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STATE BAR COURT
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**THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of
RICHARD S. PAUL,
Member No. 90142,
A Member of the State Bar.

Case No. 04-V-12645-RAH

DECISION

I. INTRODUCTION

The issue in this matter is whether Richard S. Paul ("Petitioner") 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 from his actual suspension from the practice of law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct (standard 1.4(c)(ii)) located in Title IV, Rules of Procedure of the State Bar (rule(s)).

For the reasons set forth in this Decision, the Court finds that Petitioner has shown by a preponderance of evidence that he has satisfied the requirements of standard 1.4(c)(ii). Therefore, the Court grants the Petition to be Relieved from Actual Suspension.

II. PROCEDURAL HISTORY

On June 24, 2004, Petitioner, through his counsel, David A. Clare, filed a Verified Petition to be Relieved from Actual Suspension (Petition). On August 6, 2004, the Office of the Chief Trial Counsel of the State Bar of California (State Bar), through Kevin B. Taylor, filed an opposition to the petition.

On September 9, 2004, the parties filed a Partial Stipulation as to Facts which included, inter alia, a waiver of hearing in this matter. The Court took this matter under submission on

1 September 30, 2004.

2 In its closing brief the State Bar objects to the admission of certain exhibits Petitioner
3 included as attachments to his petition.

4 Specifically, the State Bar objects to the admission of the declarations of Nancy Clark,
5 Gene Agostino, Linda Dunham, Larry Ickes, Steven Lee, Ashley Shaw, Neil Wright, and Gregory
6 Morrell on the ground that they lack foundation due to their failure to offer facts evidencing the
7 declarants' personal knowledge and understanding of the specific conduct which led to
8 petitioner's suspension.

9 Although the declarations in question lack a detailed recital of the specifics of Petitioner's
10 criminal conviction and merely state familiarity with Petitioner's "suspension" or "legal matter,"
11 this shortcoming goes to the weight, not the admissibility, of these declarations. Furthermore,
12 the lack of clarity of each declarant's understanding of Petitioner's underlying criminal
13 misconduct in no way affects the admissibility of their statements regarding pre- and post-
14 conviction observations of Petitioner's conduct.

15 Rather than exclude these declarations, the Court has considered any deficiency regarding
16 knowledge of Petitioner's criminal misconduct when deciding the weight to assign to the
17 opinions these declarants offer concerning Petitioner's fitness to return to the practice of law.
18 Therefore the State Bar's objection to the admission of these declarations due to lack of
19 foundation is overruled.

20 The State Bar also objects to the statement that "[Petitioner's] mental faculties were
21 impaired due to long-term substance abuse as is common in similar situations," on page 1, line
22 21 of Mr. Agostino's declaration. Without additional information addressing Mr. Agostino's
23 qualifications, the Court agrees with the State Bar that such a statement lacks foundation. The
24 State Bar's objection to this statement in the declaration is sustained.

25 The State Bar further objects to the statement that "A number of people advised him to go
26 home despite his ability to obtain approval for the visit, but Richard elected to strictly abide by
27 the terms and conditions of his parole and not go home," on page 3, lines 17-20 of Mr.
28 Agostino's declaration. The Court overrules the State Bar's hearsay objection to this statement

1 because the truthfulness of whether anyone told Petitioner to go home is irrelevant. The
2 statement that a number of people told Petitioner to go home merely puts into context why Mr.
3 Agostino believed it was important to include in his declaration his observation that Petitioner
4 chose to abide by the terms of his parole and not go home when Petitioner's father died.¹

5 Finally, the State Bar objects to the admission of Petitioner's Exhibit H as hearsay. In
6 support of admission, Petitioner explains that Exhibit H is not a declaration under penalty of
7 perjury but a copy of a report that Petitioner's criminal defense attorney, Paul S. Meyer,
8 submitted to the court in Petitioner's underlying criminal proceeding. Petitioner neither offered a
9 declaration from Meyer attesting to the authenticity of the exhibit nor submitted a certified copy
10 of the exhibit as a document filed with the court in his underlying criminal proceeding.
11 Petitioner offers no other basis for overcoming the State Bar's objection. Therefore the objection
12 is sustained and Exhibit H is not admitted into evidence.

