

# PUBLIC MATTER

**FILED**

DEC 16 2005

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

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In the Matter of )  
SAMUEL PAUL PLUNKETT, )  
Member No. 139418, )  
A Member of the State Bar. )

Case No. 01-C-02641-RMT  
**DECISION AND DISCIPLINE ORDER;  
ORDER FILING AND SEALING CERTAIN  
DOCUMENTS**

**INTRODUCTION**

This disciplinary proceeding arises out of the criminal conviction of respondent Samuel Paul Plunkett ("respondent") on July 15, 2002, of a violation of Penal Code section 417(a)(2) (exhibiting a firearm in an angry or threatening manner - a misdemeanor), Penal Code section 12025(a)(2) (carrying a concealed weapon - a felony), and Penal Code section 12031(a)(1) (carrying a loaded firearm, not registered - a felony).

After reaching a stipulation as to facts and conclusions of law with the Office of the Chief Trial Counsel of the State Bar of California ("OCTC"), this court approved the stipulation and accepted respondent as a participant in the State Bar Court's Alternative Discipline Program ("ADP").<sup>1</sup> (Rules Proc. of State Bar, rules 800-807.)

As set forth below, respondent has successfully completed the ADP. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of California ("Rules of Procedure"), the court hereby orders that respondent be publicly reprovved with conditions in this

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<sup>1</sup>The ADP was formerly known as the State Bar Court's Pilot Program for Respondents with Substance Abuse and/or Mental Health Issues ("Pilot Program"). The court will use ADP throughout this decision to refer to this program.



1 matter.

2 **SIGNIFICANT PROCEDURAL HISTORY**

3 On August 28, 2002, the State Bar Court Review Department issued an order suspending  
4 respondent from the practice of law pending final disposition of this proceeding in light of his  
5 felony convictions of Penal Code sections 12025(a)(2) and 12031(a)(1) and ordered him to  
6 comply with rule 955 of the California Rules of Court. The order was effective September 27,  
7 2002.<sup>2</sup>

8 On December 19, 2002, respondent entered into a participation agreement with the  
9 Lawyer Assistance Program ("LAP") to assist him with his substance abuse problem.

10 By minute order filed November 7, 2002, the Review Department referred this  
11 disciplinary proceeding to the Hearing Department, pursuant to rule 951(a) of the California  
12 Rules of Court, for a hearing and decision recommending the discipline to be imposed should the  
13 Hearing Department find that the facts and circumstances surrounding respondent's violations of  
14 Penal Code sections 417(a)(2), 12025(a)(2) and 12031(a)(1) of which respondent was convicted,  
15 involved moral turpitude or other misconduct warranting discipline.

16 Thereafter, on November 26, 2002, a Notice of Hearing on Conviction ("NOH") was  
17 filed by the State Bar Court. A copy of said notice was properly served upon respondent's  
18 counsel on that same date by certified mail, return receipt requested, at respondent's counsel's  
19 official membership records address.<sup>3</sup>

20 On December 13, 2002, respondent filed his answer to the NOH.

21 On February 6, 2003, a status conference was held in this matter, and the court referred  
22 this matter to the ADP.

23 In March 2003, respondent and the State Bar entered into a Stipulation Re Facts and  
24 Conclusions of Law in this matter.

25 \_\_\_\_\_  
26 <sup>2</sup>Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of  
27 the records of the State Bar Court Review Department.

28 <sup>3</sup>Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of  
respondent's counsel's official membership records maintained by the State Bar of California.

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On April 29, 2003, OCTC filed a brief on the issue of discipline.

In July 2003, respondent's participation agreement with the LAP was amended.

On August 7, 2003, respondent entered into a Contract and Waiver for Participation in the State Bar Court's ADP.

On August 11, 2003, the court issued a Decision Re Alternative Recommendations for Degree of Discipline pursuant to rule 803(a) of the Rules of Procedure. On that same date, the court approved the Stipulation Re Facts and Conclusions of Law submitted by the parties for purposes of respondent's participation in the ADP (Rules Proc. of State Bar, rule 802(a)) and accepted respondent into the ADP on August 11, 2003.

On September 24, 2003, respondent filed a motion with the Review Department to dismiss the August 28, 2002, interim suspension order.

On October 8, 2003, the OCTC filed its response to respondent's motion to dismiss the interim suspension order.

On October 15, 2003, the Review Department granted respondent's motion to terminate his interim suspension, and respondent's interim suspension was terminated on said date.

Over 27 months after respondent was accepted into the ADP, on November 16, 2005, this court filed an order finding that respondent had successfully completed the ADP and indicating that it would issue this decision as to the lower level of discipline set forth in the August 11, 2003, Decision Re Alternative Recommendations for Degree of Discipline.

