told the officer that she needed to find her dog as it had gone missing. Respondent denied any knowledge of a collision involving her vehicle. She claimed to have had 2 ½ glasses of wine at about 9:00 p.m. and refused to answer questions. On several occasions, Respondent instructed her husband not to speak to the responding officers. Respondent was arrested. She pleaded no contest to having a blood alcohol content of .20% and violating Vehicle Code section 23103(a) via 23103.5 [alcohol-related wet reckless], a misdemeanor.

Conclusion of Law

Respondent stipulated that the facts and circumstances surrounding her violation(s) did not involve moral turpitude, but did involve other misconduct warranting discipline.

Aggravation⁶

There are no aggravating circumstances surrounding Respondent's misconduct.

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⁶ All references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Mitigation

No Prior Record of Discipline

Respondent has no prior record of discipline. At the time of her first alcohol-related offense in May 2010, Respondent had been in practice for 16 years without a prior record of discipline.⁷ However, the parties stipulated, and the court finds, that although Respondent's lack of a prior record of discipline is entitled to "some mitigation,"⁸ the weight of such mitigation is tempered due to Respondent's offense again in 2015.

Candor/Cooperation with State Bar & Remorse/Recognition of Wrongdoing

The parties stipulated that in entering into a Stipulation in this matter, "[R]espondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative [sic] credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)" The court concurs.

Other

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

⁷ The parties stipulated that Respondent had 13 years of practice with no prior record of discipline; however, this seems to be in error, as Respondent was admitted to practice law in California on December 14, 1993.

⁸ Stipulation, page 7, last line.

358, 367.) Respondent's abuse was clearly addictive in nature; causally contributed to her 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 standards 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, and 2.16(b) and *In re Kelly* (1990) 52 Cal.3d 487; *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108; and *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

Because Respondent has now successfully completed the ADP, this court, in turn, now imposes the lower level of discipline set forth in the court's Confidential Statement for successful completion of the ADP.

Discipline Order

Accordingly, it is ordered that Respondent **Melina Shalyse Benninghoff, State Bar No. 167711**, is hereby privately reprovved. Pursuant to the provisions of rule 5.127 of the Rules of Procedure of the State Bar (Rules of Procedure), the private reprovval will be effective when this decision becomes final. Furthermore, pursuant to California Rules of Court, rule 9.19(a) and rule

5.128 of the Rules of Procedure, the court finds that the interest of Respondent and the protection of the public will be served by the following specified conditions being attached to the private reproof imposed in this matter. Failure to comply with any condition(s) attached to this private reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is hereby ordered to comply with the following conditions attached to her private reproof for one year following the effective date of the private reproof.

Reproof Conditions:

Comply with State Bar Act, Rules of Professional Conduct, and Reproof Conditions

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reproof.

Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the

effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the reprobation conditions period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the reprobation conditions period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the reprobation conditions period and no later than the last day of the reprobation conditions period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the reprobation conditions period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

State Bar Ethics School

Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.

Criminal Probation

Respondent must comply with all probation conditions imposed in the underlying criminal matter(s) and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during

the reprobation conditions period, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

Compliance with Lawyer Assistance Program Monitoring Plan

Respondent must fully comply with Respondent's Lawyer Assistance Program Participation Plan. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of her Participation Plan to the Office of Probation. Respondent must provide the Lawyer Assistance Program (LAP) with a satisfactory written waiver authorizing LAP to provide the Office of Probation and the State Bar Court with information regarding the terms and conditions of Respondent's participation in LAP and Respondent's compliance or non-compliance with LAP requirements. Revocation of such waiver is a violation of this condition. Respondent will be relieved of this condition upon providing satisfactory certification of successful completion of LAP to the Office of Probation. Voluntary or involuntary termination from LAP prior to successful completion of the program constitutes a violation of this condition.

Direction Re Decision and Order Sealing Certain Documents

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

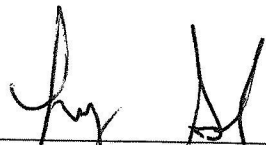
It is further ordered that protected and sealed material will only be disclosed to:

(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: July 25, 2018



LUCY ARMENDARIZ
Judge of the State Bar Court

(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		PUBLIC MATTER
Counsel For The State Bar Robert A. Henderson Supervising Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2385 Bar # 173205	Case Number (s) 15-C-10263-LMA	(for Court's use) FILED  DEC 19 2016 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jonathan I. Arons Law Office of Jonathan I. Arons 100 Bush St., Suite 918 San Francisco, CA 94104 (415) 957-1818 Bar # 111257	Submitted to: Assigned Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: MELINA SHALYSSE BENNINGHOFF Bar # 167711 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 14, 1993**.
- (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 **9** 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."

