

NOT FOR PUBLICATION

PUBLIC MATTER

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STATE BAR COURT CLERK'S OFFICE
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case Nos.: 13-C-15582-PEM; 14-C-00259
)	(Cons.)
RICHARD ROBERT SUTHERLAND,)	
)	DECISION AND ORDER SEALING
Member No. 240858,)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	
_____)	

Introduction¹

In this consolidated conviction referral matter, respondent **Richard Robert Sutherland** 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, respondent is hereby admonished.

Significant Procedural History

A. Case No. 14-C-00259

Following the transmittal to the State Bar Court of the records of respondent's October 29, 2004 conviction for violating Vehicle Code section 23152(a) [driving under the influence], a

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

misdemeanor which may or may not involve moral turpitude, the review department on February 21, 2014, filed an order to show cause why this matter should not be dismissed as the conviction occurred before respondent's admission to practice law. Respondent did not respond. The review department then filed an order on March 18, 2014, 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 and circumstances surrounding the violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A Notice of Hearing on Conviction (NOH) was filed on March 20, 2014. Respondent filed an answer to the NOH on April 16, 2014.

B. Case No. 13-C-15582

Following the transmittal to the State Bar Court of the records of respondent's September 24, 2013 conviction for violating Vehicle Code section 23152(b) [driving with blood alcohol level of .08% or more], a misdemeanor which may or may not involve moral turpitude, the review department filed an order on April 24, 2014, 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 and circumstances surrounding the violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A second NOH was filed on May 7, 2014, to which respondent filed an answer on May 12, 2014.

On May 19, 2014, the court consolidated these two conviction referral matters.

Respondent requested referral for evaluation of his eligibility for participation in the State Bar Court's ADP. Respondent also contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

On June 2, 2014, respondent submitted a declaration which established a nexus between respondent's substance abuse issue and his misconduct in this matter.

On June 30, 2014, the State Bar and respondent filed a Stipulation Re Facts and Conclusions of Law (Stipulation). The Stipulation sets forth the factual findings, legal conclusion, and mitigating and aggravating circumstances in this consolidated matter.

The court issued a Confidential Statement of Alternative Dispositions and Orders, formally advising the parties of: (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP; and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. Agreeing to those alternative possible dispositions, respondent 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 June 30, 2014.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. After receiving a Certificate of One Year of Participation in the Lawyer Assistance Program – Substance Use, the court found that respondent has successfully completed the ADP at a status conference on January 19, 2016.

This matter was submitted for decision on January 19, 2016.

Findings of Fact and Conclusion of Law

Culpability Findings

The parties' Stipulation filed on June 30, 2014, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

Case No. 14-C-00259

On September 3, 2004, respondent was arrested for driving under the influence. On October 29, 2004, he pled guilty to violating Vehicle Code section 23152(a).

Respondent stipulated that the facts and circumstances surrounding his violation did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 13-C-15582

On July 3, 2013, respondent was arrested for driving under the influence. On September 24, 2013, he pled nolo contendere to violating Vehicle Code section 23152(b).

Respondent stipulated that the facts and circumstances surrounding his violation did not involve moral turpitude but did involve other misconduct warranting discipline.

Aggravation²

There are no aggravating circumstances involved.

Mitigation

Good Character (Std. 1.6(f).)

Respondent provided nine character letters from people attesting to his integrity, honesty, and professionalism. Five of whom are attorneys. Favorable character testimony from employers and attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

Other

In addition, it is appropriate to now consider respondent's successful completion of the ADP as a mitigating circumstance in this matter.

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

² All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

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 standard 2.16(b) and case law, including *In the Matter of Respondent I* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 260; *In re Kelley* (1990) 52 Cal.3d 487; and *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74.

Because respondent has now successfully completed the ADP, this court, in turn, now issues the imposition of the lower level of discipline, set forth more fully below.³

Disposition

The court hereby orders that respondent **Richard Robert Sutherland**, State Bar Number 240858, is admonished.

