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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2357 Bar # 243691	Case Number(s): 15-H-14709 15-C-14056	For Court use only <div style="font-size: 2em; font-weight: bold;">FILED</div> <div style="font-size: 1.5em; font-weight: bold;">DEC 01 2015</div> <div style="font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel For Respondent Paul Jean Virgo 9909 Topanga Blvd #282 Chatsworth, CA 91311 (310) 666-9701 Bar # 67900	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: ANN KIM WALTZER Bar # 130865 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, 1987**.
- (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 **15** 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."

(Effective July 1, 2015)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

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

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case **12-C-14491-PEM**. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 12.
 - (b) Date prior discipline effective **May 7, 2014**. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 12.
 - (c) Rules of Professional Conduct/ State Bar Act violations: See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 12.
 - (d) Degree of prior discipline **Public Reproval**. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 12.
 - (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 involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (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) **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 "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 12.
- (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.
- (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

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would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Prefiling Stipulation - See "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 12.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and 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:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be 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)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.
- 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

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- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason: **One of the conditions of probation in case no. 12-C-14491-PEM was that respondent take and successfully complete Ethics School by May 7, 2015. Respondent took and successfully completed Ethics School on December 4, 2014.**

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- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

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In the Matter of: ANN KIM WALTZER	Case Number(s): 15-H-14709; 15-C-14056
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Substance Abuse Conditions

- a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least two meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program See below

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

Respondent recognizes that the facts and circumstances underlying her conviction suggest 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-

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help group (as defined herein), as a condition of discipline, is part of respondent's efforts to address such concerns.

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

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

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

Respondent must provide to the Office of Probation satisfactory proof of attendance of the meetings set forth herein with each Quarterly Report submitted to the Office of Probation. Respondent may not sign as the verifier of her own attendance.

Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ANN KIM WALTZER
CASE NUMBERS: 15-H-14709; 15-C-14056

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-H-14709 (State Bar Investigation)

FACTS:

1. On August 25, 2014, respondent signed a stipulation re facts, conclusions of law and disposition in case no. 12-C-14491-PEM. Respondent stipulated to a public reproof arising out of a misdemeanor conviction for violating Penal Code section 148(a)(1) [resisting, delaying, obstructing an officer], a misdemeanor, and Penal Code section 242-243(b) [battery on a peace officer], a misdemeanor. Amongst other conditions of probation, respondent stipulated to not consuming alcohol, filing quarterly reports, providing a declaration of compliance with underlying criminal probation, attending two meetings at an abstinence-based self-help group, providing monthly abstinence-based self-help group reports from an abstinence-based self-help group, and providing quarterly abstinence-based self-help group reports from an abstinence-based self-help group.
2. On April 16, 2014, the Hearing Department filed the stipulation and issued an order approving the stipulation. The order became effective on May 7, 2014.
3. On April 24, 2014, the Office of Probation sent a letter to respondent detailing the terms of her probation. Respondent received this letter.
4. On June 12, 2014, respondent untimely filed an attendance form from an abstinence-based self-help group for the month of May 2014 which was due on June 10, 2014. Respondent failed to attend the two requisite meetings in May 2014.
5. On July 28, 2014, respondent untimely filed her quarterly abstinence-based self-help group report which was due on July 10, 2014.
6. On October 14, 2014, respondent untimely filed her quarterly abstinence-based self-help group report which was due on October 10, 2014.
7. On January 9, 2015, respondent timely filed her quarterly report which was due on January 10, 2015. However, respondent misstated, under penalty of perjury, that she had complied with all of the conditions of the underlying reproof, including the condition that respondent not consume alcohol. In fact, respondent consumed alcohol, and was arrested for DUI, during the reporting period.

8. On April 13, 2015, respondent untimely filed her quarterly report which was due on April 10, 2015.

9. On April 13, 2015, respondent untimely filed a declaration of compliance with her underlying criminal probation which was due on April 10, 2015.

10. On May 11, 2015, respondent untimely filed her monthly abstinence-based self-help group report which was due on April 10, 2015.

11. On May 11, 2015, respondent untimely filed her quarterly abstinence based self-help group reports which were due on January 10, 2015 and April 10, 2015.

12. Respondent failed to file a compliant quarterly report which was due on July 10, 2015. On August 6, 2015, respondent attempted to file a quarterly report but it was rejected because respondent stated in the report that she had been convicted of DUI.

