

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 07-C-13633-LMA; 08-C-13079
)	(Cons.)
GARY WESTON SULLIVAN,)	
)	DECISION AND ORDER SEALING
Member No. 103162,)	DOCUMENTS
)	
A Member of the State Bar.)	
_____)	

I. INTRODUCTION

In this consolidated conviction referral proceeding, respondent **Gary Weston Sullivan** was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). Respondent has successfully completed the ADP. (Rules Proc. of State Bar, rules 800-807.) Accordingly, respondent is hereby publicly reprovved with conditions for one year.

II. PERTINENT PROCEDURAL HISTORY

The State Bar Court Review Department referred two matters to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding respondent’s final misdemeanor convictions involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. The referral orders were filed on:

1. March 5, 2008 (case No. 07-C-13633); and
2. October 21, 2008 (case No. 08-C-13079).

Thereafter, respondent requested referral for evaluation of his eligibility for participation in the ADP.

Respondent had contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues and signed a LAP Participation Plan on October 3, 2008.

Respondent submitted a nexus declaration to the court on July 28, 2008, which established a nexus between respondent's substance abuse issues and his misconduct in these two matters, which were consolidated on December 8, 2008.

The parties entered into two Stipulations Re Facts and Conclusions of Law (Stipulations). The Stipulations, filed February 23, 2009, set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in these two matters.

The court issued a Confidential Statement of Alternative Dispositions and Orders (Statement), dated February 23, 2009, formally advising the parties of (1) the discipline to be imposed if respondent successfully completed the ADP and (2) the discipline which would be recommended to the Supreme Court if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on February 23, 2009.

Respondent thereafter participated successfully in both the LAP and the ADP. On September 13, 2010, after receiving a Certificate of One Year of Participation in the Lawyer Assistance Program – Substance Abuse, the court filed an order finding that respondent has successfully completed the ADP.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulations, including the court's orders approving the Stipulations, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated to willfully violating Business and Professions Code section 6068, subdivision (a), for violations of Vehicle Code section 23152, subdivision (b) (driving under the influence), and Penal Code section 273.6 subdivision (a) (violation of a protective order). The parties stipulated that the facts and circumstances surrounding respondent's two convictions did not involve moral turpitude but constituted other misconduct warranting discipline.

In aggravation, respondent committed multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)¹

In mitigation, respondent has no prior record of discipline and was remorseful. (Stds. 1.2(e)(i) and 1.2(e)(vii).) In addition, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

IV. DISCUSSION

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

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6 and 2.6.

¹ All further references to standard(s) or std. are to this source.

Because respondent has now successfully completed the ADP, the court imposes the discipline set forth in the Statement if respondent successfully completed the ADP.

V. DISCIPLINE AND DISPOSITION

A. Public Repeval with Conditions Attached

Therefore, respondent **Gary Weston Sullivan** is hereby publicly reprovod with the following conditions for one year (Rules Proc. of State Bar, rule 271):

1. During the reprovod period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
3. Respondent must submit written quarterly probation reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of reprovod. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the period

- of reprobation and no later than the last day of said period;
4. Within 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 reprobation. 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 reprobation, respondent must promptly meet with the probation deputy as directed and upon request;
 5. Subject to the 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 these reprobation conditions;
 6. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of his participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP;

7. Respondent must comply with all conditions of probation imposed in the underlying criminal matters and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation; and
8. These conditions attached to the reproval will commence when this decision becomes final. (Rules Proc. of State Bar, rule 270.)

B. Costs

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

VI. DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing 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 are ordered 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 disclosures. 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: December _____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court