13 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 The court's factual findings are based on the stipulation of facts and the documents filed
15 with the petition and the response as limited by the Court's evidentiary rulings.²

16 A. Jurisdiction

17 Petitioner was admitted to the practice of law in California on November 29, 1979, and at

18
19 ¹The State Bar asserted the same objection to an almost identical statement made by
20 Gregory Morrell at page 3 lines 15-17 of his declaration. Similarly, that objection is overruled.

21 ²The Court hereby admits into the record Petitioner's attachments A-F, I-K, and M-P of
22 his petition consisting of copies of California Supreme Court Order S106565; a Rule 955
23 Statement; the State Bar Court Review Department order filed June 6, 2001, placing Petitioner
24 on interim suspension; a State Bar of California disciplinary stipulation filed March 12, 2002, in
25 case number 01-C-01774; Petitioner's declaration with MPRE and CLE documents; declarations
26 from Nancy Clark, Linda Dunham, Larry Ickes, Steven Lee, Drew Perry, Ashley Shaw, Neil
27 Wright, and Gregory Morrell.

28 Exhibit G, the declaration of Gene Agostino, is admitted into the record as limited above.
Petitioner withdrew from his petition Exhibit L, the declaration of Michael
D. Mansfield.

The Court also admits into the record the State Bar's Attachment 1 to its response
consisting of a Notice of Federal Tax Lien for years 1991-1993 and Notice of State Tax Liens for
years 1989, 1991, and 1994-1998.

1 all times mentioned herein has been a member of the State Bar of California.

2 **B. Background**

3 Petitioner describes himself as a long-term alcoholic having begun drinking in his early
4 teens. In 1997, after Petitioner met a woman named Stacy Gorgie, his substance abuse escalated
5 to heavy daily drinking and cocaine use. Petitioner began a long-term extra-marital relationship
6 with Gorgie which involved cocaine use combined with heavy alcohol consumption.

7 After the affair terminated, Petitioner continued to try to see Gorgie although she had
8 begun dating another man named Payne Siegler.

9 **C. Underlying Disciplinary Proceedings**

10 On September 19, 1998, Petitioner went to Gorgie's home to give her a birthday present.
11 Siegler was at Gorgie's home and Petitioner left without giving Gorgie the birthday present.
12 Petitioner returned to his home and drank liquor. Thereafter he returned to Gorgie's home with a
13 handgun. Siegler was outside Gorgie's home and Petitioner approached him holding the
14 handgun and threatened to kill him. Siegler ran into Gorgie's home and the police were called,
15 but Petitioner left before the police arrived.

16 While at a bar on September 21, 1998, Petitioner told a companion that he had done
17 something stupid and was going to take his own life as a result. Petitioner stated that he had used
18 an empty gun to try to scare a man who had been dating his ex-girlfriend. Petitioner had also
19 written a letter to his wife and daughter indicating that he was going to kill himself because of
20 what he had done.

21 The police arrested Petitioner at the bar after his companion informed the police that
22 Petitioner was threatening to commit suicide. When he was arrested, the police discovered
23 approximately 1.7 grams of cocaine in Petitioner's pants pocket.

24 On March 1, 1999, a four-count Information was filed in *People of the State of California*
25 *v. Richard Shelburn Paul* in Orange County Superior Court case number 98HF0958 charging
26 Petitioner with the following:

27 1. Wilfully and unlawfully committing an assault on Payne Siegler with a firearm on or
28 about September 19, 1998, in violation of Penal Code section 245(a)(2) (Assault with a Firearm),

1 a felony;

2 2. Wilfully and unlawfully drawing or exhibiting a loaded or unloaded firearm in a rude,
3 angry or threatening manner in a fight or quarrel, not in self-defense on or about September 19,
4 1998, in violation of Penal Code section 417(a)(2) (Brandishing a Firearm), a felony;

5 3. Wilfully and unlawfully having in his possession cocaine, on or about September 21,
6 1998, in violation of Health and Safety Code section 11350(a) (Possession of a Controlled
7 Substance), a felony; and

8 4. Wilfully and unlawfully threatening to commit a crime which would result in death
9 and great bodily injury to Payne Siegler on or about September 21, 1998, in violation of Penal
10 Code section 422 (Terrorist Threats), a felony.

11 The charges were enhanced with the additional allegations that on all counts Petitioner
12 used a firearm in the commission of the offenses as defined in Penal Code section 12022.5(a),
13 and that each offense is a serious felony as defined in Penal code section 1192.7(c)(8).

