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<b>State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION</b>		
Counsel For The State Bar  <b>Amanda F. Sanchez</b> Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1080  Bar # 254880	Case Number(s): <b>15-C-15017-DFM</b>	For Court use only  <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>  <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">OCT 18 2016</div> <div style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
In Pro Per Respondent  <b>Rebecca Lynn Ocain</b> 270 E. Douglas Avenue El Cajon, CA 92020 (619) 431-1076  Bar # 215907	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: <b>REBECCA LYNN OCAIN</b>  Bar # 215907  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 3, 2001**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(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 or a separate attachment entitled "Prior Discipline."
- (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 involves 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..

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- (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)  **Candor/Lack of 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. See Attachment, p. 10.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (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. **See Attachment, p. 10.**
- (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. **See Attachment, pp. 10-11.**
- (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.

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- (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 subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

**Pre-Trial Stipulation: See Attachment, p. 10.**

**No Prior Discipline: See Attachment, p. 10.**

**Good Character: See Attachment, p. 10.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

The above-referenced suspension is stayed.

- (2)  **Probation:**

Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

**E. Additional Conditions of Probation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

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- (3)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (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 or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

#### F. Other Conditions Negotiated by the Parties:

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (2)  **Other Conditions:**

**Additional Probation Condition:**

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

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

**The program called "Moderation Management" is not acceptable because it is not abstinence-based and allows the participant to continue consuming alcohol.**

**Respondent must contact the Office of Probation and obtain written approval for the program Respondent has selected prior to attending the first self-help group meeting. If Respondent wants to change groups, Respondent must first obtain the Office of Probation's written approval prior to attending a meeting with the new self-help group**



offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

6. At all times relevant herein, Respondent was a Deputy District Attorney in San Diego County.

7. On August 8, 2015, while on probation imposed as a result of a prior DUI conviction, Respondent drove while intoxicated. Due to Respondent's level of intoxication, she failed to stop for a posted stop sign in San Diego County and collided into a retaining wall.

8. A witness saw Respondent's vehicle on the dirt hill in front of him after the collision. He approached and asked what happened. Respondent said that her steering wheel did not work and then stated that her brakes did not work.

9. A second witness heard the collision and walked up to the scene on the driver's side of Respondent's vehicle. The witness noticed that the driver's side airbag had deployed and asked Respondent if she was hurt. Respondent indicated that she was okay. Respondent's speech was slurred and she was obviously drunk. Respondent became upset, stated that she needed to go home, and began walking down the road away from the scene of the collision.

10. California Highway Patrol ("CHP") officers responded to the scene of the collision, while a San Diego Police Department deputy was dispatched to contact Respondent approximately ¼ mile west of the collision scene. The police officer approached Respondent while she was walking and asked Respondent if she was involved in the collision and if she was hurt. Respondent said that she crashed her car up the street and was walking home. She also said that she had hurt her left wrist and needed medical attention. The police officer placed Respondent in the rear seat of her patrol car. While interacting with Respondent, the officer could smell the strong odor of an alcoholic beverage emitting from Respondent's breath and noticed she was unsteady on her feet.

11. One of the CHP officers arrived and asked Respondent to relate the details of the collision. Respondent said that she had gone through the stop sign, seen a small animal in front of her vehicle, swerved to miss it, and hit the retaining wall. The CHP officer also could smell alcohol on Respondent's breath, and her eyes were red and watery. Respondent said that she'd had two glasses of wine before leaving her house. The officer administered several field sobriety tests, which Respondent failed. Respondent submitted to Preliminary Alcohol Screening ("PAS") tests which showed Respondent's blood alcohol concentration level was .330 and .320 percent. The officer determined that Respondent was under the influence of alcohol at the time of the collision.

12. Respondent was arrested and transported to a hospital for medical treatment as Respondent complained about pain in her left wrist. While at the hospital, a blood sample was drawn from Respondent. Respondent's blood alcohol concentration level was 0.30 percent.

