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STATE BAR COURT
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LOS ANGELES

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of
TIMOTHY LEE DAVIS,
Member No. 14162,
A Member of the State Bar.

Case No. 03-V-04460-RMT

DECISION

I. INTRODUCTION

The issue herein is whether Petitioner Timothy Lee Davis ("Petitioner") has demonstrated, to the satisfaction of this Court, his rehabilitation, present fitness to practice law, and present learning and ability in the general law, so that he may be relieved from his actual suspension to practice law. (Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct ["standard 1.4(c)(ii)].)¹

For the reasons set forth below, the Court finds that Petitioner has shown, by a preponderance of the evidence, that he has satisfied the requirements of standard 1.4(c)(ii). The Court therefore grants Petitioner's petition to be relieved from his actual suspension from the practice of law.

II. SIGNIFICANT PROCEDURAL HISTORY

On October 27, 2003, Petitioner filed a verified petition seeking relief from actual

¹The standards are found in Title IV of the Rules of Procedure of the State Bar of California. All further references to standards are to this source.



1 suspension. The Office of the Chief Trial Counsel ("OCTC"), by Eli D. Morgenstern, filed its
2 response to the petition on December 18, 2003, indicating that it did not possess sufficient facts
3 to determine whether it opposed the petition.

4 After a hearing, the matter was submitted for decision after hearing on February 4, 2004.

5 **III. JURISDICTION**

6 Petitioner was licensed to practice law in the State of California on August 21, 1989, and
7 at all times mentioned herein has been a member of the State Bar of California.

8 **IV. FINDINGS OF FACT**

9 **A. Underlying Disciplinary Proceedings²**

10 On August 30, 2000, the Supreme Court issued an order in Supreme Court matter
11 S089192 (State Bar Court Case No. 99-C-10233) suspending Petitioner from the practice of law
12 for two years and until he complied with standard 1.4(c)(ii), staying execution of said suspension,
13 and placing Petitioner on probation for three years on conditions, including actual suspension
14 from the practice of law for two years and until he complied with standard 1.4(c)(ii) and
15 attendance at three meetings of Alcoholics Anonymous ("AA") per month. Credit toward the
16 period of actual suspension was to be allowed for the time spent on interim suspension, which
17 commenced on June 24, 1999. Petitioner was also ordered to comply with the other conditions
18 of probation as recommended by the Hearing Department of the State Bar Court, among other
19 things.

20 **B. Nature of Underlying Misconduct**

21 In Supreme Court matter S089192, discipline was imposed due to Petitioner's March 18,
22 1999, plea and conviction of felony violations of Penal Code sections 245(b) (assault with a
23 deadly weapon (semi-automatic)) and 422 (threat to commit a crime resulting in death or great
24 bodily injury).

25 After referral from the Review Department, Petitioner and OCTC stipulated that his
26

27 ²Pursuant to Evidence Code section 452(d), the Court takes judicial notice of Petitioner's
28 prior record of discipline.

1 misconduct violated Business and Professions Code section 6068(a) and warranted discipline as
2 more fully described above. In mitigation, the parties stipulated that there was no harm to the
3 victim; that Petitioner was candid and cooperative; and that he had no prior discipline. In
4 aggravation, they agreed that Petitioner acted recklessly by creating apprehension of great bodily
5 injury or death of the victim in the assault violation. His probation conditions included
6 abstention from alcoholic beverages, among other things, and attendance at AA meetings three
7 times per month. On April 25, 2000, the State Bar Court Hearing Department approved the
8 stipulation and recommended to the Supreme Court the discipline ultimately imposed.

9 The discipline was based upon the following stipulated facts:

10 On December 10, 1998, Petitioner had been drinking. He engaged in a shouting match
11 and then assaulted James Richardson, the owner of a neighborhood bar, in a nearby alley.
12 Gregory A. Patus, Petitioner's roommate, saw Petitioner punch Richardson in the shoulder. The
13 punch glanced off the shoulder and hit Richardson on the face. Petitioner also threatened to kill
14 Richardson and his wife or that his clients would "take care of" Richardson.

15 Patus pushed Petitioner away from Richardson and they both returned home where
16 Petitioner shouted at Patus for interfering in his business. Patus grabbed Petitioner's shoulders to
17 push him away. Petitioner said he would shoot Patus and walked into his bedroom.