Costs

Since an admonition does not constitute either an exoneration or the imposition of discipline, neither the State Bar nor respondent is entitled to an award of costs under Business and Professions Code section 6086.10.

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

³ Rule 5.126(D) of the Rules of Procedure of the State Bar provides that the giving of an admonition is not equal to imposing discipline on respondent.

Bar of California (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 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 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 22, 2016


PAT McELROY
Judge of the State Bar Court

(Do not write above this line.)

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

ORIGINAL

<p>Counsel For The State Bar</p> <p>Suzan J. Anderson Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2209</p> <p>Bar # 160559</p>	<p>Case Number (s) 13-C-15582-PEM; 14-C-00259</p> <p>PUBLIC MATTER FILED</p> <p>JUN 30 2014</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court's use)</p> <p><i>[Signature]</i></p>
<p>Counsel For Respondent</p> <p>Samuel C. Bellicini FISHKIN & SLATTER, LLP 1575 Treat Blvd, Suite 215 Walnut Creek, CA 94598 (925) 944-5600</p> <p>Bar # 152191</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: RICHARD ROBERT SUTHERLAND</p> <p>Bar # 240858</p> <p>A Member of the State Bar of California (Respondent)</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 December 27, 2005.
- (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 8 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."

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(Do not write above this line.)

- (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.
- (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 [see Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (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 intentional, 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) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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. See Attachment to Stipulation at page 7.
- (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:

by paramedics. Respondent was loaded into the ambulance on a gurney with a neck brace. The police officer questioned respondent in the ambulance. When asked to tell the officer about the collision, respondent replied that he did not know what happened. The officer smelled alcohol on respondent's breath, but when asked, respondent said he had not been drinking that evening. Since respondent was on a gurney, the officer could not conduct any further sobriety tests than an examination of respondent's eyes. Respondent consented to a blood test. The paramedic drew the blood in the ambulance. The blood sample contained 0.31% alcohol.

7. Respondent was transported to the hospital by ambulance. Due to respondent's generally cooperative manner, the officer allowed respondent to reach a responsible party to take him home, instead of booking respondent into jail.

8. On August 5, 2013, the Sonoma County District Attorney filed a criminal complaint in the Sonoma County Superior Court, case number SCR-637865, charging respondent with one count of Vehicle Code section 23152(a) [Driving under the influence], and one count of Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol]. The complaint further alleged that respondent had a prior conviction for violation of Vehicle Code section 23152(a) [Driving under the influence] committed on September 3, 2004.

9. On September 24, 2013, the court entered respondent's plea of nolo contendere to the count of violation of Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol], with a prior conviction, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

10. At the time of entry of the plea, the court ordered that respondent be conditionally sentenced to 36 months on conditions which included commencement of education, counseling and other rehabilitation, enroll in Multiple Offender Drinking Driver Program, the installation of an interlock device for 36 months, restitution fine of \$140, fine of \$2,242, and referral to 50 days work release.

CONCLUSIONS OF LAW:

11. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 14-C-00259 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

12. 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.

13. On September 17, 2004, the Orange County District Attorney filed a criminal complaint in the Orange County Superior Court, case number 04HM07628, charging respondent with one count of Vehicle Code section 23152(a) [Driving under the influence], and one count of Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol].

14. On October 29, 2004, the court entered respondent's plea of guilty to the count of violation of Vehicle Code section 23152(a) [Driving under the influence], and based thereon, the court found

respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

15. At the time of entry of the plea, the court ordered that respondent be placed on 3 year informal probation, on conditions which included fines of \$597, 56 hours community service, license restrictions for 90 days, and attendance at a Level 1 Program.

16. On March 18, 2014, 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 Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

17. On September 3, 2004, respondent attended a wedding and reception at the harbor in Newport Beach. Respondent drank alcoholic beverages at the wedding reception. At the reception, respondent drove a friend's vehicle.

