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State Bar Court of California
Hearing Department
Los Angeles
STAYED SUSPENSION

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Heather L. Meyers Contract Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1075</p> <p>Bar # 302264</p>	<p>Case Number(s): 15-O-11966</p>	<p>For Court use only</p> <p>FILED JUN 14 2016 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Andrea Jean Pflug Law Office of Andrea Pflug 2726 Motor Ave. Los Angeles, CA 90064 (310) 837-8615</p> <p>Bar # 94643</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Andrea Jean Pflug</p> <p>Bar # 94643</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 16, 1980**.
- (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 **10** 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.
- (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. **See Attachment at page 7.**
- (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.

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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

Community Service. See Attachment at page 7.
Remorse/Recognition of Wrongdoing. See Attachment at page 7.
Profiling Stipulation. See Attachment at page 7.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one (1) 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 **one (1) year**, 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.
- (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

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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:**

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Respondent was admitted to practice on December 16, 1980. She has been active from that time until present, totaling 33 years of discipline-free practice at the time of the misconduct. It should be noted that “an absence of any prior record over many years of practice coupled with present misconduct, which is not likely to recur” is a factor in mitigation (Rules Proc. Of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, Std. 1.6(a); all further references to Standards are to this source). Given respondent’s past history of many years in practice with no prior discipline, it would appear that respondent’s misconduct is aberrational and not likely to recur again. While respondent’s misconduct is serious, she is entitled to substantial mitigation for a discipline-free record after a significant number of years of practicing law. (*Hawes v. State Bar*, (1990) 51 Cal.3d 587, 596 [gave significant weight in mitigation to attorney practicing 10 years without discipline]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [mitigation credit for many years of discipline free practice given even when conduct is serious]).

Pro Bono Work/Community Service: Pro Bono and community service may mitigate an attorney’s misconduct. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Respondent has been a school docent at the Los Angeles County Museum of Art (LACMA) since 2007. This has entailed giving tours to school age children a minimum of 21 days per school year, two tours per day. She has also been on the Docent Board for LACMA from 2009 until 2015. While at LACMA, she has also twice served on the Admissions Committee, and has mentored and evaluated new docents. Additionally, from 2010 to 2013 she volunteered at Koreh LA, an organization that assists children in public schools with reading issues. During this time she met with a child once per week, from January through May, for one hour to help with reading issues, and help instill a love for reading. She has also been on the Chaver Community committee at Wilshire Temple from 2009 until present, serving as the chair for the committee for two years. The Chaver Community is set up to help members of the Temple dealing with loss and illness, and also to celebrate happy events such as marriage and births. Respondent’s clear and continued commitment to the community warrants strong mitigation. (See *In the Matter of John Young Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, finding that an extensive history of community service and pro bono work merited significant mitigation).

Remorse/Recognition of Wrongdoing: Respondent has acknowledged that she erroneously relied on her memory in affirming compliance. Respondent submitted a declaration, under penalty of perjury, that she has committed to keeping better records of her MCLE compliance. This includes creating a separate file on her computer for easy tracking of MCLE progress and document storage. (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330 [mitigative credit given for acknowledging insufficient record-keeping practices and changing them.])

Prefiling Stipulation: Respondent is entitled to mitigation for entering into the stipulation prior to the filing of disciplinary charges, thereby preserving 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].) Entering into a prefiling stipulation is also evidence of her acknowledgment of her misconduct.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistence across cases dealing with similar misconduct and surrounding

circumstances.” (Std. 1.1) The Standards help fulfill the primary purpose 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” (*In re Silvertown* (2005) 36 Cal 4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220) as they “promote the consistent and uniform application of disciplinary measures” (*In re Silvertown* at 91). As a result, the Standards should be followed “whenever possible” (*Id.* at 92, quoting *In re Young* (1989) 49 Cal.3d 257, 267) and deviations from the discipline stated in the Standards “should be elaborated with care.” (*Id.* at 92).

In determining whether to impose a sanction greater or less than the specified in a given Standard, attention should be paid to the factors set forth in the specific Standard, as well as the primary purposes of discipline; the balancing of all mitigating and aggravating circumstances; the type of misconduct at issue; whether and to what extent 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 2.11 applies to respondent’s acts of moral turpitude. Standard 2.11 states that the presumed discipline for an act of moral turpitude is disbarment or actual suspension. Standard 2.11 further states, “[t]he degree of sanction depends on the magnitude of misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law.”