18 Patus called the police and saw Petitioner pick up a holstered Colt Special handgun. As
19 he removed the gun from its holster, Petitioner told Patus that he would kill him. While Patus
20 ran out the front door, Petitioner fired a shot in his direction. Patus received only a bruise of
21 unknown origin and refused medical treatment. During the course of the arrest investigation,
22 Petitioner further threatened Patus.

23 Petitioner was placed on three years probation and also ordered to: (1) complete 365 days
24 in custody; (2) pay a \$2000 fine plus penalty assessment; (3) pay \$200 restitution to the victim;
25 (4) pay the costs of probation; and (5) waive his Fourth Amendment protections against
26 unreasonable searches and seizures. A lifetime ban on possession of firearms was also part of the
27 sentence.

28 Petitioner served about 224 days in custody and was released in mid-November 1999. He

1 served his time in a minimum security prison, Camp West Fork in San Diego County.

2 Petitioner remained on probation until April 15, 2002 and complied with all of the
3 conditions of probation.

4 On June 5, 2002, Petitioner's motion for relief pursuant to Penal Code section 1203.4 was
5 granted but his request to reduce the charges to misdemeanors pursuant to Penal Code section
6 17(b)3 was denied. (*People v. Davis*, San Diego Superior Court case no. SCD141648.)

7 **C. Petitioner's Rehabilitation and Present Fitness to Practice Law**

8 **1. Incarceration**

9 Immediately after his arrest and being released from jail, Petitioner worked with clients to
10 transfer his cases to other attorneys. He thought of his clients first. He stopped taking cases. He
11 was certain that all of the problems he caused would be his own problems and not cause anyone
12 else any trouble.

13 Petitioner believes that being incarcerated for seven months with drug dealers and car
14 thieves would and, in his case, did, encourage law-abiding behavior in a person with his
15 background, experience and training.

16 Prior to his alcohol-related criminal behavior, Petitioner served in the United States Navy
17 as an enlisted man from 1972 to 1976. He attended college and law school from 1977 to 1984.
18 He then returned to active military service as a Navy officer in the Judge Advocate General's
19 Corps from 1984 to 1988 before entering private practice from 1989 to 1998. While in the JAG
20 Corps, Petitioner served as a prosecutor, Summary Court and as an Article 32/Preliminary
21 Hearing Officer. In connection with this service, he was also a member of the Wisconsin and
22 Illinois bars.³

23 Petitioner did not recall any decorated military veterans in custody at Camp West Fork.
24 All of his previous experience with the law were as a prosecutor, defense counsel or counsel for
25 the government - not as a defendant (with the exception some minor traffic tickets).

26
27
28 ³Petitioner resigned from the Wisconsin Bar after his JAG Corps service was completed.
He was disciplined in Illinois due to his California criminal conviction and suspension.

1 Initially, none of the other prisoners or the probation officers trusted him. Eventually, the
2 probation officers came to trust him and he was given jobs that required little or no supervision,
3 such as working in their quarters. The worst part of the incarceration was the other inmates'
4 behavior and ideas, which, for Petitioner, given his background, was "crazy." He avoided them
5 as much as possible, such as exercising and reading books during his free time. However, most
6 of the time, was spent interacting with people who, in Petitioner's opinion, try to cheat rather
7 than live honorable lives.

8 Petitioner completed his service at Camp West Fork without incident or rule violations of
9 any kind.

10 Petitioner has complied with all of the conditions of his criminal and disciplinary
11 probations, including attending over 1000 of AA meetings, paying all fines and restitution.
12 Petitioner was on supervised probation in Ohio from November 1999 until April 2003.

13 **2. Impact of and Rehabilitation from Substance Abuse**

14 Substance abuse is a recurring theme in Petitioner's family. He believes that his mother,
15 who died from lung cancer, was killed by cigarettes and the chemicals they contain. He also
16 believes that alcohol was at least a significant factor in the death of his sister, who was a heavy
17 drinker and died from a massive seizure. His nephew, his brother's son, recently served a 30-day
18 jail sentence for an alcohol-related offense.

19 Petitioner's brother's death was drug-related, in Petitioner's opinion. Petitioner worked
20 with his brother from November 1999 until two months prior to his suicide in April 2002.
21 Petitioner's brother bought houses, refurbished them and rented them out. His brother's business
22 was failing because of his drug addiction to prescription and illegal drugs. From the time he was
23 a teenager until his death, his brother used every illegal drug he could get his hands on. Drugs
24 made him paranoid. Petitioner and his brother were estranged for the two months prior to his
25 death. According to Petitioner, drugs put his brother into so much pain that he set an elaborate
26 fire in his basement while his gas was turned on and flowing into the room. He went upstairs to
27 his bedroom and shot himself shortly before his house exploded.