13. Based on the above late report, respondent also failed to provide proof of compliance with her underlying criminal probation.

14. On August 6, 2015, respondent untimely filed her quarterly abstinence based self-help group reports which were due on January 10, 2015 and April 10, 2015.

15. Respondent failed to file a monthly abstinence based self-help group report which was due on August 10, 2015.

16. On September 21, 2015, respondent untimely filed her monthly abstinence based self-help group report which was due on September 10, 2015.

CONCLUSIONS OF LAW:

17. By consuming alcohol, failing to timely submit one quarterly report by its due date of April 10, 2015, failing to submit one quarterly report by its due date of July 10, 2015, failing to timely declare, under penalty of perjury, to the Office of Probation that respondent complied with all conditions of probation in respondent's underlying criminal matter by its due date of April 10, 2015, failing to declare, under penalty of perjury, to the Office of Probation that respondent complied with all conditions of probation in respondent's underlying criminal matter by its due date of July 10, 2015, failing to timely provide proof to the Office of Probation of attendance at two abstinence-based self-help groups per month by the deadline of May 30, 2014, failing to timely provide to the Office of Probation monthly reports of attendance at abstinence-based self-help groups by their due dates of June 10, 2014, April 10, 2015, June 10, 2015, August 10, 2015 and September 10, 2015, failing to timely provide to the Office of Probation quarterly reports of attendance at abstinence-based self-help groups by their due dates of July 10, 2014, October 10, 2014, January 10, 2015, April 10, 2015, and July 10, 2015, respondent failed to comply with conditions attached to the public reproof administered to respondent by the State Bar in case no. 12-C-14491, in willful violation of Rules of Professional Conduct, rule 1-110.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which she was convicted involved other misconduct warranting discipline.

Case No. 15-C-14056 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

18. 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.

19. On December 4, 2014, in lieu of a criminal complaint, the Santa Cruz County District Attorney filed a California Highway Patrol Notice to Appear, which alleged that respondent violated Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, and Vehicle Code section 23152(b) [Driving While Having a .08% or Higher Blood Alcohol], a misdemeanor.

20. On April 20, 2015, the court entered respondent's plea of nolo contendere to a violation of Vehicle Code section 23152(b) [Driving While Having a .08% or Higher Blood Alcohol], a misdemeanor, and based thereon, the court found respondent guilty of that charge. Pursuant to a plea agreement, the court dismissed the remaining charge in the furtherance of justice.

21. On April 20, 2015, the court suspended the imposition of sentence and placed respondent on formal probation for a period of two years. The court ordered that respondent, among other things, serve three days in county jail, with credit for two days served, complete 20 hours of volunteer work, enroll in and complete a three month authorized offender program, and pay fines and fees in the amount of \$2415.

22. On October 29, 2015, respondent's counsel sent a letter to the State Bar, waiving finality of respondent's criminal conviction.

FACTS:

23. On November 1, 2014, at approximately 11:42 p.m., CHP officers responded to a call from dispatch that respondent was weaving on southbound SR-1 in Santa Cruz. CHP officers pulled behind respondent's vehicle, noticed that she was drifting across the double yellow lines, and pulled respondent over.

24. When the responding officer approached respondent's vehicle, the officer noticed a strong odor of an alcoholic beverage emanating from respondent's car, and that respondent's eyes were red and watery.

25. The responding officer asked respondent to perform Field Sobriety Tests, which respondent failed to successfully perform.

26. Respondent stated to the officer that she drank 2 glasses of wine and 1 glass of Soju earlier that evening.

27. The responding officer determined that respondent had been driving while under the influence of alcohol, and placed her under arrest for violating Vehicle Code section 23152(a). Respondent declined a preliminary alcohol screen at the scene, and requested a breath test.

28. Respondent was transported to Dominican Hospital for administration of the breath test. Two breath tests were administered to respondent, and respondent's blood alcohol content was .12% on both tests.

