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State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar Theresa R. Stewart 111 Howard St. 7 th Floor San Francisco, CA 94105 Bar # 239829	Case Number (s) 08-C-15079 (see also 07-C-13633)	(for Court's use) PUBLIC MATTER FILED FEB 23 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Vicki Young Law Office of Ephraim Margolin 211 Stockton St. 4 th Floor San Francisco, CA 94108-5318 Bar # 73261	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Gary W. Sullivan Bar # 103162 A member of the State Bar of California (Respondent)		

Notice: 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, if Respondent is not accepted into the Lawyer Assistance 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. Respondent has engaged in several acts of misconduct apparently related to excessive use of alcohol.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

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- (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.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in 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:

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In the Matter of Gary W. Sullivan	Case number(s): 08-C-13079 (see also 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.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date <u>11/29/08</u>	 Respondent's Signature	<u>Gary W. Sullivan</u> Print Name
Date <u>11/21/08</u>	 Respondent's Counsel Signature	<u>Vicki Young</u> Print Name
Date <u>12/4/08</u>	 Deputy Trial Counsel's Signature	<u>Treva R. Stewart</u> Print Name

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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(e), Rules of Procedure.)

Date Feb 23, 2009 [Signature]
 Judge of the State Bar Court
 Luc Armenakis

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Gary W. Sullivan
CASE NUMBER(S): 08-C-15079 (see also 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 IN CONVICTION PROCEEDING.

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 December 19, 2007, respondent was convicted of violating Vehicle Code section 23152(b).

On October 21, 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 respondent's conviction for violation of Vehicle Code ("V.C.") section 23152(b) involved moral turpitude or other misconduct warranting discipline.

Facts:

1. On November 21, 2006, a Santa Cruz Sheriff's Department Deputy observed respondent's vehicle being blocked by a white pick up truck at the intersection of Water Street and N. Branciforte Drive in Santa Cruz. The driver of the white pick up was standing at the passenger door of respondent's vehicle, yelling at respondent.
2. The Deputy approached respondent's vehicle and observed respondent with his head hanging down and his hands limp in his lap. The doors were locked and the windows were up. The Deputy had to make many attempts to get respondent's attention.
3. Eventually respondent was able to put his vehicle into park and open the door.

Upon respondent opening the door, the Deputy detected a strong odor of an alcoholic beverage from inside respondent's vehicle. Respondent displayed objective signs and symptoms of alcohol intoxication. Further, he was unable to perform Field Sobriety tests.

4. Respondent was arrested and taken into custody. Respondent consented to a blood draw to determine his Blood Alcohol Concentration ("BAC"). Respondent's BAC was determined to be .31.

5. Respondent was charged as follows: Count 1 - V.C. 23152(a) (driving under the influence), Count 2 - 23152(b) (driving under the influence with a blood alcohol level of .08% or more) and Count 3 - 23222(a), possession of an open container of alcohol in a vehicle.

6. On December 19, 2007, respondent was convicted of Count 2 - 23152(b). Counts 1 and 3 were dismissed. Respondent received a 60 month suspended sentence subject to, inter alia, service of 60 days in county jail, payment of a fine of \$2013 and payment of restitution of \$100. Respondent was also ordered to enroll in and complete a nine month Multiple Offense Drinking Driver Program and enter and complete three 12-step meetings per week.

Conclusions of law:

The facts and circumstances surrounding respondent's arrest for violation of V.C. section 23152(b) does not involve moral turpitude, but does involve other misconduct warranting discipline, in violation of Business and Professions Code section 6068(a).

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.