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THE STATE BAR COURT

HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of             | ) | Case No. 03-V-03141-PEM |
| <b>MICHAEL EUGENE PLATT,</b> | ) | <b>DECISION</b>         |
| <b>No. 77779,</b>            | ) |                         |
| A Member of the State Bar.   | ) |                         |

**I. INTRODUCTION**

The issue in this case is whether Petitioner Michael Eugene Platt has demonstrated, to the satisfaction of this Court, his rehabilitation, present fitness to practice, and present learning and ability in the general law so that he may be relieved of his actual suspension from the practice of law pursuant to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct (“Standards”).

For the reasons stated below, this 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 upon payment of all fees and costs that may be due.

**II. PROCEDURAL HISTORY**

On August 7, 2003, Petitioner filed a verified petition for relief from actual suspension, seeking the termination of his actual suspension, which commenced on February 19, 2003, on the grounds that he has satisfied the requirements of Standard 1.4(c)(ii).



1 On September 22, 2003, the Office of the Chief Trial Counsel of the State Bar of California  
2 (“State Bar”) filed a response to the petition, opposing Petitioner’s request for relief from actual  
3 suspension based on the ground that Petitioner has not shown his present rehabilitation.

4 Richard J. Gibson, Jr. represented Petitioner in this matter. The State Bar was represented  
5 by Deputy Trial Counsel Tammy M. Albertsen-Murray.

6 This matter was heard by the State Bar Court on October 30, 2003, and was taken under  
7 submission on the same date.

8 **III. JURISDICTION**

9 Petitioner was admitted to the practice of law in California on December 21, 1977. From  
10 September 14, 1994 until February 19, 2003, Petitioner was a judge of the Superior Court for the  
11 County of San Joaquin. Prior to September 14, 1994 and after February 19, 2003, he has been a  
12 member of the State Bar of California.<sup>1</sup>

13 **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14 **A. Petitioner’s Underlying Judicial Disciplinary Proceeding**

15 Petitioner is a former Judge of the Superior Court for the County of San Joaquin, California.  
16 On August 31, 2001, formal proceedings against Petitioner were initiated by the Commission on  
17 Judicial Performance (“Commission”). By its First Amended Notice of Formal Proceedings, the  
18 Commission charged Petitioner with eight counts of wilful misconduct in office, conduct prejudicial  
19 to the administration of justice that brings the judicial office into disrepute, and improper action  
20 within the meaning of article VI, section 18, subdivision (d) of the California Constitution.  
21 Specifically, Petitioner was charged with four counts of ticket fixing, three counts of attempting to  
22 influence other jurists, and one count of issuing a stay in a detainer proceeding.

23 Special Masters were appointed by the Chief Justice of the California Supreme Court and a  
24 hearing was held from February 26, 2002, to February 28, 2002. On April 19, 2002, the Special  
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26 <sup>1</sup> An individual admitted and licensed to practice law in California is not a member of the State  
27 Bar while he or she is holding office as a judge of a court of record. (Cal. Const., art. VI, § 9.)

1 Masters filed their written decision. In their report, the Special Masters found that Petitioner had  
2 committed judicial misconduct in five of the eight alleged counts. On August 5, 2002, the  
3 Commission issued a Removal Order based upon the decision of the Special Masters and following  
4 oral argument conducted before the Commission on June 25, 2002. The Commission found that  
5 each of Petitioner's attempts to dismiss the four separate traffic tickets violated multiple provisions  
6 of the California Code of Judicial Ethics, i.e., Canon 1 (a judge shall uphold the integrity of the  
7 judiciary); Canon 2A (a judge shall respect and comply with the law and act at all times in a manner  
8 that promotes public confidence in the integrity and impartiality of the judiciary); Canon 2B(1) (a  
9 judge shall not allow family social, or other relationships to influence the judge's judicial conduct  
10 or judgment; a judge shall not convey or permit others to convey, that any individual is in a special  
11 position to influence the judge); Canon 2(B) (a judge shall not lend the prestige of judicial office to  
12 advance the personal interests of others); and Canon 3B(7) (a judge shall perform the duties of a  
13 judicial office impartially by permitting every person who has a legal interest in a proceeding,  
14 including the prosecuting authority, a full right to be heard according to law). The Commission also  
15 found that, on two occasions, Petitioner attempted to influence another judicial officer in violation  
16 of Canons 1, 2A, 2B(1), 2B(2) and 3B(7) and that, on another occasion, Petitioner's *ex parte*  
17 conveyance of information violated Canon 3B(7) and Canon 2 (a judge shall avoid the impropriety  
18 and appearance of impropriety in all of the judge's activities).