13. Respondent's prior DUI conviction stems from her arrest on October 18, 2013, when Respondent drove while intoxicated and crashed into a light post in an Albertson's parking lot.

14. A San Diego County Sheriff's Department deputy responded to the scene and noticed that Respondent's eyes were droopy, watery and blood-shot, her pupils appeared dilated, her speech was slurred, and he could smell the odor of an alcoholic beverage emanating from Respondent and her



breath. When he asked Respondent to turn off her vehicle's headlights, she began fumbling with the dash controls and was not able to do so. Her movements were slow and disorganized.

15. When the officer asked Respondent to step out of her vehicle, Respondent almost fell to the ground upon exiting her vehicle. The officer grabbed Respondent's arm to assist her with standing and ordered Respondent to step over to his patrol vehicle. As Respondent walked around her vehicle to get to the patrol vehicle, Respondent fell onto her vehicle, grabbing the rear portion of her vehicle above the bumper. The officer asked Respondent to stand up straight and look at him. Respondent almost fell to the ground again and blurted out, "I can't even stand up." The officer once again assisted Respondent by holding onto her arm and advised her to lean up against his patrol vehicle for stability.

16. When asked to submit to a series of preliminary field sobriety tests, Respondent replied, "Oh no you're not." Respondent told the officer that she had just left the Alpine Brewery where she had four beers. When the officer asked Respondent what kind of beers she was drinking Respondent replied, "You know, the hard kind." The officer informed Respondent that he was going to perform some alcohol sobriety tests and immediately held up his pen in his left hand and was going to check Respondent's eyes for gaze nystagmus. Respondent then turned away and stated, "I'm not doing any sobriety tests."

17. Respondent was arrested for driving while intoxicated. Respondent was again asked if she would provide a breath, urine or blood sample to which she replied, "No, I'm not going to do anything without my attorney." Respondent then refused to answer several questions regarding filling out booking paperwork and refused to allow any photos of her to be taken. Respondent was asked again if she would submit to a blood, breath or urine sample and Respondent replied, "No." The officer told her that he would contact a phlebotomist to obtain a sample of Respondent's blood. Respondent adamantly replied, "I'm only talking to my attorney." Respondent was then transported to the Sheriff's station.

18. Once at the Sheriff's station, the officer obtained a search warrant in order to obtain a blood sample from Respondent to determine her blood alcohol concentration level. Respondent's blood alcohol concentration was .28 percent.

19. On November 25, 2013, the Attorney General's Office filed a misdemeanor complaint in San Diego County Superior Court case number C335719 charging Respondent with (1) violation of Vehicle Code section 23152(a) [Driving Under Influence of Alcohol/Drugs], a misdemeanor; and (2) violation of Vehicle Code section 23152(b) [Driving with Blood Alcohol Level of .08% or More], a misdemeanor, including a special allegation that Respondent's blood alcohol concentration level was 0.20 percent weight or more, within the meaning of Vehicle Code section 23538, subdivision (b)(2) and another special allegation that Respondent willfully refused a peace officer's request to submit to, and willfully failed to complete, the chemical test(s) pursuant to Vehicle Code section 23162, within the meaning of Vehicle Code sections 23577, 23578, and 23538, subdivision (b)(2).

20. On January 22, 2014, Respondent entered a guilty plea to one count of Vehicle Code section 23152(b) [Driving with Blood Alcohol Level of .08% or More], a misdemeanor, including the special allegation that Respondent's blood alcohol was 0.15 percent weight or more, within the meaning of Vehicle Code section 23578. All other counts were dismissed.

21. On January 31, 2014, the court suspended the imposition of sentence and placed Respondent on summary probation for a period of five (5) years with conditions, which included 180 hours of volunteer work, pay court-ordered fines, comply with standard alcohol conditions pursuant to

Vehicle Code section 23600, violate no laws, enroll in and complete the nine (9) month First Conviction Program, participate in the MADD (Mothers Against Drunk Driving) program, and have the Ignition Interlock Device for one (1) year.