28 Petitioner feels that this is an important factor in his rehabilitation because the reason for

1 his own criminal conviction was a single episode of committing violent crimes while drunk. He
2 believes he would never have done any of those acts had he been sober. During the time he spent
3 in custody and watching his brother's troubles, Petitioner had time to reflect and observe on the
4 constant theme of drug or alcohol abuse in all of the clients he represented in criminal matters.

5 Petitioner did not realize the impact that alcohol could have on his life until it was too
6 late. Although, he believes, it has not been an easy lesson for him, it is a lesson he cannot forget.
7 He cannot forget how his criminal acts occurred and how fragile everything that he had worked
8 for was. Every time he reported to his probation officer, he was reminded of his criminality.
9 Every time he attends an AA meeting, he is reminded of how he got there.

10 Petitioner attends AA meetings not because he finds a great deal of solace, help or
11 companionship there but because attendance reminds him vividly of all the problems his criminal
12 acts caused. AA meetings have helped to convince him that he does not drink; that he does not
13 like the taste of alcohol; that alcohol was the underlying cause of his criminal acts as it was for
14 his criminal law clients. Not forgetting the past is an important bearing for him to keep, in his
15 opinion. Petitioner credibly asserts that he will continue to attend meetings to remember these
16 factors.

17 **3. Family Matters**

18 After being released from Camp West Fork, Petitioner's probation was transferred to
19 Ohio, where his family is. Petitioner was on supervised probation in Ohio from November 1999
20 until April 2003.

21 Since his brother's death, Petitioner takes care of his 89-year-old father on a nearly full-
22 time basis, including monitoring his health care, supervising his finances and physically doing
23 things that his father is unable to do.

24 Petitioner's brother died intestate. His son, Petitioner's nephew, was his sole heir but he
25 was unable to administer the estate because of its complexity and because of his own serious
26 drug and alcohol problems. (For example, Petitioner had placed his nephew in a drug
27 rehabilitation facility for heroin addiction in the 1990's.)

28 Petitioner retained local counsel to do the probate work. Petitioner worked for about 700

1 hours until the 11 rental properties were sold and the estate was settled. He collected the rents,
2 pursued evictions with the help of an attorney, made repairs and hired a realtor, among other
3 things. Documents relating to the brother's estate were lost in the fire when he died, so Petitioner
4 had to research the properties and have all the bills sent to him. Because of his legal training, he
5 was able to keep the rentals going with no loss of income for his nephew despite all the chaos
6 caused by his brother's suicide.

7 **4. Desire to Continue Practicing Law**

8 Petitioner became a lawyer to help people. He did that throughout his legal career and
9 wishes to continue doing so. He believes he has paid his debts for his mistakes and wants to
10 return to the practice of law to continue to contribute to justice.

11 Petitioner is unable to return to California in the immediate future because of his
12 caretaking duties for his father. However, if his actual suspension is terminated in California, he
13 intends to seek admission to the Ohio Bar and work there. He hopes eventually to return to
14 California.

15 **5. Character Witness**

16 Petitioner's character witness, Tracy B. Calabrese, was aware of the misconduct which
17 led to his suspension and attested to his trustworthiness and honesty. They met in 1988 when
18 they were both lieutenants in the trial defense division of the Navy's JAG Corps. Calabrese later
19 served as a prosecutor of attorney disciplinary matters for the Washington State Bar Association.

20 Calabrese remembers Petitioner as being the best and most passionate defense lawyer and
21 was impressed with Petitioner's straightforward, honest way of dealing with clients, opposing
22 counsel, the military judge, officers and enlisted sailors. The military judge advised Calabrese to
23 watch Petitioner to learn from an excellent lawyer who was both skillful and enthusiastic in
24 representing his clients.

25 Petitioner and Calabrese continued to keep in touch after he completed his naval service
26 and moved to San Diego. They only lost touch briefly when he was in custody. After his release,
27 Petitioner told Calabrese all of the circumstances surrounding his criminal conviction. He
28 always maintained that he was solely responsible for his actions and that he fully accepted the

1 consequences.

2 Calabrese believes that Petitioner is completely rehabilitated and ready to resume the
3 practice of law. She knows him to be trustworthy and honest and believes him when he states
4 that he has not taken a drink since the incident leading to the conviction and that he will not drink
5 in the future.