19 The Commission concluded that Petitioner's actions on four separate traffic tickets and two  
20 of his attempts to influence another jurist, as well as his *ex parte* conveyance of information  
21 regarding a family, constituted acts of wilful misconduct under article VI, section 18(d) of the  
22 California Constitution, thereby warranting Petitioner's removal from the Bench.

23 On February 16, 2003, the California Supreme Court denied a hearing on Petitioner's Writ  
24 of Review from the Commission's Removal Order of August 5, 2003 and affirmed the  
25 Commission's factual findings and conclusions of law. The Supreme Court's denial of Petitioner's  
26 Writ of Review made the Removal Order a final decision. As a result of the Supreme Court's denial,  
27 effective February 19, 2003, Petitioner was removed from the Superior Court and suspended from  
28

1 the practice of law until further order of the Court pursuant to article VI, section 18(e) of the  
2 California Constitution.

3 **1. Petitioner's Background**

4 Petitioner was an infantryman in the United States Marine Corps from 1967 through 1970,  
5 thirteen months of which he served in Vietnam. After spending three years in the Marine Corps,  
6 Petitioner went to college, graduating from the University of California at Davis with a degree in  
7 political science. Thereafter, Petitioner enrolled in law school at Pepperdine University. In 1977,  
8 Petitioner graduated from Pepperdine University with a law degree and became a member of the  
9 State Bar that same year. After being admitted to practice, Petitioner joined the San Joaquin County  
10 District Attorney's Office as a Deputy District Attorney until 1988. As a prosecutor, Petitioner  
11 served on the Child Abuse and Sexual Assault team and the Homicide team where, at various times,  
12 he was the supervisor of the teams. In 1988, Petitioner went into private practice as a solo  
13 practitioner for three years. In 1990, Petitioner rejoined the District Attorney's Office as a member  
14 of the Homicide team. As an active member of the State Bar from 1977 to 1994, Petitioner had no  
15 record of discipline.

16 Petitioner was appointed to the San Joaquin County Superior Court in September 1994.  
17 While on the bench, Petitioner handled a number of different assignments (Criminal Master Calendar  
18 1995-1997; Criminal Trial Calendar 1997-1999; Presiding Judge of the Juvenile Court 1999-2001;  
19 and Civil Trial Calendar 2001-2002).

20 On October 27, 1997, the Commission on Judicial Performance sent Petitioner a notice of  
21 intended public admonishment because in 1995, 1996 and 1997, he had solicited attorneys who  
22 appeared before him to purchase raffle tickets for a local church and to purchase tickets for a  
23 fundraiser for a local child care center and because he had placed open boxes of candy bars in his  
24 chambers and on his bailiff's desk for purchase by attorneys and court staff, with the proceeds  
25 benefitting his children's parochial school.

26 In May 2001, the Commission sent a preliminary investigation letter to Petitioner regarding  
27 complaints of ticket-fixing, attempts to influence other jurists, and issuing an improper stay in a

1 detainer proceeding. Following receipt of his response, the Commission sent a second preliminary  
2 investigation letter to Petitioner in June 2001. After considering his response to the second letter,  
3 the Commission, issued a Notice of Formal Proceeding on August 31, 2001. Petitioner filed his  
4 answer on September 18, 2001. On October 16, 2001, the Commission sent another preliminary  
5 investigation letter to Petitioner, to which he responded on November 1, 2001. The Commission  
6 issued a First Amended Notice of Formal Proceedings and Petitioner filed his answer on December  
7 19, 2001.