#### CONCLUSIONS OF LAW:

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

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent has engaged in multiple acts of misconduct involving two separate DUI convictions. The 2015 DUI conviction also involved a hit and run conviction and constituted a violation of her criminal probation in the first case. These represent separate and distinct acts of misconduct. Multiple acts of wrongdoing are an aggravating factor. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.)

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted to the California State Bar on December 3, 2001. Respondent is entitled to significant mitigation for almost 12 years of practice without a prior record of discipline at the time of her first DUI. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant mitigation].)

**Spontaneous Candor and Cooperation (Std. 1.6(e)):** Respondent notified the State Bar of her second misdemeanor DUI conviction in a letter dated October 27, 2015, providing the State Bar with information regarding the conviction, case number and her phone number should the State Bar need further information regarding her conviction. Respondent was not required to self-report this misdemeanor conviction. However, the mitigating weight is tempered by the fact that Respondent did not cooperate with law enforcement during her first DUI arrest.

**Good Character:** Respondent is entitled to some mitigation credit for good character. She submitted 13 character letters. All of the character witnesses indicated that they were aware of Respondent's misconduct. However, most of the character witnesses are members of the legal community and therefore do not constitute a broad range of references from both the legal and general communities. Therefore, Respondent is entitled to limited mitigation credit for good character. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [three attorneys and three clients not found to constitute a broad range of references from legal and general communities].)

**Pretrial Stipulation:** By entering into this stipulation, Respondent has acknowledged her 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 Spaiith* (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].)

**Remorse/Recognition of Wrongdoing (Std.1.6(g)):** On August 12, 2015, four days after Respondent's second DUI arrest, Respondent voluntarily admitted herself into a five-day in-patient detoxification facility. Upon completion, Respondent voluntarily completed a 28-day residential substance abuse treatment program. Respondent then, voluntarily, participated in an intensive outpatient

treatment program to address her alcoholism; began regularly attending Alcoholics Anonymous (“AA”) meetings weekly; and voluntarily participated in the SCRAM Continuous Alcohol Monitoring program. All these actions were taken immediately after Respondent’s second DUI arrest and prior to her DUI sentencing on November 20, 2015. Respondent is entitled to mitigation credit as she has taken objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and has made timely atonement.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.16(b) indicates that suspension or reproof is appropriate for a final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline. Drunk driving does not involve moral turpitude *per se* and, even upon viewing the facts and circumstances, has generally been held not to rise to the level of moral turpitude. (See, e.g., *In re Kelley* (1990) 52 Cal.3d 487.) However, it has been held to constitute “other misconduct warranting discipline.” Respondent’s offenses do not involve moral turpitude, but do involve other misconduct warranting discipline. Standard 2.16(b) is most applicable to Respondent’s misconduct and therefore, a suspension or reproof is appropriate.

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, Respondent engaged in multiple acts of misconduct involving two separate DUI convictions and a hit and run conviction in connection with the 2015 DUI. However, Respondent is entitled to significant mitigation for almost 12 years of practice without a prior record of discipline prior to the first DUI, minimal mitigation for spontaneous candor

and cooperation by self-reporting to the State Bar, some mitigation for good character and recognition of wrongdoing, as well as mitigation for entering into a stipulation as to facts and culpability. Here, the mitigation outweighs the aggravation and suggests that discipline at the lower end of the range of discipline suggested by standard 2.16(b) is appropriate.

However, while Respondent's conduct in the conviction matter did not involve the practice of law, Respondent's misconduct is serious because it demonstrates a disregard for the law and public safety.

