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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		ORIGINAL
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<b>Counsel For Respondent</b>  <b>Edward O. Lear</b> <b>Century Law Group LLP</b> <b>5200 W Century Blvd, Suite 345</b> <b>Los Angeles, California 90045</b> <b>(310) 642-6900</b>  <b>Bar # 132699</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>In the Matter of:</b> <b>KELLY LEIGH MCDONALD</b>  <b>Bar # 223579</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

**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 17, 2002**.
- (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)

- (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
  - (b) ☐ Date prior discipline effective
  - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
  - (d) ☐ Degree of prior discipline
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct 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.

- (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 page 9
- (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 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 convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline - See page 9**

**Remorse and Recognition of Wrongdoing - See page 10**

**Pretrial Stipulation - See page 10**

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) 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 **three (3) 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 **six (6) months**.
- 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: .

### **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: .

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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: .
- (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: **September 5, 2017.**
- (5) ☒ **Other Conditions: See page 13**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      KELLY LEIGH McDONALD

CASE NUMBERS:                      17-C-03333; 18-O-11646

**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. 17-C-03333 (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 December 27, 2016, the Solano County District Attorney filed a criminal complaint in the Solano County Superior Court, case no. FCR326793, charging respondent with one count of violation of Penal Code, section 273a(a) [Child Abuse or Endangering Health of a Child], a felony, and one count of violation of Vehicle Code, section 23152(a) [Driving Under the Influence of Alcohol ("DUI")], a misdemeanor. The complaint further alleged that respondent had a prior conviction for violation of Vehicle Code section 23152(b) [Driving with a 0.08% blood alcohol level or more] committed on March 15, 2013.

3. On June 12, 2017, the court entered respondent's plea of nolo contendere to the count of violation of Penal Code, section 273a(a) [Child Abuse or Endangering Health of a Child], a felony, and to the count of violation of Vehicle Code, section 23152(a) [Driving Under the Influence of Alcohol], a misdemeanor, with a prior conviction.

4. On July 21, 2017, the conviction was transmitted to the State Bar of California pursuant to Business and Professions Code, sections 6101 and 6102 and California Rules of Court, rule 9.5 et seq.

5. On August 2, 2017, the court reduced respondent's felony conviction to a misdemeanor conviction of Penal Code section 273a(a) and placed respondent on formal probation for a period of four (4) years. The court further ordered that respondent, among other things, totally abstain from use of alcohol, marijuana, and illegal drugs, to attend and successfully complete counseling and therapy as directed by the probation officer, to attend AA meetings, to participate in a child abuse program and alcohol program as directed by the probation officer, to install and keep in place an ignition interlocking device in her vehicle for a period of three (3) years, and to enroll and successfully complete the SB-38 program.

6. On August 11, 2017, 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. The Review Department further ordered that respondent be suspended from the practice of law, effective September 5, 2017, pending final disposition of the proceeding, and that respondent comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of said rule within 30 and 40 days, respectively, after the effective date of suspension.

FACTS:

7. On April 22, 2013, respondent pled guilty to Vehicle Code, section 23152(b) [Driving with a 0.08% blood alcohol level or more]. Respondent was granted a conditional sentence of a period of 36 months wherein she was required, among other things, to participate in a First Offender Drinking Driver Program ("DDP"). Respondent successfully completed the DDP on December 2, 2014 and the conditional sentence expired on April 22, 2016.

8. On August 27, 2016, just months after respondent had completed probation from the first DUI offense, an officer from the Fairfield Police Department ("FPD") was dispatched to Round Table Pizza in Cordelia on reports that respondent, who was intoxicated, was attempting to drive away after an employee from the restaurant attempted to prevent her from doing so due to her intoxicated state. Respondent was ultimately picked up by a taxi and taken back to her residence.

9. The very next day, on August 28, 2016, officers from FPD were dispatched to Sergeant Peppers Bar and Grill to conduct a welfare check on respondent's four-year old daughter, who was with respondent at the bar while respondent was intoxicated. Respondent had a very unsteady gait as she walked around the pool table at the restaurant. Respondent had great difficulty relaying information and was not coherent. Consequently, respondent was arrested for child endangerment and public intoxication.

10. On September 9, 2016, the Solano County District Attorney filed a criminal complaint in the Solano County Superior Court, case no. FCR324050, charging respondent with one count of violation of Penal Code, section 273a(b) [Cruelty to Child by Endangering Health], a misdemeanor, and one count of violation of Penal Code, section 647(f) [Public Intoxication], a misdemeanor, as a result of the misconduct and arrest that took place on August 28, 2016. These charges were dismissed on June 12, 2017, when respondent pled nolo contendere to the criminal convictions at issue in the present action.