6 Calabrese has been closely acquainted with several alcoholics, some recovering and some
7 still in denial. She believes that Petitioner is not an alcoholic but rather that he committed a
8 crime when he was very drunk. The alcohol clouded his judgment and ability to control his
9 temper when faced with a long-standing situation that was very aggravating (loud noise from a
10 nearby bar).

11 Calabrese notes that Petitioner's misconduct is an isolated incident. He had no prior
12 criminal record. He pled guilty, was incarcerated and complied with the terms of his probation.
13 He lives with the knowledge that his lack of judgment and his failure to control his temper
14 resulted in a criminal conviction but also tarnished his otherwise excellent reputation as a former
15 JAG Corps officer and private attorney. She is confident that Petitioner will not allow himself to
16 be involved in situations that could lead to misconduct. As former prosecutor and disciplinary
17 counsel, she strongly believes that whether a person accepts responsibility for his or her actions is
18 vital to their rehabilitation. Petitioner accepted complete responsibility for his actions from the
19 beginning. He never once tried to make excuses or to avoid any of the punishment imposed by
20 the court.

21 Calabrese knows Petitioner to be a decent, honest, ethical, hardworking and
22 compassionate person, both personally and professionally. He has spent many months handling
23 various matters as executor for the estates of his mother, sister and brother with little or no
24 appreciation from other relatives. He handled a very substantial amount of money during the
25 time he managed and sold his brother's properties. He worked hard to see to it that the sale of
26 the properties was on the most favorable terms for the benefit of his nephew. He is also an
27 extremely devoted son, overseeing his father's daily life, medical needs and substantial finances,
28 even though his father is a most difficult, demanding and unappreciative person

1 Calabrese believes that she is not soft on attorneys who commit offenses that reflect
2 adversely on their fitness to practice law because she knows well the dangers posed by attorneys
3 who are lazy, unethical, dishonest or volatile. She appreciates the value that attorneys who are
4 decent, smart, hardworking and ethical have to their clients and to the legal profession.
5 Calabrese believes that Petitioner deserved the punishment and suspension that he got after he let
6 his temper get the best of him while he was drunk and committed a very serious crime.
7 However, she is confident that he is not a recidivist. He is hardworking, ethical and decent. He
8 understands that lawyers must be held to a higher standard of conduct than the general public and
9 he is determined to live up to those standards. She believes that if he is permitted to practice law
10 again, he will be successful in conducting himself in a way that reflects very positively on the
11 legal profession.

12 **D. Petitioner's Present Learning and Ability in the General Law**

13 While suspended, Petitioner participated in MCLE-approved courses, completing over 40
14 hours in a wide range of practice areas, including legal ethics.

15 Petitioner also successfully completed the Multistate Professional Responsibility
16 Examination given on March 9, 2001.

17 After his brother's death, Petitioner managed his estate for the benefit of his nephew, who
18 himself was suffering the ravages of substance abuse. The management of the estate was done in
19 a transparent manner and in compliance with his fiduciary duties. This complex task required
20 several hundred hours of work, involving the sale of 11 pieces of real estate and accounting for
21 and distributing nearly half a million dollars.

22 Petitioner also successfully represented himself in three Ohio traffic court matters.

23 Calabrese indicated that, over the years, she would turn to Petitioner when faced with
24 legal questions in areas in which she had no experience. She knew that he would either give her
25 a very detailed and accurate explanation of the current state of the law or, if he did not have
26 experience in the area, refer her to someone else after sharing his general thoughts on the matter.
27 If Petitioner is not knowledgeable in an area of the law, he knows how to get there, according to
28 Calabrese. He is one of the smartest lawyers she knows.

1 **V. DISCUSSION**

2 Standard 1.4(c)(ii) provides, in relevant part, that normally actual suspension imposed for
3 two years or more shall require proof satisfactory to the State Bar Court of the attorney's
4 rehabilitation, present fitness to practice and present learning and ability in the general law before
5 he or she will be relieved of the actual suspension.