14 On January 7, 2000, Petitioner pled guilty to and was convicted of violating California
15 Penal code section 422 (Terrorist Threats), a felony. Counts 1-3 and the enhancements were
16 dismissed.

17 Petitioner was sentenced to sixteen months in state prison with fifteen days credit for time
18 served. From January 7, 2000, to September 18, 2000, Petitioner was incarcerated at Wasco
19 State Prison and at the Central Valley Community Correctional Facility. On September 18,
20 2000, Petitioner was released on parole.

21 On June 6, 2001, the Review Department of the State Bar Court filed an order in case
22 number 01-C-01774 suspending Petitioner from the practice of law pending final disposition of
23 the State Bar disciplinary proceeding initiated as a result of his felony conviction of Penal Code
24 section 422.

25 The Review Department's order became effective July 7, 2001, and Petitioner has been
26 suspended from the practice of law since that date.

27 Petitioner settled his disciplinary proceeding with the State Bar in March 2002 and
28 stipulated that his criminal conduct constituted a wilful violation of Business and Professions

1 Code section 6068(a) (Failure to Support Laws). Petitioner further stipulated that his conduct
2 constituted acts involving moral turpitude, dishonesty or corruption in wilful violation of
3 Business and Professions Code section 6106.

4 Petitioner stipulated that by September 1998, he had a forty-year history of alcohol abuse
5 and had been addicted to cocaine for over one year. The parties stipulated in mitigation that
6 Petitioner displayed spontaneous candor and cooperation to the State Bar during the disciplinary
7 investigation and proceedings.

8 As a condition of probation Petitioner was required to attend at least eight meetings per
9 month with Alcoholics Anonymous and submit blood and/or urine samples to a licensed medical
10 laboratory during each month of his probation period to show that he has abstained from alcohol
11 and drugs.

12 On July 18, 2002, the California Supreme Court filed an order, effective August 17, 2002,
13 in case number S106565 suspending Petitioner from the practice of law for three years. The
14 Supreme Court stayed the suspension and placed Petitioner on probation for three years on the
15 condition that he be actually suspended for two years and until he has shown satisfactory proof to
16 the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general
17 law.

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

19 Since his arrest Petitioner has taken 73 hours of continuing legal education courses
20 encompassing a wide range of topics such as alternative dispute resolution, bankruptcy, family
21 law, probate, writs and appeals, substance abuse, and law practice management. Additionally,
22 Petitioner successfully took the Multistate Professional Responsibility Exam administered on
23 March 8, 2003, and successfully completed Ethics School given by the State Bar of California on
24 June 26, 2003.

25 Petitioner has also maintained his proficiency in online legal research and regularly visits
26 the Orange County law library where he reviews legal publications and periodicals.

27 The Court finds that Petitioner possesses present learning and ability in the general law
28 and so meets the requirements of this portion of standard 1.4(c)(ii).

1 **E. Petitioner's Rehabilitation and Present Fitness to Practice Law**

2 Petitioner had never been arrested or convicted of any crime prior to the incident in
3 September 1998. Petitioner expresses remorse for his criminal conduct and now recognizes that
4 his alcohol and cocaine addiction ultimately led to his improper conduct. Prior to his
5 incarceration in October 1998, Petitioner voluntarily entered a residential substance-abuse
6 recovery program at The Oaks in Costa Mesa, California. Petitioner returned to The Oaks after
7 his release on parole.

8 Petitioner continues to reside in a residential recovery house and has maintained his
9 sobriety for over five years. Petitioner asserts that he is committed to sobriety and attends and
10 participates in Alcoholics Anonymous on a regular basis. Although Petitioner's participation in
11 A.A. is a condition of his current disciplinary probation, Petitioner states that he is dedicated to
12 the teachings of A.A. which offer him a means of coping with the trials and tribulations of life so
13 he can remain balanced, level-headed and happy.

14 Petitioner has complied with all other terms of his disciplinary probation to date.

15 Petitioner submitted the declarations of several individuals attesting to his rehabilitation
16 and good character. One of whom is Nancy Clark, a former president of the Orange County
17 chapter of the National Council of Alcohol and Drug Dependence. She is the founder and
18 executive director of a residential alternative sentencing program for adult substance abusers
19 called The Recovery Center. Clark has made thousands of recommendations to courts regarding
20 the planning and implementation of rehabilitation and treatment programs to reduce recidivism
21 through rehabilitation. She has also testified many times in courts as a designated expert witness
22 in the areas of substance abuse and rehabilitation.

