

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **04-O-15147-RAP**
) (05-O-04615); 07-O-11193 (Cons.)
WAYNE WILLIAM SUOJANEN,)
) **DECISION AND ORDER SEALING**
Member No. 193627,) **CERTAIN DOCUMENTS**
)
A Member of the State Bar.)

I. INTRODUCTION

In this disciplinary proceeding, respondent Wayne William Suojanen (“respondent”) 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 suspension be stayed, and that he be placed on probation for two years subject to certain conditions, including a 60-day period of suspension.

II. PERTINENT PROCEDURAL HISTORY

In March 2006, respondent contacted the State Bar’s Lawyer Assistance Program (“LAP”) to assist him with his mental health issue. Respondent subsequently signed a LAP Participation Plan.

On April 27, 2006, the State Bar of California's Office of the Chief Trial Counsel ("State Bar") filed a Notice of Disciplinary Charges ("NDC") against respondent in case nos. 04-O-15147 (05-O-04615). Respondent sought to participate in the State Bar Court's ADP. On June 29, 2006, this matter was referred to the ADP.

On October 17, 2006, respondent submitted a declaration to the court, which established a nexus between respondent's mental health issue and the charges in case nos. 04-O-15147 (05-O-04615).

The parties entered into a Stipulation Re Facts and Conclusions of Law ("Stipulation") in May 2007. The Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in case nos. 04-O-15147 (05-O-04615).

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated August 9, 2007, 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. After agreeing to those alternative dispositions, respondent and his counsel 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 August 9, 2007.

On August 31, 2009, however, the State Bar filed a second NDC against respondent in case no. 07-O-11193. On September 10, 2009, this matter was referred to the ADP. Case no. 07-O-11193 was subsequently consolidated with case nos. 04-O-15147 (05-O-04615).

On November 30, 2009, respondent submitted a declaration to the court, which established a nexus between respondent's mental health issue and the charges in case no. 07-O-11193.

The parties entered into a First Amended Stipulation Re Facts and Conclusions of Law (“Amended Stipulation”) in January 2010. The Amended Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in case no. 07-O-11193.

Following briefing by the parties, the court, on March 24, 2010, issued an Order Amending the Confidential Statement of Alternative Dispositions and Orders. This order modified: (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. After respondent agreed to these modifications, the court issued an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court’s ADP.

Respondent participated successfully in both the LAP and the State Bar Court’s ADP. On October 5, 2010, after receiving a Certificate of One Year of Participation in the LAP - Mental Health, the court filed an order finding that respondent has successfully completed the ADP.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties’ Stipulation and Amended Stipulation, including the court’s orders approving the Stipulation and Amended Stipulation, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation and Amended Stipulation set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter. Altogether, respondent stipulated to seven counts of misconduct.

In case no. 04-O-15147, respondent commingled personal funds in his client trust account (“CTA”) and improperly issued CTA checks for personal or business purposes. In case no. 05-O-04615, respondent issued CTA checks against insufficient funds. In case no. 07-O-11193,

respondent failed to perform legal services with competence, practiced law while has was not an active member of the State Bar, and misrepresented his status as an attorney.

In aggravation, respondent's misconduct involved trust funds and resulted in significant harm.

In mitigation, respondent was candid and cooperative with the State Bar and had no prior record of discipline. 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 - Mental Health, 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.

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 1.3, 1.4, 1.5, 1.6, 2.2(b), 2.3, 2.4(b), and 2.6, and *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871; *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47; *In the Matter of Koehler* (Review Dept. 1991)

1 Cal. State Bar Ct. Rptr. 615; and *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

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, contained in the Confidential Statement of Alternative Dispositions and Orders, as amended on March 24, 2010.

V. DISCIPLINE

It is hereby recommended that respondent **Wayne William Suojanen**, State Bar Number 193627, 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 probation¹ for a period of two years subject to the following conditions:

1. Respondent Wayne William Suojanen is suspended from the practice of law for the first 60 days of probation;
2. Respondent Wayne William Suojanen must also comply with the following additional conditions of probation:
 - a. 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;
 - b. 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;
 - c. 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

¹ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

- d. 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 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 period of probation and no later than the last day of the probation period;

- e. 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 probation conditions;
- f. 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;
- g. Respondent must comply with all provisions and conditions of his Participation Agreement with the 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 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.

At the expiration of the period of probation, if Wayne William Suojanen has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that Wayne William Suojanen take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar’s Office of Probation in Los Angeles, within one year after the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

It is not recommended that Wayne William Suojanen be required to attend the State Bar’s Client Trust Accounting school, as he satisfactorily completed this school in August 2008.

VI. 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.

VII. 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 806(c) of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 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 disclosures. 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: December 20, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court