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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Alex Hackert Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 213-765-1498 Bar # 267342	Case Number(s): 16-C-13196-DFM 16-C-13197	For Court use only PUBLIC MATTER FILED OCT 31 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Anthony Radogna Law Offices of Anthony Radogna 1 Park Plaza, Suite 600 Irvine, CA 92614 949-852-7312 Bar # 261859	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: WILLIAM ANDRAI ACOSTA Bar # 207377 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 **June 6, 2000**.
- (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 **14** 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):
- 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: **Two billing cycles immediately following the effective date of the Supreme Court order in this matter.** (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 **14-O-02844. See page 10.**
 - (b) Date prior discipline effective **July 23, 2016.**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct rule 4-100(A) and Business and Professions Code section 6106.**
 - (d) Degree of prior discipline **Two year stayed suspension, two years of probation and a 60-day actual suspension.**
 - (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.
- (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 would establish was directly responsible for the misconduct. The difficulties or disabilities were not the

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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:

Pretrial Stipulation, see page 10.

Good Character, see page 10-11.

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 **120 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: **Respondent is required to complete Ethics School as part of his discipline in Case No. 14-O-02844.**

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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 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: **Respondent is required to take the MPRE as part of his discipline in Case No. 14-O-02844.**
- (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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: WILLIAM ANDRAI ACOSTA
CASE NUMBERS: 16-C-13196-DFM and 16-C-13197

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 16-C-13196 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On October 19, 2015, the Los Angeles County District Attorney filed a criminal complaint in the Los Angeles County Superior Court, case no. 5JB07648, charging respondent with one count of violation of Vehicle Code section 14601.2(a) [driving when privilege suspended or revoked for a driving under the influence conviction], a misdemeanor, one count of violation of Vehicle Code section 22350 [driving at an unsafe speed], an infraction, and one count of violation of Vehicle Code section 23247(e) [driving a vehicle not equipped with an ignition interlock device when privilege restricted], a misdemeanor.

3. On March 21, 2016, the count of violation of Vehicle Code section 22350 [driving at an unsafe speed] was dismissed on motion of the prosecution.

4. On March 21, 2016, a jury trial began.

5. On March 23, 2016, the case was submitted to the jury.

6. On March 23, 2016, the jury found respondent guilty on one count of violation of Vehicle Code section 14601.2(a) [driving when privilege suspended or revoked for a driving under the influence conviction], a misdemeanor, and one count of violation of Vehicle Code section 23247(e) [driving a vehicle not equipped with an ignition interlock device when privilege restricted], a misdemeanor, as charged in the complaint.

7. On March 23, 2016, the court suspended imposition of sentencing and placed respondent on 3 years of summary probation, including conditions that respondent serve 30 days in county jail, complete 10 days of community labor within 1 year, not drive a motor vehicle without a valid driver's license or the minimum amount of liability insurance set by law, and not operate a motor vehicle without an installed ignition interlock device for a period of 1 year.

8. Thereafter, respondent's conviction became final.

9. On July 15, 2016, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

10. On February 28, 2014, respondent was convicted of one count of violation of Vehicle Code section 23152(b) [driving under the influence with a blood alcohol content of .08% or higher], a misdemeanor, in Los Angeles County Superior Court case no. 3PK04461. The underlying incident occurred on August 30, 2013. The court sentenced respondent to three years of summary probation. As a result of the conviction, the Department of Motor Vehicles suspended respondent's driver's license and imposes the requirement that any vehicle he drives be equipped with an ignition interlock device.

11. On the afternoon of August 25, 2015, a Los Angeles County Sheriff's Deputy observed respondent driving 52 MPH in a 35 MPH zone, and initiated a traffic stop. When the deputy pulled respondent over and asked for respondent's license and registration, respondent admitted that his driver's license was suspended. The deputy ran a record check and confirmed that respondent's license was suspended.

12. The vehicle respondent was driving did not have an ignition interlock device.

13. The deputy issued respondent a citation for violations of Vehicle Code sections 14601.2(a) [driving when privilege suspended or revoked for a driving under the influence conviction] and 22350 [driving at an unsafe speed].