**FACTS AND CONCLUSIONS OF LAW**

The Stipulation Re Facts and Conclusions of Law, approved by the court on August 11, 2003, is incorporated by reference as if set forth fully herein.

**Jurisdiction**

Respondent is a member of the State Bar of California, admitted March 1, 1989.

**Case No. 01-C-02641**

Respondent went into a bar in Van Nuys, California, during the early morning hours of June 21, 2001, and consumed about five or six alcoholic beverages. At some point, respondent

1 went outside to his car and came back into the bar with a backpack that contained a revolver and  
2 two semi-automatic weapons. Inside the bar, respondent exhibited one of the semi-automatic  
3 weapons. A melee ensued that involved other individuals who were present. Respondent's  
4 weapon was removed from his hand and he was held down until the police arrived and he was  
5 taken into custody. Respondent remained in custody from June 21, 2001, until the acceptance of  
6 his *nolo contendere* plea on July 15, 2002, to felony violations of Penal Code sections  
7 12025(a)(2) [carrying a concealed weapon] and 12031(a)(1) [carrying a loaded firearm] and to a  
8 misdemeanor violation of Penal Code section 417(a)(2) [exhibiting a firearm in an angry or  
9 threatening manner].

10 Respondent was sentenced to one year in county jail (with custody credits of 583 days,  
11 including 389 actual days and 194 good time/work time credits), a \$200 restitution fine and other  
12 orders.

13 The facts and circumstances surrounding respondent's violation of Penal Code sections  
14 12025(a)(2), 12031(a)(1) and 417(a)(2) do not involve moral turpitude but do involve other  
15 misconduct warranting discipline and constitute a violation of section 6068(a) of the Business  
16 and Professions Code.

### 17 AGGRAVATION AND MITIGATION

#### 18 Aggravation

19 In aggravation, respondent's misconduct significantly harmed the public because  
20 members of the public were put at risk by respondent's handling of a loaded weapon while in an  
21 intoxicated state. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof.  
22 Misconduct, std. 1.2(b)(iv) ["standard"].)

#### 23 Mitigation

24 In mitigation, respondent has no prior record of discipline in approximately twelve years  
25 of practice prior to the date of his misconduct. Such a period of practice without prior discipline  
26 is entitled to substantial weight as a mitigating factor. (Standard 1.2(e)(i); *Hawes v. State Bar*  
27 (1990) 51 Cal.3d 587, 596 [more than 10 years of practice without prior discipline is entitled to  
28 significant weight in mitigation]; *Schneider v. State Bar* (1987) 43 Cal.3d 784, 798-799 [13 years

1 of practice without prior discipline is an important mitigating circumstance].)

2        Additionally, respondent displayed candor and cooperation to the State Bar during the  
3 disciplinary investigation and proceeding. He also signed a participation agreement with the  
4 LAP and complied with the requirements of his participation agreement with the LAP. (Standard  
5 1.2(e)(v).)

6        Respondent also promptly took objective steps that spontaneously demonstrated his  
7 remorse and recognition of his misconduct. (Standard 1.2(e)(vii).)

8        Furthermore, respondent was suffering from a substance abuse problem at the time of his  
9 misconduct which was directly responsible for the misconduct, and he has established through  
10 clear and convincing evidence that he no longer suffers from such difficulties. (Standard  
11 1.2(e)(iv).)

12        The parties' Stipulation Re Facts and Conclusions of Law establishes that at the time of  
13 his misconduct, respondent was suffering from a substance abuse problem which was addictive  
14 in nature. In addition, the stipulated facts also establish a causal connection between  
15 respondent's substance abuse problem and the misconduct found in the underlying criminal and  
16 disciplinary proceeding. The court therefore finds that respondent has adequately established a  
17 nexus between his substance abuse problem and his criminal conduct, i.e., that his substance  
18 abuse problem directly caused his criminal conduct.

19        Furthermore, respondent sought assistance from the LAP in 2002. On December 19,  
20 2002, respondent entered into a participation agreement with the LAP to assist him with his  
21 substance abuse problem. Since entering into the LAP, respondent has maintained compliance  
22 with the terms of his participation agreement. Furthermore, on November 9, 2005, pursuant to  
23 rule 804 of the Rules of Procedure, the court received from the LAP a Certificate of One Year  
24 Participation in the Lawyer Assistance Program dated November 8, 2005, indicating that  
25 respondent has been substance-free for one year prior to the date of the certificate.