While Standard 2.11 calls for actual suspension, Standard 1.7(c) indicates that mitigating factors should be considered and may demonstrate the need for a lesser sanction than called for by the Standards. Here, respondent made a grossly negligent misrepresentation, under penalty of perjury, that she completed the required 25 hour MCLE requirement when she had in fact only completed one and one half hours during the compliance period. Respondent’s misconduct circumvented the continuing legal education requirements established for the purpose of enhancing attorney competence and protecting the public. However, respondent’s 33 years of discipline free practice provides significant mitigation. Her substantial dedication to community service also provides significant mitigation. Further respondent showed remorse and accepted responsibility for her wrongdoing. Additionally, by agreeing to a pre-filing stipulation, respondent has accepted responsibility for her misconduct and saved State Bar time and resources. Further, there are no aggravating factors present. Therefore, a deviation from Standard 2.11 is warranted and a recommendation of a one year stayed suspension and one year of probation with conditions is appropriate in this matter.

Case law also supports this level of discipline. It is important to consider the Review Department decision in *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. Attorney Yee submitted her MCLE compliance card and affirmed that she had completed the requisite 25 hours during her compliance period. However, during a subsequent audit and State Bar investigation, Yee was unable to produce any record of compliance. The Review Department found that “Yee’s failure to verify her MCLE compliance before affirming it constitutes gross negligence amounting to moral turpitude for discipline purposes” (*Yee* at 334), but declined to find she had misrepresented her MCLE compliance intentionally. The Review Department found strong mitigation in Yee’s case. In particular, the Review Department noted Yee’s: (1) 10 and one half years of discipline-free practice; (2) her candor and cooperation with the State Bar during the investigation; (3) her good character as evidenced by the

testimony of eleven witnesses; (4) her immediate recognition of wrongdoing and creation of a plan to avoid such issues in the future; and, (5) her significant amount of pro bono work and service to the community. *Id.* at 335-36. In *Yee*, the Review Department imposed discipline consisting of a public reproof.

Using *Yee* as a guide, respondent is afforded substantial mitigation for her 33 years of practice without a record of discipline. Further, she has an extensive history of community service work worthy of significant mitigation. She also has shown remorse and recognition of her wrongdoing by submitting a declaration admitting her misconduct in relaying on her memory, and by developing a plan to avoid the problem in the future. Additionally, by entering into a prefiling stipulation she has shown she has taken responsibility for her misconduct and saving State Bar time and resources. However, respondents substance and breadth of mitigation are not as substantial as in *Yee*. Therefore, the application of the Standards and case law support a level of discipline greater than that imposed in *Yee*.

In light of the totality of the facts and circumstances presently available, including the mitigation of a discipline-free record and prefiling stipulation, and in light of the Standards, discipline consisting of a one year stayed suspension and a one year period of probation, is appropriate to protect the public, courts and the legal profession, maintain high professional standards by attorneys, and preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of May 11, 2016, the prosecution costs in this matter are \$3,139.00. 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.

EXCLUSION FROM MCLE CREDIT

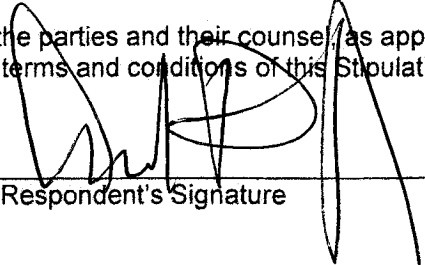
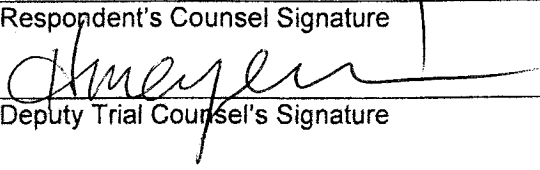
Pursuant to rule 3201, respondent may not receive MCLE credit for completion of the ethics courses ordered as a condition of her probation. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: Andrea Jean Pflug	Case number(s): 15-O-11966
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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>5/26/2016</u> Date	 Respondent's Signature	<u>Andrea Jean Pflug</u> Print Name
<u>5/31/2016</u> Date	 Deputy Trial Counsel's Signature	<u>Heather L. Meyers</u> Print Name

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In the Matter of: Andrea Jean Pflug	Case Number(s): 15-O-11966
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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.

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.)**

June 13, 2016 W. Kurt McMill
Date Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 14, 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:

**SANDREA JEAN PFLUG
LAW OFC ANDREA PFLUG
2726 MOTOR AVE
LOS ANGELES, CA 90064**

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

HEATHER L. MEYERS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 14, 2016.



Paul Barona
Case Administrator
State Bar Court