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MAY 13 2004

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STATE BAR COURT
HEARING DEPARTMENT -LOS ANGELES

In the Matter of

Case No. 04-V-10608-PEM

MICHAEL H. DO
No. 154567

DECISION

A Member of the State Bar.

I. INTRODUCTION

The issue in this case is whether Petitioner Michael H. Do 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.

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 February 18, 2004, Petitioner filed a verified petition for relief from actual suspension, seeking the termination of his actual suspension on the grounds that he has satisfied the requirements of Standard 1.4(c)(ii). On April 5, 2004, the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") filed a response to the petition, stating that it did not possess



1 sufficient facts to determine whether or not it opposed the Petition and it therefore requested a
2 hearing on the Petition pursuant to rule 633(c). Further pursuant to rule 633(a) and Evidence Code
3 section 452, subdivision(d)(1), the State Bar requested that the Court take judicial notice of all
4 records of the Superior Court of California for the County of Santa Clara in case number
5 CC069899, entitled *People v. Do*, including all probation records relating thereto.¹

6 On April 29, 2004, the State bar filed a supplemental response to Petitioner's petition
7 stating that it no longer opposed Respondent's petition.

8 On May 5, 2004, the Court reviewed Petitioner's petition and the State Bar's response and
9 supplemental response as well as the January 30, 2002 stipulation re: facts, conclusions of law on
10 the matter for which Respondent was disciplined. The matter was submitted for decision on May
11 3, 2004.

12 **III. JURISDICTION**

13 Petitioner was admitted to the practice of law in California on December 16, 1991, and, at
14 all times mentioned herein, has been a member of the State Bar of California.

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

16 **A. Petitioner's Underlying Disciplinary Proceeding**

17 In January 2001, Petitioner was convicted, based upon a plea of no contest, of violating
18 Penal Code Section 288a (oral copulation with a minor under the age of 18). The victim was his
19 niece. Petitioner was then sentenced to six months in a work furlough program.

20 Following Petitioner's conviction, the State Bar Court Review Department placed Petitioner
21 on interim suspension by minute order filed March 12, 2001, effective April 16, 2001, in *In the*
22 *Matter of Michael Hoang Do*, State Bar Court Case No. 00-C-12321, pending final disposition of
23 the disciplinary proceeding. On October 11, 2001, the Review Department of the State Bar Court
24 issued an order referring the matter to the Hearing Department for a recommendation concerning

25
26 ¹The State Bar did not give the court the records in case number CC069899, therefore, the Court
27 did not take judicial notice of the records. However, the Court did take judicial notice of stipulation re:
28 facts, conclusions of law and disposition in the underlying case.

1 the appropriate discipline to be imposed.

2 On January 29, 2002, Petitioner and the State Bar submitted a Stipulation as to Facts and
3 Disposition in the underlying disciplinary proceedings. The stipulation was approved and filed by
4 the State Bar Court on January 30, 2002. Thereafter, by minute order filed June 12, 2002, in
5 Case No. S105542, the Supreme Court adopted this Court's recommended disposition. The
6 Supreme Court ordered that Petitioner be suspended for five years and that Petitioner placed on
7 probation for five years. The conditions of Petitioner's probation included his actual suspension
8 from the practice of law for three years and until he has shown proof satisfactory to the State Bar
9 Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant
10 to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. Petitioner
11 was also ordered to comply with the other conditions of probation recommended by this Court, and
12 was ordered to take and pass the Multistate Professional Responsibility Examination ("MPRE")
13 during the period of his actual suspension. The discipline was effective July 12, 2002. The
14 Supreme Court gave Petitioner credit for his period of interim suspension, retroactive to April 16,
15 2001. As a result, Petitioner was eligible to be relieved from his actual suspension effective April
16 16, 2004.

17 **1. Petitioner's Background**

18 Petitioner was admitted to the State Bar of California in December 1991. Petitioner
19 practiced law in the Greater Bay Area in Northern California since his admission to the State Bar
20 until December 2000.

21 In 1995 Petitioner's niece came from Hawaii to live in the house Petitioner shared with his
22 mother and another brother. The niece was 17 years old and Petitioner was in his late 30s. During
23 the time the niece lived in the same house, Petitioner established a sexual relationship with his niece.
24 The relationship continued for several years. Petitioner broke off the relationship in 1998 and a year
25 later the niece reported the matter to the police. During the investigation the police surreptitiously
26 tape recorded a telephone call between the niece and Petitioner. Petitioner subsequently pleaded no
27 contest to the felony crime of oral copulation with a minor under the age of 18. He was placed on
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1 five years probation and was required to spend six months in a work-furlough program.

2 **2. Nature of Underlying Misconduct**

3 Petitioner has been suspended from the practice of law since April 16, 2001, after he pleaded
4 no contest to oral copulation with a minor under the age of 18, a felony. The parties stipulated that
5 the facts and circumstances surrounding Petitioner's conviction involved moral turpitude *per se* and
6 that Petitioner's misconduct was aggravated by the fact that incest was involved in violation of
7 Penal Code section 285, which is also a felony. The parties also stipulated to the following factors
8 in mitigation: (1) Petitioner had no prior disciplinary record; (2) Petitioner displayed spontaneous
9 candor and cooperation to the State Bar during the disciplinary investigation and proceedings; and
10 (3) Petitioner promptly took objective steps spontaneously demonstrating remorse and recognition
11 of the wrongdoing, which steps were designed to timely atone for the consequences of his
12 misconduct.