11. On December 15, 2016, respondent was involved in a traffic collision in the city of Fairfield, California, which resulted in her car flipping. Respondent's daughter was seated in the rear of the car at the time of the collision. A California Highway Patrol ("CHP") officer responded to a call regarding said collision and arrived at the scene at around 4:10 p.m.

12. While respondent stated that she had only one beer at 12:00 p.m. that day, her gait was extremely unsteady and she nearly fell when talking to the CHP officer. Respondent emitted an odor of alcohol, had red and watery eyes, her speech was slurred, and she had a delayed response to questions. The CHP officer conducted a series of field sobriety tests ("FST"), all of respondent's responses to which indicated intoxication. Respondent refused to submit to a Preliminary Alcohol Screening Device test.

13. Respondent and her daughter were transported to Kaiser Vallejo by ambulance. Respondent was thereafter arrested and transported to Solano County Jail. Respondent's daughter was placed in temporary custody of Child Protective Services.

14. The blood sample taken from respondent at 5:54 p.m. that day showed that she had a blood alcohol level of 0.24% (three times the legal limit).

#### 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. 18-O-11646 (State Bar Investigation)

#### FACTS:

16. On August 11, 2017, the Review Department of the State Bar Court issued an order ("August 11, 2017 Order") referring case no. 17-C-03333 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. The Review Department further ordered that respondent be suspended from the practice of law, effective September 5, 2017, pending final disposition of the proceeding, and that respondent comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of said rule within 30 and 40 days, respectively, after the effective date of suspension. This Order was served on respondent via first class mail to the address identified in respondent's State Bar profile. Respondent received the Order.

17. The deadline for respondent to file the 9.20 declaration was October 15, 2017. Respondent did not file the 9.20 declaration by this date. Instead, respondent filed the 9.20 declaration on November 13, 2017, 28 days late.

#### CONCLUSIONS OF LAW:

18. By failing to timely submit her rule 9.20 declaration in accordance with the Review Department's August 11, 2017, respondent failed to obey a court order in willful violation of California Business & Professions Code, section 6103.

#### **ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.**

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** In addition to the criminal convictions warranting discipline, respondent also violated California Business & Professions Code, section 6103 as a result of her failure to timely submit her rule 9.20 declaration as required by the Review Department in its August 11, 2017 Order.

#### **ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.**

**No Prior Discipline:** Respondent was admitted to the State Bar of California on December 17, 2002 and has no prior record of discipline. However, she was on voluntary inactive status between January 1, 2003 and April 22, 2008 (approximately 5 years, 3 months), between February 19, 2010 and August 5, 2010 (approximately 5 months), and between February 1, 2011 and October 17, 2011 (approximately 8 months). Thus, at the time of the misconduct resulting in the criminal convictions at issue in Case No. 17-C-03333, respondent had approximately 7 years of discipline-free practice.



**Remorse and Recognition of Wrongdoing:** While “substantial compliance” (e.g. late compliance) is no defense to culpability for failure to timely file a 9.20 declaration, belated compliance has been considered as a mitigating factor in determining discipline. (See e.g. *Shapiro v. State Bar* (1990) 51 Cal. 3d 251, 271; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192)

**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].)

## **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).)

In this matter, respondent admits to committing one act of professional misconduct in violation of California Business & Professions Code, section 6103 and admits to the underlying misconduct for the criminal convictions (child endangerment and driving under the influence) to which she has pled nolo contendere. 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.”

Standard 2.12 provides that disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order. (See also California Business & Professions Code, section 6103) Standard



2.16(a) provides that actual suspension is the presumed sanction for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline.

Willful violations of rule 9.20 (formerly rule 955) result in disbarment, typically when the willful failure was as to the basic notice requirements of rule 9.20(a) and/or where efforts at compliance were deemed inadequate or absent all together. (See e.g. *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131 [respondent did not send written notices to any clients informing them of his suspension]; *Powers v. State Bar* (1988) 44 Cal.3d 337, 342 [respondent did not believe that the requirements of rule 955 applied to him since he had no clients or pending cases at the time he was ordered to comply with rule 955]; *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322 [attorney's efforts at compliance were inadequate, his transfer of cases to successor counsel was done in an irresponsible manner, and his declaration filed in an attempt to comply with rule 955(c) contained inaccuracies. The attorney did not make any efforts, however belated, to comply with rule 955].)

In *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, the attorney filed a proper affidavit 21 days late, after two reminders from the probation department. The Review Department noted that had the short delay been the sole issue, disbarment would not have been necessary. (*Id.* at p. 385) However, disbarment was recommended where attorney had two prior disciplines and demonstrated "ostrich-like behavior" which resulted in her prolonged inattention to the actions taken by the State Bar and the Supreme Court. (*Id.* at p. 388.) Thus, even though "all of the proceedings stemmed from minor misconduct involving one client" (*Id.* at p. 387), the Review Department concluded that disbarment was "particularly appropriate" given the attorney's demonstrated indifference to successive disciplinary orders. (*Id.* at p. 388.)