29. Respondent was then booked into Santa Cruz County Jail.

CONCLUSIONS OF LAW:

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

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a single prior instance of discipline. In case no. 12-C-14491-PEM, respondent stipulated to a public reproof based on a conviction for violation of Penal Code section 148(a)(1) [resisting, delaying, obstructing an officer], a misdemeanor, and Penal Code section 242-243(b) [battery on a peace officer], a misdemeanor.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent engaged in multiple violations of the conditions attached to the stipulation from Case No. 12-C-14491-PEM, and was separately convicted of a DUI. Respondent's multiple violations constitute an aggravating circumstance pursuant to Standard 1.5(b). (*See In the Matter of Tiernan* (Review Dept. 1996) 3 Cal State Bar Ct. Rptr. 523, 529 [holding that failure to cooperate with probation monitor and failure to timely file probation reports constituted multiple acts of misconduct].)

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Prefiling Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to the filing of a Notice of Disciplinary Charges, thereby saving 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].) None at this time.

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 the 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).)

Here, Standard 1.8(a) applies because respondent has a single prior record of discipline. Standard 1.8(a) provides that “[i]f a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” Respondent’s prior misconduct is neither remote in time nor lacking in seriousness. Therefore, the appropriate level of discipline must be greater than a public reproof.

In determining the specific level of discipline warranted, we turn to other applicable Standards. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” The most severe sanction applicable to respondent’s misconduct is found in Standard 2.14, which applies to her violations of Rules of Professional Conduct, rule 1-110. Standard 2.14 states that “[a]ctual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member’s unwillingness or inability to comply with disciplinary orders.”

Here, a 90-day actual suspension, as opposed to a lesser actual suspension, is warranted because respondent violated multiple conditions of probation, was separately convicted of a DUI, and because respondent’s misconduct is aggravated by multiple acts of misconduct and a prior record of discipline. A higher level of discipline is not warranted because respondent’s prior discipline did not relate to the practice of law, and because respondent substantially participated in her probation. Respondent filed several documents late with the Office of Probation, but she did file them. Respondent’s misconduct is also mitigated by a pre-filing stipulation.

Conroy v. State Bar (1990) 51 Cal.3d 799, supports a 90-day actual suspension. In *Conroy*, the Supreme Court ordered attorney Conroy actually suspended for 60-days for violating a single condition of probation – failing to timely take and pass the MPRE. (*Id.* at 802.) Respondent’s misconduct was “substantial[ly]” aggravated by a prior private reproof involving clients, the fact that respondent defaulted in his second disciplinary matter, and a lack of remorse. (*Id.* at 806) As respondent defaulted at trial, there was no evidence in the record on mitigation. (*Id.*)

Here, respondent's case is similar to, yet more egregious than, attorney Conroy's misconduct. Respondent committed more acts of misconduct than attorney Conroy did, and respondent was previously publicly reprovved, as opposed to privately reprovved. Therefore, respondent's misconduct warrants a higher of level of discipline than attorney Conroy's misconduct did.

Balancing all of the appropriate factors, a 90-day actual suspension is warranted and is consistent with the Standards and *Conroy*.

COSTS OF DISCIPLINARY PROCEEDINGS.


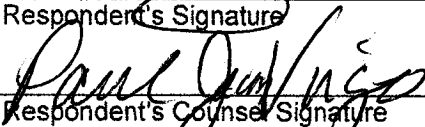

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of November 4, 2015, the prosecution costs in this matter are \$5,573. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: ANN KIM WALTZER	Case number(s): 15-H-14709; 15-C-14056
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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>11/11/15</u> Date	 Respondent's Signature	<u>Ann Kim Waltzer</u> Print Name
<u>11/11/15</u> Date	 Respondent's Counsel Signature	<u>Paul Jean Virgo</u> Print Name
<u>11/17/15</u> Date	 Deputy Trial Counsel's Signature	<u>Heather E. Abelson</u> Print Name

(Do not write above this line.)

In the Matter of: ANN KIM WALTZER	Case Number(s): 15-H-14709; 15-C-14056
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ACTUAL SUSPENSION ORDER

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

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

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

Dec 1, 2015
Date

Pat McElroy
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 1, 2015, I deposited a true copy of the following document(s):

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

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

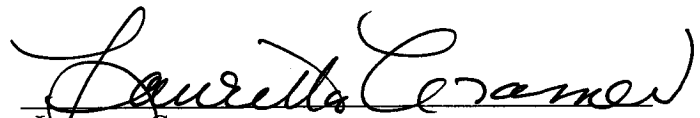
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

PAUL JEAN VIRGO
9909 TOPANGA BLVD # 282
CHATSWORTH, CA 91311

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

Heather E. Abelson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 1, 2015.


Laurretta Cramer
Case Administrator
State Bar Court