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State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM



<p>Counsel For The State Bar</p> <p>Treva R. Stewart 180 Howard St. 7th Floor San Francisco, CA 94105</p> <p>Bar # 239829</p>	<p>Case Number (s)</p> <p>07-C-13633</p> <p>RECEIVED</p> <p>JUL 30 2008</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>ZDS</i></p> <p>FEB 23 2009</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Vicki Young Law Office of Ephraim Margolin 240 Stockton St. 4th Floor San Francisco, CA 94108-5318</p> <p>Bar # 73261</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p>	
<p>In the Matter Of: Gary W. Sullivan</p> <p>Bar # 103162</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 10, 1982**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, **except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.**
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **6** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) 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.

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- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (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) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **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.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. 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 deemed serious.

- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. **Respondent enrolled in domestic violence and alcohol treatment programs pursuant to court order. He also contacted the LAP program and signed a pre-enrollment evaluation plan. He has indicated a willingness to sign a long-term participation agreement with LAP if accepted into the program.**
- (5) **Restitution:** Respondent paid \$ o n i n 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 in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (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 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:

See Attachment

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **Gary W. Sullivan**
CASE NUMBERS: **07-C-13633**

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the State Bar Act and/or Rules of Professional Conduct.

Procedural Background:

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. On November 1, 2007, respondent plead *nolo contendere* to one count of a misdemeanor violation of Penal Code ("P.C.") section 273.6(A) (intentional and knowing violation of a protective order). On March 5, 2008, 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 facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

Facts:

On the morning of December 25, 2006, police were summoned to the residence of respondent and his live in girlfriend, Lori Harvey ("Ms. Harvey"), for a report of a family disturbance. Shortly after their arrival, the responding officers determined that respondent was intoxicated. Respondent was arrested and transported to the main jail. After arriving at the main jail, respondent attempted to attack the transporting officer, as a result of which, the officer sustained injuries to his right hand and lower back.

Respondent was charged with one count of violation of Penal Code (P.C.) section 242-243(e), misdemeanor battery on a spouse or cohabitant. No charges were brought in connection with the incident involving the transporting officer. On January 8, 2007, a criminal protective order was issued against respondent which prohibited him from, inter alia, annoying, harassing, battering or otherwise disturbing the peace of Ms. Harvey.

On July 25, 2007 at approximately 5:48 a.m., police were again summoned to the residence of respondent and Ms. Harvey for a report of a family disturbance. Respondent had violated the

protective order issued against him on January 8, 2007, by entering Ms. Harvey's bedroom approximately 50 times during the middle of the night, yelling and swearing at her. Respondent also broke glass picture frames in the living room area, just outside of Ms. Harvey's bedroom door. Respondent was determined to be under the influence of alcohol. Respondent was arrested and transported to the county jail. Respondent was charged with violation of P.C. Section 273.6(A).

On November 1, 2007, respondent was convicted of misdemeanor violation of P. C. section 273.6(a). The charge of violation of P.C. section 242-243(e) was dismissed. Respondent was sentenced to ten days in jail and placed on three years formal probation with conditions that he attend and complete substance abuse and domestic violence counseling, that he complete 40 hours of volunteer work, and that he pay a fine with additional court administrative fees.

Conclusions of law:

The facts and circumstances surrounding respondent's arrest for violation of Penal Code section 273.6(A) does not involve moral turpitude, but does involve other misconduct warranting discipline, in violation of Business and Professions Code section 6068(a).

ADDITIONAL MITIGATING CIRCUMSTANCES.

Cooperation with criminal probation: Respondent has remained in full compliance with the terms of his most recent criminal probation.

RULES OF PROCEDURE EFFECTIVE JULY 1, 2008

Filing of Stipulation: Pursuant to rules 803(b) and 806(c) of the Rules of Procedure, this Stipulation will be filed upon approval by the Program Judge and respondent's acceptance into ADP.

Subsequent allegations of misconduct:

Pursuant to rule 804.5(a) of the Rules of Procedure, any misconduct alleged to have occurred after respondent's admittance to the Program may constitute grounds for respondent's termination from the ADP and imposition of the higher level of discipline specified in the Program Judge's decision regarding the alternative levels of discipline.

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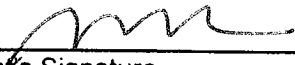
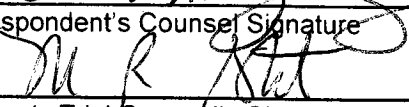
In the Matter of GARY W. SULLIVAN	Case number(s): 07-C-13633
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SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

<u>7/28/08</u> Date	 Respondent's Signature	<u>Gary W. Sullivan</u> Print Name
<u>7/28/08</u> Date	<u>Vicki H. Young</u> Respondent's Counsel Signature	<u>Vicki H. Young</u> Print Name
<u>7/28/08</u> Date	 Deputy Trial Counsel's Signature	<u>Treva R. Stewart</u> Print Name

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In the Matter Of GARY W. SULLIVAN	Case Number(s): 07-C-13633
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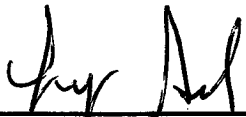
ORDER

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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(2), Rules of Procedure.)

Feb 23, 2007
Date


Judge of the State Bar Court
Lucy Armeria

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 San Francisco, on February 23, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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 _____, California, addressed as follows:

- by certified mail, No. _____, with return receipt requested, through the United States Postal Service at _____, California, addressed as follows:

- by overnight mail at _____, California, addressed as follows:

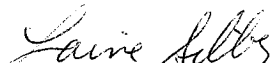
- by fax transmission, at fax number _____. No error was reported by the fax machine that I used.

- By personal service:

VICKY H. YOUNG 180 HOWARD STREET, 6 TH FLOOR SAN FRANCISCO, CA 94105	TREVA R. STEWART 180 HOWARD STREET, 6 TH FLOOR SAN FRANCISCO, CA 94105
GARY W. SULLIVAN 180 HOWARD STREET, 6 TH FLOOR SAN FRANCISCO, CA 94105	

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

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 23, 2009.



Laine Silber
Case Administrator
State Bar Court