18. Respondent drove the friend's vehicle and was pulled over by the Newport Beach Police Department. Respondent cooperated with the police officers and was taken to the police station for the formal Breathalyzer analysis. Respondent was released on his own recognizance to a friend shortly thereafter.

19. On September 17, 2004, the Orange County District Attorney filed a criminal complaint in the Orange County Superior Court, case number 04HM07628, charging respondent with one count of Vehicle Code section 23152(a) [Driving under the influence], and one count of Vehicle Code section 23152(b) [Driving with 0.08 percent or more blood alcohol].

20. On October 29, 2004, the court entered respondent's plea of guilty to the count of violation of Vehicle Code section 23152(a) [Driving under the influence], and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

21. At the time of entry of the plea, the court ordered that respondent be placed on 3 year informal probation, on conditions which included fines of \$597, 56 hours community service, license restrictions for 90 days, and attendance at a Level 1 Program.

CONCLUSIONS OF LAW:

22. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

MITIGATING CIRCUMSTANCES

Good Character (Std. 1.6(f)): Respondent has provided nine character letters from people attesting to his integrity, honesty, and professionalism. The character references include five attorneys, an office administrator, the owner of the gym respondent joined after the 2013 conviction, a hair stylist, and a fraud investigator. Each character reference acknowledged being aware of respondent's misconduct, and each was able to point to specific reasons for his or her high opinion of respondent's moral character in spite of the misconduct. The owner of the gym also discussed how respondent assisted him in forming a non-profit organization while refusing any type of compensation, tutored a young man who was studying to become a correctional officer without any charge and has done pro bono work for many of the clients of the gym.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 5, 2014, the prosecution costs in this matter are \$4,784. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

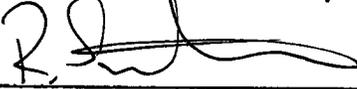
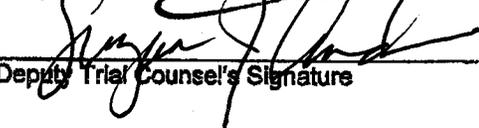
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: Richard Robert Sutherland	Case number(s): 13-C-15582; 14-C-00259
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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, Conclusions of Law, and Disposition.

<u>June 9, 2014</u> Date	 Respondent's Signature	<u>RICHARD ROBERT SUTHERLAND</u> Print Name
<u>15 June 2014</u> Date	 Respondent's Counsel Signature	<u>SAMUEL C. BELLICINI</u> Print Name
<u>6/16/14</u> Date	 Deputy Trial Counsel's Signature	<u>SUZAN J. ANDERSON</u> Print Name

(Do not write above this line.)

In the Matter of:
Richard Robert Sutherland

Case Number(s):
13-C-15582; 14-C-00259

ALTERNATIVE DISCIPLINE PROGRAM 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 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date

June 30, 2014

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 June 30, 2014 I deposited a true copy of the following document(s):

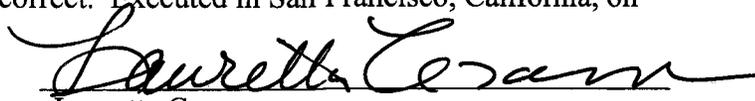
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

- by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

SAMUEL C. BELLICINI
SUZAN J. ANDERSON

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 30, 2014



Laurretta Cramer
Case Administrator
State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 March 22, 2016, I deposited a true copy of the following document(s):

- 1.) DECISION AND ORDER SEALING CERTAIN DOCUMENTS
- 2.) 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 San Francisco, California, addressed as follows:

SAMUEL C. BELLICINI
SAMUEL C. BELLICINI, LAWYER
1005 NORTHGATE DR # 240
SAN RAFAEL, CA 94903

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

Esther J. Rogers, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 22, 2016.



Laurretta Cramer
Case Administrator
State Bar Court