## 8 **2. Nature of the Underlying Judicial Misconduct**

9 Briefly summarized, the misconduct found by the Commission on Judicial Performance that  
10 formed the basis for its decision to remove Petitioner from the bench, was as follows:

11 First, Petitioner admitted that he had a personal relationship with an individual, Guardado,  
12 who loaned Petitioner about \$3,500 in October 1998, which Petitioner subsequently discharged in  
13 bankruptcy in July 1999. Thereafter, in December 1999, Petitioner received a telephone call from  
14 Guardado's wife, who informed him that her niece had received a speeding ticket in San Joaquin  
15 County. Although the ticket would not have come before Petitioner for any purpose in the regular  
16 course of judicial business, Petitioner instructed his clerk to locate the ticket and, on February 29,  
17 2000, instructed the clerk to dismiss the ticket.

18 Second, on February 8, 2000, Mrs. Guardado telephoned Petitioner and stated that Guardado  
19 had received a speeding ticket in San Joaquin County. Although the ticket would not have come  
20 before Petitioner for any purpose in the regular course of judicial business, Petitioner instructed his  
21 clerk to locate the ticket and, on February 29, 2000, instructed the clerk to dismiss it.

22 Third, on November 16, 2000, Mrs. Guardado telephoned Petitioner and informed him that  
23 she had received a speeding ticket in San Joaquin County. Although Mrs. Guardado's ticket would  
24 not have come before him for any purpose in the regular course of judicial business, Petitioner  
25 instructed his clerk to locate the court records of the speeding ticket. Petitioner then telephoned his  
26 former clerk, who was assigned to a different courtroom, on January 9, 2001, and asked his former  
27 clerk to dismiss Mrs. Guardado's traffic ticket. The clerk refused to do so.

1 Fourth, sometime after March 27, 2000, Petitioner's bailiff informed him that the son of a  
2 reserve deputy sheriff who had occasionally acted as Petitioner's bailiff, had received a speeding  
3 ticket in San Joaquin County. In response to the bailiff's request for help, Petitioner contacted the  
4 California Highway Patrol officer who issued the citation and discussed the matter with him on an  
5 *ex parte* basis. Therefore, although the ticket would not have come before him for any purpose in  
6 the regular course of judicial business, Petitioner directed the dismissal of the speeding ticket without  
7 a hearing on May 23, 2000.

8 Fifth, in July 1998, Petitioner telephoned Judge Holland in his chambers in Stockton, where  
9 Judge Holland was assigned to the juvenile dependency calendar. Petitioner engaged in an *ex parte*  
10 communication with Judge Holland in which Petitioner stated that Judge Holland had a pending  
11 matter involving the family of a former client of Petitioner and that the former client had allegedly  
12 absconded with one of his children. Petitioner told Judge Holland that the family was dysfunctional  
13 and that he had advised his former client to return the child and to cooperate with Child Protective  
14 Services.

15 Sixth, sometime in 1999 or 2000, Petitioner engaged in an improper *ex parte* communication  
16 by telephoning Commissioner Kronlund, who was assigned to the Tracy branch of the San Joaquin  
17 Superior Court, about a friend of his, whom he referred to as his godfather, and the manner in which  
18 the traffic court handles traffic tickets and, in particular, the handling of late fees. During this  
19 conversation, Petitioner indicated that his friend was active in the community.

20 Finally, during the spring or summer of 2000, Petitioner made an *ex parte* visit to Judge  
21 James Hammerstone at his chambers in the Stockton branch of the court and told Judge  
22 Hammerstone that a personal acquaintance of Petitioner or a member of the acquaintance's family  
23 was being held in county jail for a theft-related offense. Petitioner asked Judge Hammerstone to  
24 grant an own recognizance release or to call the jail and order an OR release. Judge Hammerstone  
25 refused to do so.

26 As previously indicated, based upon the above-referenced misconduct, the Commission on  
27 Judicial Performance issued an order of removal of Petitioner on August 5, 2002, and pursuant to  
28

1 the provisions of article VI, section 18 of the California Constitution and rule 120 of the Rules of  
2 the Commission on Judicial Performance, Petitioner was disqualified from acting as a judge. On  
3 February 16, 2003, the California Supreme Court denied a hearing on Petitioner's Writ of Review  
4 from the Commission's Removal Order. The Supreme Court's decision made the Removal Order  
5 a final decision, effective February 19, 2003. Petitioner was thus suspended from the practice of law  
6 by virtue of his removal from the bench on February 19, 2003.