26        In addition to participating in the LAP, respondent was accepted into the court's ADP on  
27 August 11, 2003. Respondent's participation in the ADP allowed the court to monitor  
28 respondent's progress in the LAP and his overall efforts at addressing the problem that led to his

1 criminal misconduct. Respondent fully complied with all the terms and conditions of the  
2 program, including timely appearing for all court ordered events. Respondent was an exemplary  
3 participant in the ADP. Based on his dedication to his sobriety and to the ADP and the LAP, the  
4 court found it appropriate to reduce the length of time that respondent was required to participate  
5 in the ADP from 36 months to 27 months. (Rules Proc. of State Bar, rule 804.) Accordingly, on  
6 November 16, 2005, the court filed an order finding that respondent had successfully completed  
7 the ADP.

8 Respondent is entitled to significant mitigating credit for his participation in the LAP and  
9 his successful completion of the court's ADP.

#### 10 DISCUSSION

11 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the  
12 public, to preserve public confidence in the profession, and to maintain the highest possible  
13 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;  
14 Standard 1.3.)

15 Standard 1.6 provides that the appropriate sanction for the misconduct found must be  
16 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of  
17 imposing discipline.

18 In this case, standard 3.4 provides that conviction of a crime which does not involve  
19 moral turpitude, either inherently or in the facts and circumstances surrounding the commission  
20 of the crime, but which does involve other misconduct warranting discipline, must result in a  
21 sanction appropriate to the nature and extent of the misconduct.

22 In *In re Hickey* (1990) 50 Cal.3d 571, the Supreme Court considered the discipline to be  
23 imposed upon an attorney who had been convicted of a violation of Penal Code section 12025(b)  
24 [carrying a concealed weapon]. In that case, the attorney's misconduct involved striking his wife  
25 on the side of the head with a gun at a nightclub. The attorney's wife subsequently took refuge at  
26 a neighbor's house, but the attorney came to the neighbor's door and threatened her. Both the  
27 neighbor and the attorney's wife then heard a noise outside that sounded like a gunshot. The  
28 police were subsequently called to the attorney's home and observed the attorney emerge from

1 his house with a handgun protruding about two inches from the waistband of his pants. The  
2 attorney was arrested and charged with violations of Penal Code sections 12031(a) [carrying a  
3 loaded weapon], 12025(b) [carrying a concealed weapon] and 647(f) [public drunkenness]. The  
4 attorney subsequently pled *nolo contendere* to the violation of Penal Code section 12025(b), and  
5 the remaining charges were dismissed. (*In re Hickey, supra*, 50 Cal.3d at pp. 574-575.)

6 The attorney in *Hickey* argued that his misconduct had no nexus to the practice of law,  
7 that it was the result of alcoholism from which he had now recovered and that his misconduct  
8 was related to marital difficulties which had now been resolved. (*In re Hickey, supra*, 50 Cal.3d  
9 at p. 578.) The Supreme Court rejected Hickey's arguments, holding that while the incidents in  
10 question did not arise out of the attorney's legal practice, when an attorney's alcoholism leads  
11 him to engage in violent criminal conduct, the State Bar does not need to wait until a client is  
12 injured or until the attorney neglects his legal duties before it imposes discipline to protect the  
13 public. Moreover, the Supreme Court held that, while evidence that the attorney has taken steps  
14 to deal with his alcohol problem is mitigating evidence, that evidence does not eliminate the  
15 initial misconduct as an appropriate basis for discipline. (*In re Hickey, supra*, 50 Cal.3d at p.  
16 579.)

17 The Supreme Court also found the attorney in *Hickey* culpable of misconduct in one  
18 client matter. In light of all of the misconduct found, the Supreme Court suspended the attorney  
19 from the practice of law for a period of three years, stayed execution of the suspension and  
20 placed him on probation for a period of three years on conditions that included his actual  
21 suspension for a period of 30 days. (*In re Hickey, supra*, 50 Cal.3d at pp. 581-582.)

22 There are substantial similarities between respondent's criminal misconduct in the current  
23 proceeding and the criminal misconduct of the attorney in *Hickey*. The mitigating and  
24 aggravating circumstances also appear similar. The discipline imposed upon the attorney in  
25 *Hickey* was substantially mitigated by his involvement in Alcoholics Anonymous, although the  
26 Supreme Court concluded that a significant period of probation was needed to ensure that the  
27 attorney's recovery continued.

28 Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or

1 other substance abuse problems can be accorded significant mitigating weight if it is established  
2 that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct;  
3 and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford*  
4 *v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

5 At the time respondent engaged in his criminal conduct, he was suffering from a  
6 substance abuse problem which was addictive in nature, and respondent's substance abuse  
7 problem directly caused the criminal conduct in this matter. Furthermore, respondent has been  
8 participating in the LAP since 2002 and has successfully completed the ADP. Respondent's  
9 successful completion of the ADP, which required his compliance with all terms and conditions  
10 set forth by the LAP, as well as the Certificate of One Year Participation in the Lawyer  
11 Assistance Program indicating that respondent has been substance-free for one year prior to the  
12 date of the certificate, establishes by clear and convincing evidence that respondent has  
13 undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar, supra*, 52  
14 Cal.3d at p. 101; *In re Billings, supra*, 50 Cal.3d at p. 367.)