14. On March 23, 2016, at the conclusion of the trial in this matter, the court found respondent to be in violation of his probation in case nos. 2PK04986 (see below) and 3PK04461, based upon respondent's conviction and thereby ordered respondent's probation revoked. The court reinstated respondent's probation on the same terms and conditions, with the modification that respondent serve an additional 60 days in county jail, to be served consecutively with the sentence imposed in the present matter.

CONCLUSIONS OF LAW:

15. The facts and circumstances surrounding the above-described violations did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 16-C-13197 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

16. 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.

17. On October 22, 2012, the Los Angeles County District Attorney filed a criminal complaint in the Los Angeles County Superior Court, case no. 2PK04986, charging respondent with one count of violation of Penal Code section 243(b) [battery upon a peace officer or other designated persons], a misdemeanor, and one count of violation of Penal Code section 273.5(a) [inflicting corporal injury to spouse], a misdemeanor.

18. On February 3, 2014, a jury trial began.

19. On February 6, 2014, on motion of the prosecution, the complaint was amended by interlineation to add one count of violation of Penal Code section 242 [battery], a misdemeanor.

20. On February 6, 2014, the court entered respondent's plea of nolo contendere to the count of violation of Penal Code section 242 [battery], a misdemeanor, and based thereon, the court found respondent guilty of that count. The remaining counts were dismissed pursuant to plea negotiations.

21. On February 6, 2014, the court suspended imposition of sentencing and placed respondent on three years of summary probation, including conditions that respondent serve 3 days in county jail, stay 100 yards away from Ms. X, and within 30 days enroll in and then complete a 52-week domestic violence treatment program.

22. Thereafter respondent's conviction became final.

23. On July 15, 2016, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

24. On the night of September 29, 2012, respondent was driving home with his wife, Ms. X, when the couple got into an argument. At some point during the argument, Ms. X called 911, reporting that respondent had hit her and that he had been drinking.

25. Los Angeles County Sheriff's Deputies responded to respondent's residence. Upon arrival, they found respondent outside the house. The deputies observed scratches to respondent's cheek and forearm, from being struck by Ms. X, and that respondent's breath smelled of alcohol. Respondent declined to speak with the deputies and declined medical attention. The deputies detained respondent, placing him the back seat of a patrol car, while they conducted their investigation.

26. Ms. X was also outside, and was crying. The deputies observed some swelling and small lacerations to her lips, and that her breath smelled of alcohol. She refused medical attention and declined to obtain an Emergency Protective Order against respondent. She then refused to cooperate any further with the deputies.

27. While respondent was handcuffed and seated in the back of a patrol car, he began to complain of difficulty breathing. A Fire Department medical unit was summoned to attend to respondent. While a firefighter was attending respondent, respondent spat in the firefighter's face without any warning or provocation.

28. The deputies arrested respondent for violations of Penal Code sections 243(b) [battery upon a peace officer or other designated persons] and 273.5(a) [inflicting corporal injury to spouse].

CONCLUSIONS OF LAW:

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

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline, consisting of a two year stayed suspension, two years of probation and a 60-day actual suspension, which went into effect on July 23, 2016 (State Bar case no. 14-O-02844). In that matter, respondent was found culpable after trial of one count of violating Rules of Professional Conduct rule 4-100(A) [failure to maintain client funds in trust] and one count of violating Business and Professions Code section 6106 [moral turpitude – misappropriation by gross negligence]. The misconduct took place between November 2013 and January 2014. Respondent opened a marker account with a Nevada casino. In November 2013 respondent updated the account to connect it to respondent’s client trust account. In January 2014, respondent obtained \$10,000 in casino chips on the marker account. After he did not repay the casino, the casino presented the marker to respondent’s bank to collect payment for the \$10,000. This resulted in settlement funds belonging to two of respondent’s clients being withdrawn from the client trust account for payment to the casino. The clients would receive their funds after respondent quickly replenished his CTA. Respondent was given mitigating credit for having no prior record of discipline in 13 years of practice, lack of real harm to the clients, entering into a pretrial stipulation of facts and “compelling mitigation based on his extraordinary good moral character”.

