

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 12-C-10777; 12-C-10778 (Cons.)
)	
SIERRA DAVID STERKIN,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 234356,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction

In this consolidated conviction referral proceeding, respondent Sierra David Sterkin (respondent)¹ was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two years, that execution of that period of suspensions be stayed, and that he be placed on probation for three years subject to certain conditions, including a six-month period of suspension (with credit given for the period of interim suspension commencing on May 14, 2012, and terminating on March 12, 2013).²

¹ Respondent was admitted to practice law in California on December 7, 2004.

² Respondent’s period of interim suspension in case No. 12-C-10777 began on May 14, 2012, and ended on March 7, 2013. His period of interim suspension in case No. 12-C-10778 began on June 22, 2012, and ended on March 12, 2013. The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of respondent’s State Bar membership records which reflect the termination dates of his interim suspensions.

Significant Procedural History

Case No. 12-C-10777

After the transmittal to the State Bar Court of the records of respondent's January 30, 2012, conviction for violating Penal Code section 69 (obstructing or resisting executive officers in performance of their duties), a felony, and respondent's filing of an answer to the transmittal of the records of conviction, the Review Department of the State Bar Court filed an order on April 4, 2012, in case No. 12-C-10777, suspending respondent from the practice of law effective April 27, 2012, pending final disposition of this matter, and ordering respondent to comply with California Rules of Court, rule 9.20.³

On April 17, 2012, respondent filed a motion to delay or stay his interim suspension. Respondent filed a declaration and supplemental information in support of his motion on May 3, 2012.

Pursuant to an order filed on April 24, 2012, the review department temporarily stayed the effective date of respondent's interim suspension.

On April 25, 2012, the State Bar filed an opposition to respondent's motion to delay or stay his interim suspension.

On May 3, 2012, the review department filed an order (1) denying respondent's motion to delay or stay his interim suspension; (2) lifting the temporary stay; (3) suspending respondent effective May 14, 2012;⁴ and (4) referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts

³ The State Bar of California, Office of the Chief Trial Counsel (State Bar) transmitted notice of the finality of respondent's conviction to the State Bar Court on February 27, 2012.

⁴ Respondent filed his California Rules of Court, rule 9.20 compliance declaration on May 17, 2012.

and circumstances surrounding respondent's violation of Penal Code section 69 involved moral turpitude or other misconduct warranting discipline.

A Notice of Hearing on Conviction (NOH) was filed in case No. 12-C-10777 on May 10, 2012. Respondent filed an answer to the NOH on May 18, 2012.

Pursuant to a Status Conference Order filed on June 11, 2012, the court referred this matter to the State Bar Court's ADP.

Case No. 12-C-10777 was consolidated with case No. 12-C-10778 on July 2, 2012.

Case No. 12-C-10778

Following the transmittal to the State Bar Court of the records of respondent's March 5, 2012, conviction for violating Penal Code section 422 (criminal threats), a misdemeanor, for which there is probable cause to believe involves moral turpitude, the review department filed an order in case No. 12-C-10778 suspending respondent from the practice of law effective June 22, 2012, pending final disposition of this matter and ordering him to comply with California Rules of Court, rule 9.20.⁵ The review department also referred the case to the hearing department for a hearing and decision as to whether the facts and circumstances surrounding respondent's violation of Penal Code section 422 involved moral turpitude or other misconduct warranting discipline and, if so found, the discipline to be imposed.

A NOH was filed in case No. 12-C-10778 on June 15, 2012. Respondent filed his answer to the NOH on June 20, 2012.

Pursuant to a Status Conference Order filed on July 2, 2012, this matter was referred to the State Bar Court's ADP and was consolidated with case No. 12-C-10777.

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⁵ Respondent filed his California Rules of Court, rule 9.20 compliance declaration on June 22, 2012.

Case Nos. 12-C-10777; 12-C-10778 (Consolidated)

On August 3, 2012, respondent submitted to the court his Nexus Statement which established a nexus between his mental health issue and his misconduct in this consolidated matter.

In October 2012, respondent entered into a long-term Participation Plan with the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issue.

The court received the parties' Stipulation Re Facts and Conclusions of Law (Stipulation) in this consolidated matter on November 13, 2012.

The parties submitted briefs on the appropriate levels of discipline in this matter in November 2012.

Thereafter, on January 14, 2013, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) setting forth the discipline the court would recommend if respondent successfully completed the ADP and the discipline which the court would recommend if respondent was terminated from, or failed to successfully complete, the ADP. Also on January 14, 2013, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract); the parties' Stipulation was filed; and respondent was accepted into the ADP as of that date.

On March 13, 2014, the court received from the LAP a certificate dated March 10, 2014, setting forth that respondent had satisfied the requirements in his LAP Participation Agreement/Plan for one year prior to the date of the certificate, and during this time period, respondent has maintained mental health stability and has successfully participated in the LAP.