23 Clark first met Petitioner when he voluntarily entered her residential program at The Oaks
24 in 1998. Clark observed that while Petitioner was a resident at The Oaks he readily accepted
25 direction and attended many more meetings than required under the program. Clark believes that
26 Petitioner's long-term substance abuse was a direct cause of the behavior leading up to his arrest.
27 She also believes that his rehabilitation is evidenced by the fact that Petitioner has never once
28 failed to accept responsibility for his actions and continues to express remorse for the pain and

1 suffering he caused others.

2 Clark was so impressed with Petitioner's rehabilitation and recovery that she nominated
3 him to the Board of Directors of the Orange County Chapter of the National Council on
4 Alcoholism and Drug Dependency. In the fall of 2000, Clark asked Petitioner to serve on the
5 Board of Directors of Nancy Clark & Associates.

6 Gene Agostino also attests to Petitioner's rehabilitation. Agostino is program director of
7 The Wings Sober Living Program in Costa Mesa, California. Like Clark, Agostino first met
8 Petitioner after he voluntarily entered the residential rehabilitation program at The Oaks.
9 Agostino was impressed with Petitioner's commitment to the rehabilitation program and
10 determination in completing all requirements without cutting corners or taking any short cuts.

11 Agostino witnessed Petitioner employ the coping tools learned in A.A. when Petitioner
12 had to navigate life-altering events such as the death of his girl friend and the death of his father.
13 The death of Petitioner's father was made more painful due to the fact that Petitioner was unable
14 to obtain permission from parole authorities to visit him before he died.

15 Agostino believes Petitioner is committed to his sobriety and also believes that
16 Petitioner's ability to now associate with old friends and openly speak with them about his past
17 problems reflects positively on Petitioner's rehabilitation.

18 Linda Dunham worked as a legal secretary for Petitioner when he was with the law firm
19 of McGee & Paul and has known him for over twenty years. Dunham attests that prior to his
20 arrest and conviction, Petitioner was well thought of in the community and well respected for his
21 community interest in child charities. She has observed Petitioner "put his life back together"
22 over the past six years and notes that he is again well thought of in the community and known for
23 his integrity and honesty.

24 Gregory Morrell, an attorney, currently employed as vice president of a real estate firm in
25 Newport Beach, California, has known Petitioner since 1980. Morrell is Petitioner's A.A.
26 sponsor and has reviewed Petitioner's pre-plea probation report and is therefore familiar with
27 Petitioner's criminal misconduct. As Petitioner's sponsor, Morrell has been able to assess
28 Petitioner's rehabilitation as it relates to his character, emotional stability, and ability to function

1 as a productive member of society. In his opinion, Petitioner has made a remarkable recovery
2 and is of the highest moral character.

3 The above declarants have no reservations about Petitioner's return to the practice of law
4 and would not hesitate to retain him as an attorney.

5 Petitioner submitted the declarations of five other members of the community - a chief of
6 hospital security, an investment banker, a retired school teacher, a publicist, and a marketing
7 executive- who have known Petitioner from between ten to twenty years. These declarants
8 uniformly attest to Petitioner's recovery, high moral character and reputation for honesty and
9 integrity.

10 Based on this evidence, the Court finds that Petitioner has demonstrated rehabilitation
11 and present fitness to practice law and so meets the requirements of this portion of standard
12 1.4(c)(ii).

13 IV. DISCUSSION

14 Standard 1.4(c)(ii) provides, in relevant part, that before an attorney can be relieved from
15 an actual suspension of two years or more, the attorney shall provide proof satisfactory to the
16 State Bar Court of the attorney's rehabilitation, present fitness to practice and present learning
17 and ability in the general law.

18 In this proceeding, Petitioner has the burden of proving by a preponderance of the
19 evidence that he has satisfied the conditions of standard 1.4(c)(ii). (Rule 634.) The Court looks
20 to the nature of the underlying misconduct as well as the aggravating and mitigating
21 circumstances surrounding it to determine the point from which to measure Petitioner's
22 rehabilitation, present learning and ability in the general law, and present fitness to practice
23 before being relieved from his actual suspension. (*In the Matter of Murphy* (Review Dept. 1997)
24 3 Cal. State Bar Ct. Rptr. 571, 578.)