As discussed in detail below, since there is an overlap between the misconduct at issue in this case and respondent’s prior record of discipline, the effect of respondent’s prior discipline is properly analyzed under the totality analysis from *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619. Here, although respondent’s prior record of discipline factors into the analysis below, because of the reasoning set forth in *Sklar*, its aggravating weight is diminished. (See Analysis section, below.)

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney’s stipulation to facts and culpability was held to be a mitigating circumstance].)

Good Character: As discussed above, in respondent’s prior record of discipline he received mitigating credit based on evidence of 20 witnesses who attested to their belief in respondent’s good moral character. However, that evidence was only balanced with the misconduct in the prior matter and there is no evidence to show that these witnesses are aware of respondent’s criminal convictions. (See *In the Matter of Song* (Review Dept. 20 13) 5 Cal. State Bar Ct. Rptr. 273, 280 [limited weight was assigned to good character evidence where attorney failed to establish that his witnesses knew the full extent of his misconduct].) Thus, the weight of respondent’s previously presented mitigation is tempered. (See generally *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 600 [mitigation evidence similar to that which had been presenting a attorney’s prior discipline case and was found sufficiently mitigating to avert an attorney’s disbarment for prior misconduct, was not sufficient to

justify a recommendation short of disbarment in a subsequent matter in view of additional, serious misconduct and the need for protection of the public].)

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).)

While Standard 1.8(a) provides that if respondent has a record of one prior discipline, the discipline imposed for the current misconduct must be greater than the previous discipline unless the prior discipline was remote in time and the offense was of minimal severity, the timing of the underlying events in the current matter and respondent’s prior record of discipline create a situation where the courts have indicated that Standard 1.8(a) should not strictly apply. Instead, a “totality analysis” from *In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at 619, is instructive. Under this analysis one should consider “the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought as one case.” (*Id.* See also *In the Matter of Hansen* (Review Dept. 2016) _ Cal. State Bar. Ct. Rptr. ___, case no. 11-O-17874 at 12-14 [Standard 1.8(b) not applicable where misconduct at issue predated filing of disciplinary charges in attorney’s two prior records of discipline].) Here, there is an overlap in the two criminal cases, and the misconduct and prosecution from respondent’s prior discipline. The incident underlying the battery conviction occurred in September 2012, with respondent’s guilty plea entered in February 2014. The events in the prior discipline occurred between November 2013 and January 2014. The prosecution of such commenced in June 2015, with the Hearing Department’s decision issued in February 2016. The incident underlying the DUI conviction occurred in August 2013, with the conviction entered in February 2014. The incident underlying the driving on a suspended license conviction occurred in August 2015, with the jury rendered its verdict in March 2016. The total scope of this misconduct occurred between 2012 and 2015, and thus *Sklar’s* totality analysis should apply.

Thus, the question becomes what discipline is appropriate for all misconduct considered together. Standard 1.7 (a) requires that where an attorney acknowledges two or more acts of misconduct, and different sanctions are prescribed by the Standards that apply to those acts, the sanction imposed shall be the most severe prescribed in the applicable standard. To determine the appropriate level of discipline under *Sklar's* totality analysis, the Standard with the most severe sanction applicable amongst all the acts of misconduct must be identified.

For the purposes of these proceedings, respondent's convictions are conclusive evidence of guilt of the elements of the crimes committed. (Bus. & Prof. Code, § 6101(a); *In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 60.) Neither of respondent's two convictions involve moral turpitude. Respondent's convictions for driving when privilege suspended or revoked and driving a vehicle not equipped with an ignition interlock device do not involve moral turpitude, as analogously, driving under the influence of alcohol is not a crime that involves moral turpitude per se. (*In re Kelley* (1990) 52 Cal.3d 487.) DUI convictions have been held to constitute other misconduct warranting discipline. (*Id.* at 496 [attorney convictions for two DUI's, where the second incident occurred while the attorney was on probation for the first conviction showed a "lack of respect for the legal system"].) Thus, respondent's convictions for driving while his license was suspended and driving without an ignition interlock device, both of which were conditions imposed due to a prior DUI conviction, warrant discipline. As to respondent's battery conviction, a criminal conviction involving assaultive behavior does not, in itself, involve moral turpitude, and that is the case here. (See *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 60 [intoxicated attorney committed battery upon a police officer, held not to involve moral turpitude].) The appropriate level of discipline for this misconduct is found under Standard 2.16(b), which indicates that suspension or reproof is the presumed level of discipline for a misdemeanor conviction not involving moral turpitude, but involving other misconduct warranting discipline.