The circumstances justifying a recommendation of disbarment are absent from the present case involving respondent's section 6103 violation. There is no evidence to suggest that respondent did not give proper notice in compliance with rule 9.20(a). Rather, she filed her declaration 28 days late before a disciplinary proceeding was initiated.

Thus a period of actual suspension is appropriate under both Standards 2.12 and 2.16. Given the seriousness of the misconduct surrounding the criminal convictions and the subsequent section 6103 violation, a significant period of actual suspension is warranted.

Respondent had a prior DUI conviction in 2013, only three years prior to the incident, where she was required to enroll in DDP. She completed DDP in 2016 and thus, she was fully aware of the dangers of drinking and driving. Yet, in September 2016, just months after completing probation from the first DUI offense, she was charged with public intoxication and child endangerment after she became highly intoxicated at a local restaurant/bar with her four-year old daughter. Despite being on heightened notice of the potential dangers and adverse consequences of her misconduct and with charges still pending, respondent again put her young daughter in danger by driving with her in the backseat with a blood alcohol concentration of 0.24% (three times the legal limit). This ultimately led to the December 2016 collision, which respondent acknowledges could have resulted in death or serious bodily injury. Respondent's misconduct is serious because it demonstrates a conscious disregard for the law and safety of others, including her own young daughter.

In aggravation, respondent is culpable of multiple acts of misconduct, where in addition to the criminal convictions warranting discipline, respondent also violated California Business & Professions Code, section 6103 as a result of her failure to timely submit her rule 9.20 declaration as required by the Review Department in its August 11, 2017 Order.

In mitigation, respondent has no prior record of discipline since being admitted in 2002, but this should be given only minimal mitigating weight, since she spent six of those years in voluntary inactive status. Thus, at the time of the misconduct resulting in the criminal convictions at issue in Case No. 17-C-03333, respondent had approximately 7 years of discipline-free practice, which is entitled to only minimal mitigating credit. (See *In re Naney* (1990) 51 Cal.3d 186, 196 [seven years of discipline free practice at time of misconduct is “not a strong mitigating factor.”]; *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 316 [eight years without discipline does not merit significant mitigation]; *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 752 (eight years not significant mitigation].) Furthermore, her prior DUI conviction and history of child endangerment occurred in close proximity to the misconduct surrounding the 2017 conviction, which suggests that the misconduct may likely recur.

Given the misconduct, the facts and circumstances surrounding the misconduct, and the aggravation and mitigating circumstances, a two-year period of stayed suspension and a three-year period of probation with conditions including an actual suspension of six months and substance abuse conditions is sufficient to achieve the purposes of discipline expressed in Standard 1.1.

Case law supports this level of discipline. In *In the matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, Jensen was convicted of misdemeanor child endangerment after leaving his nine-month-old daughter in a crib in a hotel room for at least 40 minutes while he took his toddler son for a walk. While the court concluded that “Jensen’s actions fall at the very low end of misconduct justifying professional discipline,” the court found that the conviction warranted discipline and ordered a two year stayed suspension with an actual 120 day suspension.

Jensen had two prior records of discipline from 2007 and 2011, but since the misconduct in the 2011 case occurred before he was disciplined in the 2007 case, the court assigned limiting aggravating weight to Jensen’s second prior record. Pursuant to Standard 1.7(b) (now Std. 1.8(a)), which provides that discipline should be progressive, the court imposed a longer suspension period than he had previously received (30 days). The court assigned additional mitigating weight to Jensen for his pro bono work, his remorse and recognition of wrongdoing, and stipulating to culpability.

Despite the fact that respondent does not have a record of discipline, which is only entitled to minimal mitigating weight, the seriousness of the misconduct surrounding her criminal convictions compounded by her subsequent failure to obey the Review Department’s August 11, 2017 Order warrants a greater level of discipline than that imposed in *Jensen*. Firstly, *Jensen* involved only a misdemeanor conviction of child endangerment, whereas here, respondent pled nolo contendere to a felony conviction of child endangerment.

Notably, the court in *Jensen* concluded that respondent’s actions fell “at the very low end of misconduct justifying professional discipline,” where “leaving his daughter unattended at the hotel had nothing to do with the practice of law, his child was not injured, and no substance abuse was involved.” (*In the matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 288-89) Here, in contrast, respondent drove with a blood alcohol concentration of 0.24% (three times the legal limit) with her four-year old daughter in the back seat. This resulted in a collision where her car rolled over, and could have resulted in death or serious bodily injury. What makes this situation particularly egregious is that respondent was convicted of a DUI only three years prior (in 2013) and was charged with public intoxication and child endangerment just two months before the collision. Prior incidents of the same misconduct that occurred close in time to that giving rise to the conviction at issue were not present in *Jensen*.

