

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

In the Matter of)	Case No. 01-O-03875; 02-O-10041;
)	02-O-11391; 02-O-14046;
DAVID M. CORDREY,)	02-O-14789; 03-O-01702;
)	04-C-14577
Member No. 136671,)	
)	
A Member of the State Bar.)	

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

INTRODUCTION/PERTINENT PROCEDURAL HISTORY

This disciplinary matter involving respondent **David M. Cordrey** arises out of six client matters involving violations of the Rules of Professional Conduct of the State Bar of California and/or provisions of the State Bar Act and respondent's misdemeanor criminal conviction for drunk driving.

After the filing of formal disciplinary charges against respondent by the Office of the Chief Trial Counsel of the State Bar of California (State Bar),¹ respondent's disciplinary matter was referred to the State Bar Court's Alternative Discipline Program² in October 2002.

In December 2002, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with a substance abuse and a mental health issue; and on April 21,

¹Formal disciplinary charges were filed against respondent on May 3, 2002 (case no. 01-O-03875); January 10, 2003 (case no. 02-O-11391; 02-O-14046); June 26, 2003 (case no. 02-O-10041; 02-O-14789); and January 6, 2004 (case no. 03-O-01702). In addition, a Notice of Hearing on Conviction was filed in case no. 04-C-14577 on November 9, 2004.

²Also known as the State Bar Court's Program for Respondent's with Substance Abuse and/or Mental Health Issues. (Rules Proc. of State Bar, rules 800-807.)

2003, respondent executed a Participation Agreement with the LAP.³

On June 10, 2003, ADP Judge Robert M. Talcott returned case nos. 01-O-03875 and 02-O-11391 back to Judge Pat E. McElroy⁴ for standard case processing, as respondent had failed to comply with ADP conditions.

In August 2003, case nos. 01-O-03875; 02-O-10041; and 02-O-11391 were consolidated.

In March 2004, these consolidated matters, as well as case no. 03-O-01702 were referred to the ADP and a status conference was scheduled with the undersigned ADP judge.

On November 9, 2004, after referral from the Review Department of the State Bar Court, case no. 04-C-14577 was assigned to the undersigned judge.

On November 24, 2004, respondent submitted a declaration to the court which established that at the time of his misconduct, respondent was suffering from a substance abuse and a mental health issue.

The parties entered into a stipulation regarding facts and conclusions of law in this matter on November 4, 2005, and it was received by the court on that same date. Respondent's declaration and the stipulated facts established a causal connection between respondent's substance abuse and his mental health issue and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his substance abuse and mental health issue and his

³Respondent executed an amendment to his LAP Participation Agreement on August 12, 2003 and April 7, 2005.

⁴Judge McElroy was originally assigned these cases. Case No. 01-O-03875 was referred to ADP Judge Paul Bacigalupo and thereafter reassigned to Judge Robert M. Talcott effective January 23, 2003. Pursuant to an order filed on February 24, 2003, case no. 02-O-11391 was referred to the ADP and a status conference was scheduled with ADP Judge Robert M. Talcott.

misconduct in this matter, i.e., that his substance abuse and mental health issue directly caused the misconduct set forth in this matter.

On May 22, 2006, the LAP Evaluation Committee recommended that respondent's Participation Agreement be amended, and that while respondent resided in the United Kingdom he comply with certain requirements.

After the parties submitted to the court their respective briefs on the issue of discipline in this matter, the court lodged its Confidential Statement of Alternative Dispositions and Orders on June 12, 2006, setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day: (1) the parties' Stipulation Re Facts and Conclusions of Law and the order approving the stipulation, as modified, was lodged with the court; (2) the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), which was executed by respondent on April 17, 2006, was lodged with the court; and (3) respondent's period of participation in the ADP commenced.

On June 24, 2006, the LAP Evaluation Committee terminated respondent from the LAP due to incomplete compliance with his LAP requirements.

On July 3, 2006, the court issued an order to the Office of Probation ordering the Office of Probation to monitor respondent's compliance with the terms and certain specified conditions set forth in the Contract.

On October 19, 2006, respondent again contacted the LAP, and respondent completed the LAP telephone intake process on November 8, 2006.

On October 30, 2006, the court received from the Office of Probation a report which reflected that respondent had not complied with a certain condition of his ADP Contract. Respondent eventually complied with this condition, albeit over one month late.

On December 13, 2006, respondent signed a LAP Evaluation Plan. Respondent thereafter signed up with the Georgia equivalent of the LAP.

On March 26, 2007, respondent met with the LAP Evaluation Committee for a review of his application for participation in the LAP. The LAP Evaluation Committee determined that respondent did not meet the criteria for acceptance into the LAP, and LAP closed respondent's case. On April 3, 2007, the court received a report from the Office of Probation which reflected that respondent had again not complied with a term of his ADP Contract.