In respondent's prior discipline, his misconduct was analyzed under Standard 2.1(b), which provides that the presumed sanction for misappropriation of client funds involving gross negligence is actual suspension. Between the instant cases and the prior discipline, Standard 2.1(b) is the applicable sanction, as it is the most severe.

Respondent's total misconduct includes misappropriation by gross negligence in connection with his obtaining casino markers with repayment connected to his client trust account, and his convictions for battery, driving while his license was suspended, and driving a vehicle without an ignition interlock device. The totality of the misconduct occurred between 2012 and 2015. Respondent's criminal conduct reflects poorly on his judgment, respect for the law, fitness to practice and the legal profession. (See *In re Kelley, supra*, 52 Cal.3d at 495-496.) Coupled with the misconduct for misappropriation by gross negligence, respondent has exhibited a lengthy pattern of unethical behavior, necessitating a significant period of actual suspension in keeping with Standard 2.1(b).

Respondent previously received a 60-day actual suspension for the misconduct involving the misappropriation. As discussed above, respondent received mitigating credit under several factors, but that evidence was only balanced with the misappropriation, and not the criminal convictions. Thus, the weight of respondent's previously presented mitigation is tempered. (See *In the Matter of Song, supra*, 5 Cal. State Bar Ct. Rptr. 273 at 280; *In the Matter of Snyder, supra*, 2 Cal. State Bar Ct. Rptr. at 600.) Also, the mitigation respondent previously received for having 13 years of discipline free practice is slightly reduced since the battery incident occurred about two years before the casino marker incident. Therefore, had all three discipline cases been brought against respondent together in the same

proceeding, and weighing the misconduct with respondent's mitigation and aggravation, the appropriate level of discipline would have included a six-month actual suspension. This result will sufficiently protect the public, the courts, and the legal profession, maintain high professional standards for attorneys, and preserve public confidence in the legal profession.

Since a 60-day actual suspension has already been imposed upon respondent, the recommended level of discipline in this matter is a 120-day actual suspension, with a 2-year stayed suspension and 2 years of probation. This will have the practical effect of achieving a six-month actual suspension.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of October 13, 2016, the prosecution costs in this matter are \$3,568. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

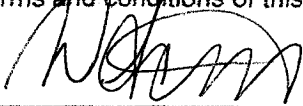
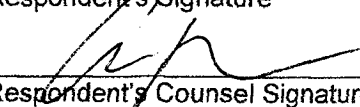
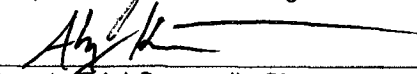
Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of discipline. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: WILLIAM ANDRAI ACOSTA	Case number(s): 16-C-13196-DFM and 16-C-13197
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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>10-24-16</u> Date	 Respondent's Signature	<u>William Andrai Acosta</u> Print Name
<u>10-27-16</u> Date	 Respondent's Counsel Signature	<u>Anthony Radogna</u> Print Name
<u>10/27/16</u> Date	 Deputy Trial Counsel's Signature	<u>Alex Hackert</u> Print Name

(Do not write above this line.)

In the Matter of: WILLIAM ANDRAI ACOSTA	Case Number(s): 16-C-13196-DFM and 16-C-13197
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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.)**

10/31/16

Date



DONALD F. MILES
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 October 31, 2016, I deposited a true copy of the following document(s):

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

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

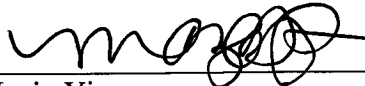
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ANTHONY P. RADOGNA
LAW OFFICES OF ANTHONY RADOGNA
1 PARK PLZ STE 600
IRVINE, CA 92614 - 5987

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

ALEX J. HACKERT, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 31, 2016.



Mazie Yip
Case Administrator
State Bar Court