Thereafter, on July 8, 2014, the court filed an order finding that respondent has successfully completed the ADP, and this matter was submitted for decision on July 8, 2014.

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Findings of Fact and Conclusions of Law

Culpability Findings

The parties' Stipulation filed on January 14, 2013, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

Case No. 12-C-10777

Respondent entered a plea of nolo contendere to a charge of violating Penal Code section 69 (obstructing or resisting executive officers in performance of their duties), a felony. On October 16, 2011, respondent, who had not been taking his prescribed medication, was observed by a police officer yelling obscenities at people and shattering a box of empty wine bottles in the middle of a street. Respondent requested transport for mental health treatment and the officer agreed to this request. However, respondent thereafter punched the officer in the side of the officer's head and resisted being placed into handcuffs. In the course of their physical conflict, the officer suffered abrasions to both knees and an abrasion to a hand. Thereafter, the officer suffered from a numb ear, sore jaw, and a severe headache. Another officer who came upon the arrest in progress, received abrasions on both of his knees while assisting. Respondent was taken into custody. Respondent stipulated that the facts and circumstances surrounding his violation involved moral turpitude.

Case No. 12-C-10778

Respondent entered a plea of nolo contendere to a charge of violating Penal Code section 422 (criminal threats), a misdemeanor. On January 5, 2012, while he was not taking any prescribed medication, respondent threatened his neighbor, stating: "I am going to slit your

throat with a buck knife and watch your guts fall on the floor.’’⁶ The neighbor had not had any contact with respondent prior to the threat and did not provoke the threat. Respondent stipulated that the facts and circumstances surrounding his violation involved moral turpitude.

Aggravation

Multiple Misconduct (Standard 1.2(b)(ii).)⁷

Respondent was convicted of two criminal acts which occurred three months apart.

Dishonesty/Concealment (Standard 1.2(b)(iii).)

Respondent dishonestly concealed his conviction of Penal Code section 422 from the review department in his motion to delay or stay his interim suspension ordered in case No. 12-C-10777, after claiming that he was stabilized through treatment he received after the incident leading to his Penal Code section 69 conviction.

Indifference Toward Rectification (Standard 1.2(b)(v).)

Although he was arrested and taken into custody on October 16, 2011, that did not deter him from going off his medication, resulting in the conduct leading three months later to his conviction of Penal Code section 422.

Mitigation

Other

Respondent has cooperated with the State Bar during these proceedings since late May 2012, including entering into a Stipulation.

Respondent has also successfully completed the ADP. Respondent’s successful completion of the ADP, which required his successful participation in the LAP, as well as the

⁶ See the parties’ Stipulation, page 7, numbered paragraph 28.

⁷ The Standards for Attorney Sanctions for Professional Misconduct (Standards) were revised effective January 1, 2014. However, as the parties’ entered into their Stipulation prior to the effective date of the revisions, the court will cite to the former Standards which were in effect at the time the Stipulation was entered into in November 2012.

certificate of one-year participation in the LAP, qualify as clear and convincing evidence that respondent no longer suffers from the mental health 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. (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, 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 or was terminated from, or failed to successfully complete, 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, 3.2 and *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52; *In re Hickey* (1990) 50 Cal.3d 571; *In re Otto* (1989) 48 Cal.3d 970; *In re Larkin* (1989) 48 Cal.3d 236; and *In re Mostman* (1989) 47 Cal.3d 725.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

Recommendations

It is hereby recommended that respondent Sierra David Sterkin, State Bar Number 234356, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law in the State of California for the first six months of his probation (with credit given for the period of interim suspension commencing on May 14, 2012, and terminating on March 12, 2013).⁸

2. 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.

3. Within 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.

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 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.

5. 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, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in

⁸ Respondent's period of interim suspension in case No. 12-C-10777 began on May 14, 2012, and ended on March 7, 2013. His period of interim suspension in case No. 12-C-10778 began on June 22, 2012, and ended on March 12, 2013. The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of respondent's State Bar membership records which reflect the termination dates of his interim suspensions.

the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than 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 20 days before the last day of the period of probation and no later than the last day of the probation period.

6. 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.

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.

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

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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.⁹

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Direction Re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) of the Rules of Procedure of the State Bar (Rules of Procedure),¹⁰ 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 official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom

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⁹ It is not recommended that respondent be ordered to provide to the Office of Probation proof of attendance at State Bar Ethics School, as respondent completed Ethics School on March 14, 2013. It is also not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE), as he took and passed the MPRE administered on April 6, 2013. Further, the court will not recommend that respondent be ordered to comply with California Rules of Court, rule 9.20, as he filed rule 9.20 compliance declarations in connection with his interim suspensions, and he will not serve any prospective period of actual suspension after the effective date of the Supreme Court order imposing discipline in this matter.

¹⁰ Unless otherwise indicated, all references to rules refer to the Rules of Procedure of the State Bar which were in effect at the time respondent was accepted into the ADP.

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: November _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court