7 In short, Petitioner has suffered the most extreme discipline – removal from his position as  
8 Judge of the Superior Court of San Joaquin County – based upon findings of judicial misconduct in  
9 seven separate matters, including four instances of ticket fixing and three counts of attempting to  
10 influence other jurists on behalf of defendants, in violation of multiple Canons of Judicial Ethics.

11 In its decision to remove Petitioner, the Commission found two troubling features. First,  
12 there was a pattern of misconduct beginning shortly after Petitioner took the bench through January  
13 9, 2001, indicating that Petitioner was willing to use his judicial position for the benefit of friends  
14 and acquaintances, even after being warned by his colleagues and privately admonished by the  
15 Commission. Second, Petitioner's response to the allegations raised concern about his truthfulness.  
16 Petitioner told the Special Masters that, at the time he dismissed the traffic tickets, he did not  
17 perceive any legal or ethical problem with doing so. Specifically, the Commission found that  
18 Petitioner cloaked his alleged ignorance that ticket fixing was wrong in after-the-fact rationalizations  
19 that called into question his credibility given that Petitioner had served fifteen years in the District  
20 Attorney's Office and had been a judge for five years.

21 Notwithstanding the Commission's decision to remove Petitioner, the Commission found  
22 the following factors in mitigation: (1) Petitioner's remorse; (2) Petitioner's early acknowledgment  
23 of wrong doing; (3) Petitioner's performance as a judge; (4) Petitioner's support in the community;<sup>2</sup>

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25 <sup>2</sup> Subsequent to the Removal Order of August 5, 2002, and while that Order was on appeal before  
26 the California Supreme Court, Petitioner faced a contested re-election against five challengers. His  
27 judicial misconduct and removal were thoroughly covered by the local media and the election was the  
28 subject of aggressive campaigns by each of the challengers. Despite the negative publicity, Petitioner  
won the election with 60.4% of the total vote.

1 (5) Petitioner's capacity to rehabilitate;<sup>3</sup> and (6) Petitioner's voluntary seeking of counseling on  
2 ethics from retired Judge Duane Martin.

3 **B. Petitioner's Present Learning and Ability in the General Law**

4 At the hearing in this matter, the parties stipulated that Petitioner has present learning and  
5 ability in the general law. In addition, on August 8, 2003, Petitioner sat for and passed the Multistate  
6 Professional Responsibility Examination. Based upon the record as a whole, and the parties'  
7 stipulation that Petitioner has present learning and ability in the general law, the Court finds that  
8 Petitioner has demonstrated, by a preponderance of the evidence, that he has present, learning and  
9 ability in the general law.

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

11 Prior to Petitioner's appointment to the bench, he led an exemplary life as an attorney.  
12 Petitioner had no prior record of attorney discipline and was a successful Deputy District Attorney.  
13 At the hearing on this matter, Petitioner admitted the wrongfulness of his acts that caused his  
14 removal from the bench. In contrast to his testimony before the Commission, Petitioner admitted  
15 in this proceeding that he knew at the time he fixed the traffic tickets that he was wrong.<sup>4</sup> Petitioner  
16 offered no justifications or excuses for his misconduct.

17 Petitioner presented 8 letters, each dating from May 2003 through July 2003, from judges  
18 on the Superior Court bench of San Joaquin County. All of these judges urged this Court to reinstate  
19 Petitioner's license to practice law. Many of the judges expressed a high regard for Petitioner's  
20 ethics and integrity, notwithstanding his misconduct. Petitioner also presented at least 19 letters  
21 from practicing attorneys. In these letters, Petitioner's good character, remorse and rehabilitation  
22 are attested to by a wide range of people in the legal community who were aware of the full extent  
23 of Petitioner's misconduct. Favorable character testimony and reference letters from employers and  
24 attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

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26 <sup>3</sup> The Special Masters made no finding as to whether Petitioner was capable of rehabilitation.

27 <sup>4</sup> By the time of the Commission hearing, Petitioner had admitted that his *ex parte*  
28 communication with other jurists might suggest the appearance of impropriety.