On April 24, 2007, the court filed an order following an April 6, 2007 status conference denying the oral motion of Deputy Trial Counsel Charles Murray to terminate respondent from the ADP.

On June 28 and July 13, 2007, the court received a report from the Office of Probation which reflected that respondent was not in compliance with a condition of his ADP Contract.

Following a status conference held on July 20, 2007, the court issued an order setting forth that the court would issue an Order to Show Cause regarding respondent's termination from the ADP.

On July 30, 2007, the court filed an Order to Show Cause Re: Termination from ADP and Imposition of the High Level of Discipline (OSC). Respondent was ordered to show cause in writing on or before August 17, 2007 as to why he should not be terminated from the ADP and the high level of discipline imposed. Respondent failed to file a written response to the OSC. Thus, no good cause having been shown, the court issued an order on November 27, 2007, terminating respondent from further participation in the ADP. The court further ordered that the high level of discipline set forth in the Confidential Statement of Alternative Dispositions and Orders lodged on June 12, 2006, be imposed, and the matter was taken under submission on this date. Thereafter, the parties' Stipulation Re Facts and Conclusions of Law was filed in this matter.

Accordingly, the court now issues this decision recommending that the Supreme Court impose upon respondent the discipline set forth below in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation Re Facts and Conclusions of Law, including the court's order approving the stipulation as modified, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.

DISCUSSION

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

Prior to being accepted for participation in the ADP, the parties submitted briefs to the court on the appropriate discipline in this matter. After reviewing the parties' briefs and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his substance abuse issue and his mental health issue and his misconduct in this matter, the parties were advised of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from the ADP. Thereafter, the Contract to participate in the ADP, which was executed by respondent on April 17, 2006, was lodged with the court, and respondent's participation period in the ADP commenced.

Less than two weeks after respondent's period of participation in the ADP began, the LAP Evaluation Committee terminated respondent from the LAP due to his incomplete compliance with his LAP requirements and thereafter, the LAP declined to readmit respondent to the ADP and closed respondent's case. In addition, on October 30,

2006, April 3, June 28, and July 13, 2007, the court received a report from the Office of Probation which reflected that respondent was not in compliance with a condition of his ADP Contract.

The court thereafter ordered respondent to show cause in writing as to why he should not be terminated from the ADP and the high level of discipline imposed. Respondent failed to file a written response to the order to show cause, and the court therefore issued an order terminating respondent from further participation in the ADP and ordering that the high level of discipline set forth in the Confidential Statement of Alternative Dispositions and Orders lodged on June 12, 2006, be imposed.

Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders in the event respondent was terminated from the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **DAVID A. CORDREY** be suspended from the practice of law for three years and until he pays restitution and complies with the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct as set forth more fully below, that execution of the suspension be stayed, and that respondent be placed on probation for a period of four years on the following conditions:

1. Respondent must be actually suspended from the practice of law in the State of California for a period of nine (9) months and until he pays restitution to Gus Miller of the amount of \$3,000.00, plus ten percent (10%) interest per annum, accruing from May 1, 2001 (or to the Client Security Fund [CSF] to the extent of any payment from the fund to Gus Miller, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and provide satisfactory proof thereof to the State Bar's Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code

- section 6140.5, subdivision (c) and (d). To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to Gus Miller, as set forth above. To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such is or has been shown to the Office of Probation.
2. If respondent is actually suspended for two years or more, he must remain actually suspended until he proves to the State Bar Court his rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.
 3. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California.
 4. 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.
 5. Within thirty (30) days after 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.

6. 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 of the State Bar of California, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him 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 thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.
7. 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 the probation period.

Subject to assertion of applicable privileges, respondent must 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 the probation conditions.
8. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
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. Respondent must obtain an examination of his mental and physical condition with respect to his substance abuse and mental health issue pursuant to rule 184 of the Rules of Procedure of the State Bar of California from a qualified practitioner

approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/monitoring recommended by the examining practitioner will be at respondent's own expense. The examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is so complying with this condition of probation. Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar of California. The motion must be supported by a written statement from the examining or treating practitioner, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition. Revocation of any medical/confidentiality waiver is a violation of this condition. Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given to anyone except

members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

11. If respondent has not previously satisfied the legal malpractice judgments of the Achui family against him, respondent must provide, in each quarterly written report required herein, a description of the status of said legal malpractice judgments and all acts he has taken to satisfy those judgments.

In addition, 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 Cal. Rules of Court, rule 9.10(b) (formerly rule 951(b)); Rules Proc. of State Bar, rule 321(a) & (c).)**

Respondent must comply with the requirements of rule 9.20 (formerly rule 955) of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

COSTS

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 that a court case administrator file this Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (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 further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: April ____, 2008

RICHARD A. HONN
Judge of the State Bar Court