6 In this proceeding, Petitioner has the burden of proving by a preponderance of the
7 evidence
8 that he has satisfied the conditions of standard 1.4(c)(ii). The Court looks to the nature of the
9 underlying misconduct as well as the aggravating and mitigating circumstances surrounding it to
10 determine the point from which to measure Petitioner's rehabilitation, present learning and ability
11 in the general law, and present fitness to practice before being relieved from his actual
12 suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

13 To establish rehabilitation, the Hearing Department must first consider the prior
14 misconduct from which Petitioner seeks to show rehabilitation. The amount of evidence of
15 rehabilitation varies according to the seriousness of the misconduct at issue. Second, the Court
16 must examine Petitioner's actions since the imposition of his discipline to determine whether his
17 actions, in light of the prior misconduct, sufficiently demonstrate rehabilitation by a
18 preponderance of the evidence. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at
19 p. 581.)

20 Petitioner must show strict compliance with the terms of probation in the underlying
21 disciplinary matter; exemplary conduct from the time of the imposition of the prior discipline;
22 and must demonstrate "that the conduct evidencing rehabilitation is such that the court may make
23 a determination that the conduct leading to the discipline ... is not likely to be repeated." (*In the*
24 *Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

25 Petitioner was found culpable of serious misconduct on the basis of a criminal conviction,
26 as was set forth above. He has acknowledged the wrongfulness of his misconduct and has
27 expressed remorse for his misdeeds as well as his resolve to avoid a reoccurrence. His
28 misconduct was directly related to the abuse of alcohol. However, he attended over 1000 hours

1 of AA meetings and has been sober for more than five years. He is aware of the connection
2 between substance abuse and criminal conduct, be it his, his former clients', his nephew or his
3 brother. Petitioner complied with the conditions of his criminal and disciplinary probations. The
4 credible testimony of a long-time attorney friend who is a former Bar counsel in the state of
5 Washington, is persuasive in supporting the conclusion that Petitioner has been rehabilitated and
6 presently possesses good moral character. Favorable character testimony from attorneys are
7 entitled to considerable weight. (Cf. *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

8 There is nothing in Petitioner's background other than this one isolated incident which
9 would suggest that he is not fit to practice law.⁴ On the contrary, he has had no prior disciplinary
10 contact with the State Bar; he has served honorably on two tours of duty with the U.S. Navy and
11 performed admirably as a judge advocate, both as a prosecutor and as a defense counsel.

12 Moreover, Petitioner has demonstrated his present learning and ability in the general law.

13 Therefore, the Court finds that Petitioner has demonstrated, by a preponderance of the
14 evidence, that he is rehabilitated and has present fitness to practice law.

15 **VI. CONCLUSION**

16 Based on the foregoing, the Court finds that Petitioner Timothy Lee Davis has established
17 by a preponderance of the evidence his rehabilitation, present fitness to practice and present
18 learning and ability in the general law.

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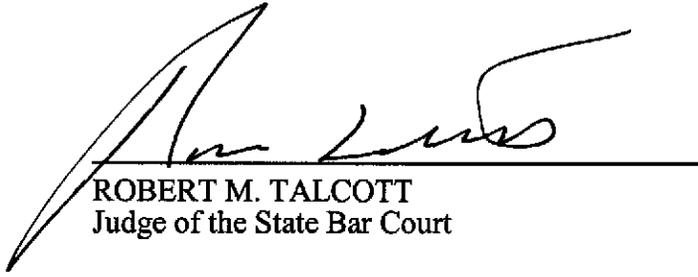
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26 ⁴The Court did not find persuasive the prosecution's argument that certain procedural
27 deficiencies were indicative of Petitioner's failure to follow rules. The petition originally was
28 rejected for filing because it lacked a verification. On the day of trial, Petitioner brought certain
evidence instead of providing it earlier to the prosecution.

1 Accordingly, Petitioner's petition for relief from actual suspension from the practice of
2 law pursuant to standard 1.4(c)(ii) is GRANTED. It is further ordered that Petitioner's actual
3 suspension from the practice of law in the State of California is hereby terminated and he shall
4 hereafter be entitled to resume the practice of law in this state upon the payment of all applicable
5 State Bar fees and previously assessed costs.
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10 Dated: February ¹²25, 2004


11 ROBERT M. TALCOTT
12 Judge of the State Bar Court
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CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 Los Angeles, on February 25, 2004, I deposited a true copy of the following document(s):

DECISION, filed February 25, 2004

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

[X] by overnight mail at Los Angeles, California, addressed as follows:

**TIMOTHY L. DAVIS
557 LARCOMB AVE
COLUMBUS OH 43223-1837**

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

ELI MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 25, 2004.**



Tammy R. Cleaver
Case Administrator
State Bar Court