1 Finally, Petitioner presented at least 15 laudatory letters from a broad cross-section of his  
2 community, including the a Vice-Mayor, two Chief Executive Officers of charitable organizations,  
3 bankers and teachers. In all of these letters, the community representatives have expressed that  
4 Petitioner's remorse, acknowledgment of wrongdoing and apology for his conduct are evidence of  
5 his rehabilitation.

6 More importantly, at the hearing on this matter, Petitioner testified that he personally  
7 apologized to the court clerks that he had asked to process dismissals and that he has apologized to  
8 his community<sup>5</sup> for his misconduct and that there is not a day that goes by where he is not remorseful  
9 for his misconduct. Moreover, evidence was presented that Petitioner spent at least several hours  
10 working on ethical issues presented by the Commission's allegations with Retired Superior Court  
11 Judge Duane Martin. Also, on June 12, 2003, Petitioner attended and successfully completed State  
12 Bar Ethics School.

13 The Court finds that, based upon the evidence set forth above, that Petitioner has  
14 demonstrated, by a preponderance of the evidence, that he is rehabilitated and has present fitness to  
15 practice law.

## 16 V. DISCUSSION

17 In order to be relieved of his actual suspension under Standard 1.4(c)(ii) of the Standards for  
18 Attorney Sanctions for Professional Misconduct, Petitioner has the burden of proving in this  
19 proceeding, by a preponderance of the evidence, that he is rehabilitated, has present fitness to practice  
20 law and has present learning ability in the general law. (*In the Matter of Terrones* (Review Dept.  
21 2001) 4 Cal. State Bar Ct. Rptr.289; rule 634, Rules Proc. of State Bar.)

22 The State Bar does not challenge Petitioner's present learning and ability in the general law.  
23 Based upon the evidence presented in this proceeding and upon the stipulation of the parties, this  
24 Court concludes that Petitioner has demonstrated present learning and ability in the general law.

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26 <sup>5</sup> Petitioner presented jury trial excerpts attached as exhibits to his petition. These excerpts  
27 reflect that Petitioner, while still on the bench and in open court, acknowledged his misconduct and  
28 apologized for it to attorneys, their clients, and to jurors in his court and community in general.



1 of the judicial system, weighed in favor of Petitioner's removal.

2 In August 2001, while the Commission's initial investigation was pending, Petitioner attended  
3 a Judicial Ethics seminar and met with another judge to discuss ethical issues. Since Petitioner's  
4 removal from the bench and his suspension from the practice of law, he has acknowledged that he  
5 knew that ticket fixing was wrong and has accepted responsibility for his misconduct. Petitioner has  
6 taken objective steps to demonstrate his remorse and his recognition of his wrongdoing. He has  
7 openly and freely discussed with his community the circumstances of his removal and the harm he  
8 has done to the judicial system. Petitioner also has attended State Bar Ethics School. Moreover,  
9 Petitioner has remained active in his community, oftentimes spending at least 10-15 hours per week  
10 coaching youth sporting activities.

11 As mitigating circumstances, in the underlying judicial disciplinary proceeding, it was noted  
12 that Petitioner was remorseful and had acknowledged his wrongdoing at an early stage. Petitioner  
13 also has no prior record of discipline as an attorney. Furthermore, Petitioner's past colleagues and  
14 friends provided statements attesting to his good character and the steps he has taken to rehabilitate  
15 himself. The Court finds that there is no evidence to suggest that Petitioner's misconduct which led  
16 to his removal from the bench is likely to recur. Petitioner testified that his removal from the bench  
17 for misconduct has left an indelible mark on his life and his future course of conduct.

18 Therefore, based on the foregoing, the Court finds that Petitioner has demonstrated, by a  
19 preponderance of the evidence, that he is rehabilitated and has present fitness to practice law.

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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 San Francisco, on November 10, 2003, I deposited a true copy of the following document(s):

**DECISION**

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

by overnight mail in San Francisco, California, addressed as follows:

**RICHARD J GIBSON JR**  
**2027 GRAND CANAL BLVD #35**  
**P O BOX 1771**  
**STOCKTON CA 95201**

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

**TAMMY ALBERTSEN-MURRAY, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 10, 2003**.

  
**George Hue**  
Case Administrator  
State Bar Court