25 To establish rehabilitation, the Court must first consider the prior misconduct from which
26 Petitioner seeks to show rehabilitation. The amount of evidence of rehabilitation varies
27 according to the seriousness of the misconduct at issue. Second, the Court must examine
28 Petitioner's actions since the imposition of his discipline to determine whether his actions, in

1 light of the prior misconduct, sufficiently demonstrate rehabilitation by a preponderance of the
2 evidence. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

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

8 Petitioner has complied with all the terms and conditions of his probation. He maintains
9 an active and continuing participation in A.A. Since his arrest he served on the board of the local
10 chapter of the National Council on Alcoholism and Drug Dependency and still serves on the
11 board of Nancy Clark & Associates. Petitioner has continued to expand his knowledge of law
12 through reading and continuing legal education courses. More importantly, Petitioner's
13 witnesses, agree that he is stable and fit to practice.

14 Based on this evidence, it is evident to the Court that Petitioner has changed his character.
15 Petitioner has attained sobriety and overcome the habits of a substance abuser to become a
16 functional individual armed with the tools to deal with stress without resorting to alcohol or
17 illicit drugs.

18 In rebuttal of Petitioner's showing of rehabilitation the State Bar argues that Petitioner's
19 failure to address various tax liens directly with the IRS and California Franchise Tax Board
20 evidences his lack of exemplary conduct. Although Petitioner suffered these tax liens prior to the
21 imposition of his prior discipline, it is properly considered in establishing the point from which
22 rehabilitation must be measured. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p.
23 584.)

24 Although Petitioner believes that many of the tax liens have either expired or were
25 discharged by his personal bankruptcy, he consulted with a certified public accountant prior to
26 filing his petition for relief from actual suspension. During that consultation Petitioner learned
27 that if he were to compromise the liens, he would have to either pay the entire compromised
28 amount as a lump sum or make installment payments. Petitioner neither has the funds nor a

1 sufficiently consistent income for either option but intends to satisfy any remaining tax liens
2 through a compromise and release as soon as he is able to do so.

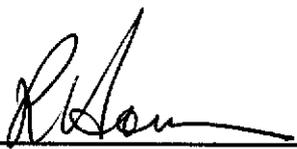
3 The court finds that Petitioner's existing tax liens do not defeat his showing of
4 rehabilitation. Further, it appears to the Court that the conduct leading to the discipline is not
5 likely to be repeated. Therefore, based on the above, the Court finds that Petitioner has
6 demonstrated, by a preponderance of evidence, that he is rehabilitated, has present fitness to
7 practice law, and has present learning and ability in the general law.

8 V. CONCLUSION

9 The Court finds that Petitioner has satisfied the requirements of standard 1.4(c)(ii) of the
10 Standards for Attorney Sanctions for Professional Misconduct and that he has demonstrated, by a
11 preponderance of the evidence and to the satisfaction of the Court, that he is rehabilitated, that he
12 is presently fit to practice law and that he possesses present learning and ability in the general
13 law.

14 Accordingly, the petition to be relieved from his actual suspension from the practice of
15 law is hereby **GRANTED**. Upon the finality of this Decision, Petitioner's actual suspension
16 from the practice of law in the State of California is hereby terminated and he shall hereafter be
17 entitled to resume the practice of law in California upon payment of all applicable State Bar fees.

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21 Dated: October 15, 2004



22 **RICHARD A. HONN**
23 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 October 18, 2004, I deposited a true copy of the following document(s):

DECISION, filed October 18, 2004

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

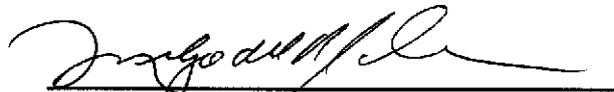
by overnight mail through UPS, next day delivery at Los Angeles, California, addressed as follows:

**DAVID ALAN CLARE
ATTORNEY AT LAW
4675 MACARTHUR CT #1250
NEWPORT BEACH, CA 92660**

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

Gordon Grenier , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 18, 2004.**



Milagro del R. Salmeron
Case Administrator
State Bar Court