In addition, of particular concern are the facts that Respondent was a Deputy District Attorney when she committed the misconduct, she committed the second DUI while on probation for her first DUI, and her blood alcohol concentration levels were very high in both her first and second DUIs. Therefore, in order to protect the public, the courts and the legal profession, to maintain the highest professional standards, and to preserve public confidence in the legal profession, and in consideration of the mitigating and aggravating circumstances, it is appropriate that Respondent be suspended for one year, that the suspension be stayed, and that she be placed on probation for two years with conditions, including, but not limited to, that she comply with substance abuse conditions and comply with the terms and conditions of her criminal probation.

Case law also provides guidance as to the appropriate level of discipline and supports the stipulated discipline. In *In re Kelley* (1990) 32 Cal.3d 487, the Supreme Court publicly reprimanded an attorney and placed her on disciplinary probation for a period of three years subject to conditions which included her referral to the State Bar's Program on Alcohol Abuse. The attorney was convicted of drunk driving on two occasions over a 31-month period. The second incident constituted a violation of her criminal probation in the first case. The attorney's blood alcohol level in the second case was between 0.16 percent and 0.17 percent. Similarly, Respondent also has two DUI convictions, both occurring within a 26-month period, and the second incident constituted a violation of her criminal probation in the first case.

However, unlike the attorney in *Kelley*, at the time of both DUI arrests, Respondent was a Deputy District Attorney and should have known the seriousness of her drinking and driving as she worked in law enforcement for 10 years. (*Seide v. State Bar* (1989) 49 Cal. 3d 933,938 [applicant's conduct surrounding conviction for drug trafficking more egregious due to prior law enforcement background].)

Further, during both incidents, Respondent's blood alcohol concentration levels were significantly higher than in *Kelley*. Respondent's blood alcohol concentration level for the 2013 DUI arrest was .28 percent and .30 percent for the 2015 DUI arrest. Finally, unlike the attorney in *Kelley*, Respondent also had a hit and run conviction from the 2015 DUI arrest. Because Respondent was a Deputy District Attorney, had higher blood alcohol concentration levels than the attorney in *Kelley*, and was convicted of a hit and run in addition to DUI, a higher level of discipline than that imposed in *Kelley* is warranted, and suspension is appropriate.

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


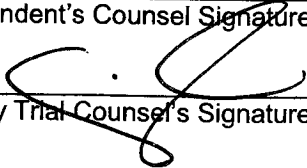
Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of September 22, 2016, the prosecution costs in this matter are \$2,567.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: <b>Rebecca Lynn Ocain</b>	Case number(s): <b>15-C-15017-DFM</b>
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### SIGNATURE OF THE PARTIES

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

<u>9/26/16</u> Date	 Respondent's Signature	<u>Rebecca Lynn Ocain</u> Print Name
<u>9/29/2016</u> Date	 Deputy Trial Counsel's Signature	<u>Amanda F. Sanchez</u> Print Name

(Do not write above this line.)

In the Matter of: Rebecca Lynn Ocain	Case Number(s): 15-C-15017-DFM
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### STAYED SUSPENSION ORDER

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 6 of the Stipulation, the following is added after the last paragraph:

“Respondent must provide to the Office of Probation satisfactory proof of attendance at the abstinence-based self-help group meetings with each Quarterly Report she submits to the Office of Probation. Respondent may not sign as the verifier of her own attendance at these meetings.

Respondent has been sober since August 10, 2015. Respondent must comply with any conditions of her criminal probation that address her past alcohol abuse.”

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

October 18, 2016  
Date

  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 18, 2016, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

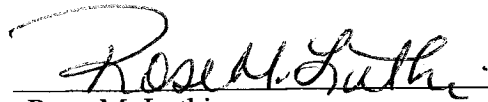
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

REBECCA L. OCAIN  
REBECCA OCAIN, ATTORNEY AT LAW  
270 E DOUGLAS AVE  
EL CAJON, CA 92020

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

AMANDA SANCHEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 18, 2016.

  
\_\_\_\_\_  
Rose M. Luthi  
Case Administrator  
State Bar Court