(Do not write above this line.)

- (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(h) & 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) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involved uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.

(Stipulation form approved by SBC Executive Committee 9/18/2002. Rev. 7/1/2015.)

Program

(Do not write above this line.)

- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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.

(Do not write above this line.)

Additional mitigating circumstances: Pre-trial stipulation; No prior record of discipline - See attachment to stipulation at p. 7.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MELINA SHALYSSE BENNINGHOFF
CASE NUMBER: 15-C-10263-LMA

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 15-C-10263 (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 January 5, 2015, the Madera County District Attorney filed a criminal complaint in the Madera County Superior Court, case no. CCR047857, charging respondent with one count of violation of Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor; one count of violation of Vehicle Code section 23152(b) [Driving Under the Influence w/BAC of 0.08 percent or higher]; and one count of violation of Vehicle Code section 21650 [Driving on the Wrong Side of Roadway] a misdemeanor, committed on October 11, 2014.
3. On December 16, 2015, the court entered respondent's plea of guilty to the count of violation of Vehicle Code section 23103.5 [Reckless Driving Involving Alcohol], a misdemeanor, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining counts in the furtherance of justice.
4. On January 27, 2016, the court suspended the imposition of sentence and placed respondent on informal probation for a period of two years. The court ordered that respondent, among other things: (1) obey all laws, federal, state and local; (2) advised respondent of Vehicle Code section 23593, which states: "You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder."; (3) 2 days CTS; (4) pay a \$725 fine; and (5) Contact DUI Program and Enroll by 04-01-2016/Attend and Complete wet reckless component of 3 month DUI program.
5. On May 5, 2016, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

1. On October 11, 2014, respondent was drinking at her home with Eugene S. and Katherine S. Respondent decided to leave in her automobile. Eugene S. and Katherine S., knowing that respondent had been drinking alcohol attempted to stop respondent from leaving. They were unsuccessful.
2. On October 11, 2014, at approximately 8:30 p.m. respondent was driving her automobile in Chowchilla California. Respondent had been drinking alcohol previously with Eugene S. and Katherine S..
3. At approximately 8:42 p.m. respondent while driving under the influence of alcohol allowed her car to drift across double yellow lines, directly into the oncoming traffic, which happened to be a Chowchilla Police Officer driving a fully marked Chowchilla Police patrol unit. The police officer had to pull off of the roadway onto the shoulder in order to avoid a collision.
4. At approximately 8:42 p.m. the police officer made a traffic stop of respondent. Respondent's eyes were bloodshot and watery, she slurred her speech and she emitted an odor of alcohol. When asked by the police officer why she crossed the double yellow line nearly hitting the police officer, respondent stated that her Chihuahua jumped on her head causing her to swerve. Respondent admitted to consuming a "little bit" of alcohol, which she described as two glasses of wine.
5. Respondent blew into a Preliminary Alcohol Screening Device ("PAS"). The first attempt was unsuccessful as respondent failed to blow adequate air into the device. Respondent's second blow into the PAS registered a Blood Alcohol Content ("BAC") of .225%.
6. The police officer asked respondent to take a second PAS test, which respondent refused to do.
7. The police officer arrested respondent for a violation of Vehicle Code section 23152(a) DUI.
8. After arrest respondent was admonished that she was required to submit to a chemical test of her choice. Respondent chose a breath test. Respondent was tested on a California DOJ Drager Alcotest 7510. The first test was administered on October 11, 2014 at 10:26 p.m., which registered respondent's BAC at .19%. The second test was administered on October 11, 2014 at 10:29, which registered respondent's BAC at .18%.

ADDITIONAL BACKGROUND FACTS:

9. Respondent has a prior driving under the influence related offense.
10. On May 18, 2010, at approximately 11:30 p.m. respondent was driving her automobile in Chowchilla California. Respondent had been drinking alcohol prior to driving. Respondent drove her automobile into an electric poll, which was located in close proximity to respondent's home. Respondent left the scene of the accident and went to her residence.
11. On May 18, 2010, at approximately 11:30 p.m. an officer of the California Highway Patrol responded to the scene. The hood of the automobile was warm to the touch, respondent's personal effects were located on the roadway by the driver's side door and the inside of the vehicle emitted a strong odor of alcohol. The officer ran a DMV registration inquiry which disclosed the registered owner's address, which was respondent's address. The officer located respondent at her residence, which was approximately 160 feet from the scene of the accident.