15 The court therefore finds that it is appropriate in this case to impose discipline less than  
16 that imposed on the attorney in *Hickey*. Based upon respondent's participation in the ADP and  
17 his commitment to his sobriety, the court is provided with substantial evidence that the purposes  
18 of the disciplinary system are being adequately addressed in the case, i.e., the protection of the  
19 public, the courts and the legal profession; the maintenance of high professional standards by  
20 attorneys; and the preservation of public confidence in the legal profession. Therefore based  
21 upon consideration of *Hickey*, the standards set forth above, and the strong mitigating  
22 circumstances in this case, the court concludes that the discipline set forth below is appropriate.

### 23 DISCIPLINE ORDER

24 Accordingly, it is ordered that respondent **SAMUEL PAUL PLUNKETT** is hereby  
25 publicly reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the public  
26 reproval will be effective when this decision becomes final. Furthermore, pursuant to rule 956(a)  
27 of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the  
28 interests of respondent and the protection of the public will be served by the following specified

1 conditions being attached to the public reproof imposed in this matter. Failure to comply with  
2 any conditions attached to this reproof may constitute cause for a separate proceeding for wilful  
3 breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California.

4 Respondent is hereby ordered to comply with the following conditions attached to his public  
5 reproof for a period of twelve months following the effective date of the public reproof  
6 imposed in this matter:

- 7 1. During the twelve-month period, respondent shall comply with the provisions of the State  
8 Bar Act and the Rules of Professional Conduct;
- 9 2. Respondent shall comply with all conditions of probation imposed in the underlying  
10 criminal proceeding in *People v. Samuel Paul Plunkett*, Los Angeles Superior Court Case  
11 No. LA 038368;
- 12 3. Within ten (10) days of any change in the information required to be maintained on the  
13 membership records of the State Bar pursuant to Business and Professions Code section  
14 6002.1, subdivision (a), including his current office address and telephone number, or if  
15 no office is maintained, the address to be used for State Bar purposes, respondent shall  
16 report any such change in writing to the Membership Records Office of the State Bar and  
17 to the Office of Probation;
- 18 4. Respondent shall comply with all provisions and conditions of his Participation  
19 Agreement with the Lawyer Assistance Program;
- 20 5. Respondent shall submit written quarterly reports to the Office of Probation on each  
21 January 10, April 10, July 10 and October 10 of the period of these conditions. Under  
22 penalty of perjury, respondent shall state whether he has complied with the State Bar Act,  
23 the Rules of Professional Conduct, and all of the conditions set forth in this Decision  
24 during the preceding calendar quarter. If the first report will cover less than thirty (30)  
25 days, that report shall be submitted on the reporting due date for the next calendar quarter  
26 and shall cover the extended period. In addition to all quarterly reports, respondent shall  
27 submit a final report, containing the same information required by the quarterly reports.  
28 The final report shall be submitted no earlier than twenty (20) days before the last day of

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the period during which these conditions apply and no later than the last day of said period;

6. Subject to the assertion of applicable privileges, respondent shall answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these conditions;

7. Within one (1) year of the effective date of this Decision, respondent shall provide to the Office of Probation satisfactory proof of attendance at a session of State Bar Ethics School, and of passage of the test given at the end of that session;

8. The period during which these conditions apply shall commence on the effective date of this Decision.

**COSTS**

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER FILING AND SEALING CERTAIN DOCUMENTS**

The court orders the Clerk to file the parties' Stipulation Re Facts and Conclusions of Law, as well as this Decision and Discipline Order; Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed pursuant to rule 23 of the Rules of Procedure.

**IT IS SO ORDERED.**

Dated: December 16, 2005



ROBERT M. TALCOTT  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; 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 December 16, 2005, I deposited a true copy of the following document(s):

**DECISION AND DISCIPLINE ORDER; ORDER FILING AND SEALING  
CERTAIN DOCUMENTS**

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

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

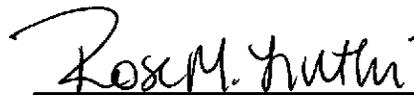
**THEODORE COHEN, ESQ.**  
**9952 SANTA MONICA BLVD**  
**BEVERLY HILLS CA 90212**

**SAMUEL PLUNKETT, ESQ.**  
**264 S LA CIENEGA BLVD 1106**  
**BEVERLY HILLS CA 90211**

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

**CHARLES MURRAY, ESQ., Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 16, 2005.**



**Rose M. Luthi**  
Case Administrator  
State Bar Court