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 5, 2018, the discipline costs in this matter are \$6,666. 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.

## **LAWYER'S ASSISTANCE PROGRAM.**

1. During the probation period, respondent must continually participate in the Lawyer Assistance Program ("LAP"), and comply with all participation conditions of LAP, including respondent's Monitoring Plan, or any modification to any such plan or agreement (the "Plan"). Respondent must pay the expenses of LAP participation. Voluntary or involuntary termination from LAP constitutes a violation of this probation.
2. Within 10 days of signing this stipulation, respondent must provide a complete copy of this stipulation to the assigned LAP Clinical Rehabilitation Coordinator and obtain a letter from LAP acknowledging its receipt of the stipulation. Respondent must attach a copy of LAP's acknowledgement letter to the first quarterly probation report required by these conditions of probation.
3. Within 30 days of the effective date of discipline, respondent shall:
  - (a) sign a LAP waiver form promulgated by the Office of Probation and deliver it to the Office of Probation. The LAP waiver will authorize LAP to release information and documents to the Office of Probation, the Office of Chief Trial Counsel, and the State Bar Court, including but not limited to the terms and conditions of the Plan, any subsequent modifications to the Plan, respondent's compliance or failure to comply with the Plan, and the reasons for any decision to terminate respondent from the LAP. Revocation of the LAP waiver constitutes a violation of probation; and
  - (b) provide a complete copy of the Plan and any modifications to the Office of Probation.
4. Within five days of occurrence, respondent shall notify the Office of Probation of any of the following:
  - (a) that the Plan has been modified, in which case respondent shall simultaneously provide the Office of Probation a copy of the modified Plan;
  - (b) that respondent has violated any of the terms and conditions of the Plan;
  - (c) that respondent has revoked the LAP waiver; and
  - (d) that respondent has been voluntarily or involuntarily terminated from the LAP.
5. For each of the quarterly probation reports and the final report required under the terms of this probation, respondent must:
  - (a) report whether respondent has complied or not complied with the terms and conditions of the Plan during the period covered by the report;

(b) instruct LAP in writing to (1) issue a narrative account concerning respondent's participation, compliance and/or non-compliance with the terms and conditions of the Plan during the period covered by the probation report and (2) provide the narrative account to the Office of Probation on or before due date for respondent's probation report. Respondent must deliver this written instruction to LAP between 10 and 20 days before respondent's probation report is due; and

(c) Respondent shall attach a copy of the letter of instruction to the probation report.

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


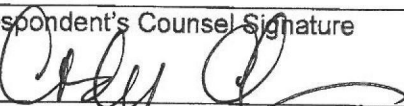
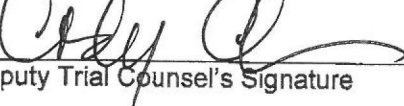
Respondent may not receive MCLE credit for completion of Ethics School required by section (E)(8) of this stipulation. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>KELLY LEIGH McDONALD</b>	Case number(s): <b>17-C-03333; 18-O-11646</b>
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### SIGNATURE OF THE PARTIES

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

<u>04/11/18</u> Date	<u></u> Respondent's Signature	<u>KELLY LEIGH McDONALD</u> Print Name
<u>4/12/2018</u> Date	<u></u> Respondent's Counsel Signature	<u>ED O. LEAR</u> Print Name
	<u></u> Deputy Trial Counsel's Signature	<u>CINDY CHAN</u> Print Name

(Do not write above this line.)

In the Matter of: <b>KELLY LEIGH McDONALD</b>	Case number(s): <b>17-C-03333; 18-O-11646</b>
--	--

### 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.

Date	Respondent's Signature	KELLY LEIGH McDONALD
4/12/18		Print Name
Date	Respondent's Counsel Signature	ED O. LEAR
		Print Name
Date	Deputy Trial Counsel's Signature	CINDY CHAN
		Print Name



(Do not write above this line.)

In the Matter of: <b>KELLY LEIGH McDONALD</b>	Case Number(s): <b>17-C-03333; 18-O-11646</b>
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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.
1. On p. 5, par. E. (1), delete the checked box regarding the "and until" condition.
  2. On p. 6, par. F. (1), check the box for Multistate Professional Responsibility Exam.

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.)**

April 30, 2018  
Date

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
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 Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 30, 2018, 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:

EDWARD O. LEAR  
CENTURY LAW GROUP LLP  
5200 W CENTURY BLVD #345  
LOS ANGELES, CA 90045

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

CINDY W.Y. CHAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 30, 2018.



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Mazie Yip  
Court Specialist  
State Bar Court