12. Once at respondent's address the officer observed respondent looking through the window at the collision scene. The officer observed a wine glass with residual wine in the yard of respondent's residence. The officer knocked on the door of respondent's residence. Respondent answered the door after approximately two minutes. Respondent was wearing a T-shirt, which had what appeared to be a wine stain. Respondent smelled of alcohol. Respondent told the officer that her dog had gone missing and she needed to find it. The officer noted that respondent's eyes were red and watery, that her speech was slurred and she was unsteady on her feet. Respondent denied any knowledge of a collision involving her automobile. Respondent claimed to have had 2 ½ glasses of wine at about 9:00 p.m.. Respondent refused to answer any questions. Respondent's husband confirmed that the wine glass in the yard was his and respondent's. Respondent's husband stated that he had been in bed asleep since 10:40 p.m. Respondent on several occasions instructed her husband not to talk to the responding officers. Respondent's husband confirmed that respondent was the only driver of the automobile involved in the accident.

13. On May 19, 2010, at approximately 00:20 a.m. respondent was arrested for a violation of Vehicle Code section 23152(a) DUI.

14. On June 19, 2010, the Madera County District Attorney filed a criminal complaint in the Madera County Superior Court, case no. CCR031174, charging respondent with one count of violation of Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor; one count of violation of Vehicle Code section 23152(b) [Driving Under the Influence w/BAC of 0.08 percent or higher]; one count of violation of Vehicle Code section 20002(a) [Hit and Run with Property Damage] and one count of violation of Vehicle Code section 16028(a) [Driving w/o Evidence of Insurance] an infraction., committed on May 18, 2010.

15. On July 7, 2011, respondent pled no contest to having a BAC of .20% and violating a new or reduced charge of Vehicle Code section 23103(a) via 23103.5 [Alcohol Related Wet Reckless], a misdemeanor, the court dismissed the other counts on motion by the people. Thereafter the court imposed sentence.

CONCLUSIONS OF LAW:

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

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

No prior record of discipline: Respondent has been in practice since December 14, 1993, with no prior record. Her first driving with alcohol offense took place in May 2010 and repeated in 2015. The period of time, 13 years with no prior discipline, is worthy of some mitigation, although tempered

because of the repeated offense in 2015. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of July 14, 2016, the prosecution costs in this matter are \$2,507. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

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: MELINA SHALYSSE BENNINGHOFF	Case number(s): 15-C-10263-LMA
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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>7/18/16</u> Date	<u>Melina Benninghoff</u> Respondent's Signature	<u>Melina S. Benninghoff</u> Print Name
<u>August 1, 2016</u> Date	<u>[Signature]</u> Respondent's Counsel Signature	<u>Jonathan I. Arons</u> Print Name
<u>8/16/2016</u> Date	<u>[Signature]</u> Deputy Trial Counsel's Signature	<u>Robert A. Henderson</u> Print Name

SUSAN CHAN Fu
RH.
8/16/2016

(Do not write above this line.)

In the Matter of: MELINA SHALYSSE BENNINGHOFF	Case Number(s): 15-C-10263-LMA
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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.)

Dec. 14, 2016
Date


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 December 19, 2016, I deposited a true copy of the following document(s):

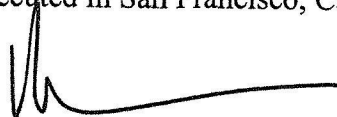
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

By personally delivering a copy of said document(s) to:

TREVA R. STEWART
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

JONATHAN I. ARONS
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 19, 2016.



Vincent Au
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 Court Specialist 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 July 25, 2018, I deposited a true copy of the following document(s):

DECISION AND DISCIPLINE ORDER; ORDER SEALING CERTAIN DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

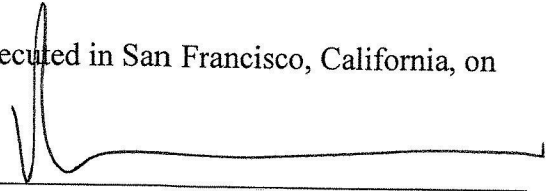
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JONATHAN IRWIN ARONS
LAW OFC JONATHAN I ARONS
100 BUSH ST STE 918
SAN FRANCISCO, CA 94104

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

Johnna Sack, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 25, 2018.



Vincent Au
Court Specialist
State Bar Court