

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>07-C-14263-LMA</b>
	)	
<b>DAVID ROBERT KNUTSEN,</b>	)	<b>DECISION AND DISCIPLINE ORDER;</b>
	)	<b>ORDER SEALING CERTAIN</b>
<b>Member No. 248944,</b>	)	<b>DOCUMENTS</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

In May 2007, respondent **David Robert Knutsen** (“respondent”) was arrested for driving under the influence of alcohol. Respondent was subsequently convicted, and this matter was referred to this court for a hearing and decision as to whether the facts and circumstances surrounding this conviction involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. Thereafter, respondent participated in and successfully completed the State Bar Court’s Alternative Discipline Program (“ADP”). Accordingly, the court hereby orders, as set forth below, the imposition of discipline relating to a successful completion of the ADP.

## **PROCEDURAL HISTORY**

In September 2008, respondent pled guilty to and was convicted of driving while having a blood-alcohol level of .08% or higher (California Vehicle Code section 23152, subd. (b)). This was respondent's second conviction for driving under the influence since 2006. Respondent was subsequently sentenced to, among other things, 30 days in jail with credit for time served.

In December 2008, the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") transmitted a certified copy of respondent's record of conviction, in Case No. 07-C-14263, to the State Bar Court pursuant to Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5, et seq.

On December 19, 2008, the Review Department of the State Bar Court issued an order referring Case No. 07-C-14263 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding respondent's conviction are found to involve moral turpitude or other misconduct warranting discipline.

Respondent sought to participate in the ADP, and on February 17, 2009, this matter was referred to the ADP.

On March 9, 2009, respondent submitted a nexus statement establishing a nexus between his substance abuse issue and his misconduct. The parties entered into a Stipulation Re Facts and Conclusions of Law which was received by the State Bar Court on or about June 2009.

On August 3, 2009, the court lodged the Confidential Statement of Alternative Dispositions and Orders, and the Contract and Waiver for Participation in the State Bar Court's ADP ("Contract"). That same day, the court filed the parties' Stipulation Re Facts and Conclusions of Law, and issued an order formally accepting respondent into the ADP.

On January 31, 2011, the court issued an order finding that respondent successfully completed the ADP and this matter was submitted for decision.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Stipulation Re Facts and Conclusions of Law, including the court's order approving the Stipulation Re Facts and Conclusions of Law, 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. Below is an abbreviated summary of this matter.

On May 22, 2007, a peace officer on patrol in San Mateo County noticed a vehicle having difficulty maintaining its lane. The officer initiated a traffic stop and made contact with respondent, the driver of the vehicle. Respondent told the officer that he had not been drinking that evening; however, the officer observed that respondent had watery eyes, slurred speech, and an odor of alcohol. After failing a series of field sobriety tests, respondent was arrested. At the time of his arrest, respondent had a blood-alcohol concentration of .12%.

On September 2, 2008, respondent was convicted of a misdemeanor violation of California Vehicle Code section 23152, subd. (b) [driving a vehicle with a blood-alcohol concentration of .08% or higher].<sup>1</sup> Respondent was placed on probation for a period of three years and ordered to comply with several conditions of probation. Respondent was also ordered to serve 30 days in county jail, with credit for time served.

Although the facts and circumstances surrounding the present matter do not involve moral turpitude, they do involve other misconduct warranting discipline.

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<sup>1</sup> In August 2006, respondent had a prior conviction for driving under the influence.

## **Aggravation and Mitigation**

The parties stipulated to the following factors in aggravation and mitigation. In aggravation, respondent, at the time of the present misconduct, was on criminal probation for a previous conviction of driving under the influence. In addition, respondent initially refused to exit his vehicle when asked to do so by the officer.

In mitigation, respondent promptly took objective steps spontaneously demonstrating remorse and recognition of his wrongdoing, including immediately enrolling in a residential treatment facility and completing a 28-day program.

In addition, respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program – Substance Use, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

## **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.)

The parties submitted briefs on the issue of discipline. After considering the parties' briefs, including the case law and standards cited therein, the court advised the parties of the discipline that would be ordered if respondent successfully completed the ADP and the discipline

that would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as standards 1.3, 1.4, 1.5, 1.6, and 3.4. The court also considered and distinguished *In re Carr* (1988) 46 Cal.3d 1089, *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108, *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, *In re Kelley* (1990) 52 Cal.3d 487, and *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260.

After agreeing to the court's proposed high and low levels of discipline, respondent executed the Contract to participate in the ADP, and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and—as set forth in the court's January 31, 2011 order—successfully completed the ADP. Accordingly, the court orders imposition of the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders relating to a successful completion of the ADP.

#### **DISCIPLINE ORDER**

Accordingly, it is ordered that respondent **David Robert Knutsen**, State Bar Number 248944, is hereby privately reprovved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), the private reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the private reprovval imposed in this matter. Failure to comply with

any conditions attached to this private reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his private reproof for a period of two years following the effective date of the private reproof imposed in this matter:

1. During the reproof period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct;
2. 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;
3. 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;
4. 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 reproof. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all reproof conditions 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.

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 reproof period and no later than the last day of the reproof period;

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 the reproof conditions;
6. 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 State Bar Ethics School, and passage of the test given at the end of that session;

7. Respondent must comply with all conditions of probation imposed in the underlying criminal matter(s) and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;
8. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement 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 Plan/Agreement 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 respondent’s 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; and
9. The period during which these conditions are in effect will commence upon the date this decision imposing the private reproof becomes final.

Based on the nature of the misconduct and the discipline imposed, it is not ordered that respondent take and pass the Multistate Professional Responsibility Examination.

**DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388 of the Rules of Procedure, all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 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: March \_\_\_\_\_, 2011

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LUCY ARMENDARIZ  
Judge of the State Bar Court