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

14 Petitioner's discipline problems were not caused by and did not involve legal incompetence.
15 After Petitioner's suspension from the practice of law, Petitioner worked for the Legal Aid Society
16 of Santa Clara County from May 2001 to July 2002, where he was paralegal who did legal research
17 in the field of family and criminal law. From December 2002 Petitioner took at least nine (9) self
18 study programs offered by the State Bar of California. In addition, in 2003, Petitioner attended at
19 least twelve (12) seminars offered by the State bar at its annual bar meeting. Furthermore, Petitioner
20 on September 19, 2002 completed Ethics school and on August 8, 2003, Petitioner took and passed
21 the Multistate Professional Responsibility exam. Under the more relaxed standard accorded a
22 standard 1.4(c)(ii) petition, Petitioner has established his learning and ability in the general law.

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

24 Prior to the events leading to Petitioner's 2001 conviction, Petitioner was a law-abiding
25 citizen. Since his conviction Petitioner has complied with all the terms and conditions of probation
26 imposed in the underlying criminal matter. Moreover, Kenneth J. Deaver, LCSW and certified
27 Clinical Criminal Justice Specialist, who was Petitioner's therapist from September 5, 2000, until
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1 July 25, 2002, reports that Petitioner has been responsive to therapy.

2 The Court finds that, based on the evidence above, Petitioner has demonstrated by a
3 preponderance of the evidence that he is rehabilitated and has present fitness to practice law.

4 **V. DISCUSSION**

5 In order to be relieved of his actual suspension under Standard 1.4(c)(ii) of the Standards
6 for Attorney Sanctions for Professional Misconduct, Petitioner has the burden of proving in this
7 proceeding, by a preponderance of the evidence that he is rehabilitated, has present fitness to practice
8 and present learning ability in the general law. (*In the Matter of Terrones* (Review Dept. 2001) 4
9 Cal. State Bar Ct. Rptr. 289, 293; rule 634, Rules Proc. of State Bar.).

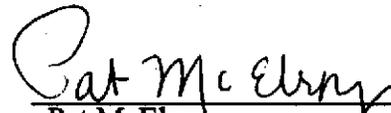
10 To establish rehabilitation, the hearing department must first consider the prior misconduct
11 from which Petitioner seeks to show rehabilitation. The amount of evidence varies according to the
12 misconduct at issue. Second, the court must examine Petitioner's actions since the imposition of his
13 discipline in order to determine whether his actions, in light of the prior misconduct, sufficiently
14 demonstrates rehabilitation by a preponderance of the evidence. (*In the Matter of Murphy* (Review
15 Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571.) Petitioner must show strict compliance with the terms
16 of his probation in the underlying disciplinary matter, exemplary conduct from the time of the
17 imposition of the prior discipline, and must demonstrate "that the conduct evidencing rehabilitation
18 is such that the court may make a determination that the conduct leading to the discipline is not
19 likely to be repeated." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581)

20 As the Review Department of the State Bar court noted in *Murphy*, "In weighing such a
21 determination, the court should look to the nature of the underlying offense, or offenses, any
22 aggravation, other misconduct or mitigation that may have been considered, and any evidence
23 adduced that bears on whether the cause or causes of such misconduct have been eliminated." (*In*
24 *the Matter of Murphy, supra* 3, Cal. State Bar Ct. Rptr. at p. 581.)

25 Regarding the issue of whether Petitioner has sufficiently demonstrated by a preponderance
26 of the evidence, his rehabilitation and present fitness to practice law, the Court will first consider
27 Petitioner's prior misconduct, the aggravating and mitigating circumstances surrounding said

1 Accordingly, Petitioner's petition to be relieved from his actual suspension from the
2 practice of law is hereby **GRANTED**. Upon the finality of this Decision, Petitioner shall be entitled
3 to resume the practice of law in California upon his payment of all applicable State Bar fees and
4 previously assessed costs.

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6
7 Dated: May 11, 2004


Pat McElroy
Judge of the State Bar Court

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 May 13, 2004, I deposited a true copy of the following document(s):

DECISION

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

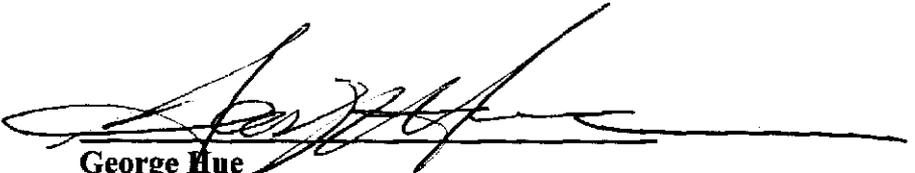
by overnight mail in San Francisco, California, addressed as follows:

**MICHAEL DO
17 VACAVILLE
IRVINE, CA 92602**

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

ERIC HSU, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 13, 2004**.


George Hue
Case Administrator
State Bar Court