

1 suspension. The Office of the Chief Trial Counsel of the State Bar ("OCTC") filed its response to
2 the petition on January 26, 2005, indicating it does not oppose the petition.

3 No party requested a hearing in this matter, and the matter was submitted for decision on
4 January 27, 2005.

5 **III. JURISDICTION**

6 Petitioner was licensed to practice law in the State of California on December 4, 1990, 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 31, 2001, the Supreme Court issued an order in *In Re Ella Smith Chattejee on*
11 *Discipline*, S098519 (State Bar Court Case No. 00-O-10146) suspending Petitioner from the practice
12 of law for one year, staying execution of said suspension, and actually suspending Petitioner for 45
13 days, and until she filed a motion to terminate her actual suspension pursuant to rule 205 of the Rules
14 of Procedure.³ The Supreme Court order also provided that if Petitioner remained suspended for
15 two years or more, she was to remain suspended until she has shown proof satisfactory to the State
16 Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law
17 pursuant to standard 1.4(c)(ii).

18 **B. Nature of Underlying Misconduct**

19 In connection with a single client matter, Petitioner was found to have failed to competently
20 perform legal services in a bankruptcy case; failed to keep her client informed about significant
21 developments in her case, including but not limited to, the dismissal of her bankruptcy petition, after
22 neither Petitioner nor the client appeared at the first meeting of creditors; and failed to cooperate with
23 the State Bar in its investigation of the clients's complaint. Petitioner was found to have wilfully
24 violated rule 3-110(A), and sections 6068(m) and 6068(i).

25
26 ²Pursuant to Evidence Code section 452(d), the Court take judicial notice of Petitioner's
27 prior record of discipline.

28 ³Currently pending is the parties' stipulation to terminate Petitioner's actual suspension in
accordance with rule 205 of the Rules of Procedure of the State Bar.

1 The Court found Petitioner's 8 ½ years of unblemished practice to be a mitigating factor.
2 However, the mitigation was balanced against the aggravating factors found in connection with the
3 misconduct, specifically, multiple acts of wrongdoing, significant harm to the client, and indifference
4 toward rectification of her misconduct. Taking into account that Petitioner did not participate in the
5 proceeding, and therefore the Court had no explanation for her misconduct, the Court recommended,
6 among other things, an actual suspension period of 45 days. The discipline recommendation was
7 ultimately adopted by the Supreme Court, and the discipline imposed, effective September 30, 2001.

8 **C. Other Misconduct**

9 By Petitioner's admission, she experienced health problems beginning in 1999, specifically
10 depression. Unfortunately, because she did not participate in her first disciplinary proceeding, the
11 Court had no information regarding the problems underlying the misconduct or Petitioner's practice.
12 Therefore, in her first disciplinary case, the Court did not include in its discipline recommendation
13 any conditions related to treatment.

14 Effective July 31, 2002, Petitioner was actually suspended for 300 days, among other things,
15 in a second disciplinary case, S106180 (State Bar Court Case Nos. 99-O-10705, 00-O-12735,
16 00-O-14633). In connection with three client matters, Petitioner was found to have commingled
17 personal and trust funds, written bad checks on her client trust account, misappropriated client funds,
18 failed to promptly distribute funds held in trust, failed to advise a client of significant developments
19 in his case, and to have improperly withdrew from employment. In addition, Petitioner failed to
20 cooperate with the State Bar's investigation in each of the client matters. However, Petitioner did
21 participate in the disciplinary matter. In fact, Petitioner entered into a stipulation with the State Bar,
22 admitting the misconduct. In the stipulation, the parties noted that the discipline in Petitioner's first
23 disciplinary case had not been imposed at the time Petitioner committed the misconduct in the
24 second disciplinary matter.

25 By the time of the second disciplinary matter, Petitioner readily acknowledged the health
26 problems that she was experiencing and the Court was made aware of those problems. As part of
27 the conditions of probation imposed in the second disciplinary matter, Petitioner was required to
28 obtain monthly treatment and to provide proof of the treatment to the Office of Probation. Thus,

Petitioner began receiving consistent treatment for her illness.

In addition, Petitioner began attending the Lawyer's Assistance Program from July 2003, and was formally admitted into the program on December 16, 2003.

However, despite the ongoing medical treatment, Petitioner did not comply with the second disciplinary order, and as a result, two additional disciplinary cases were brought against Petitioner. For failure to comply with rule 955 of the California Rules of Court, charges were filed against Petitioner in case no. S123034 (State Bar Court Case No. 02-N-15505). In addition, as a result of her failure to comply with any of the conditions of probation, a probation revocation proceeding, S106180 (State Bar Court Case No. 03-PM-00468), was initiated. In connection with each case, Petitioner received three years probation and six months actual suspension, to be served concurrently. The discipline in the two cases was effective June 18, 2004.

D. Petitioner's Rehabilitation and Present Fitness to Practice Law

Since the discipline imposed in the two most recent cases, Petitioner has complied with all disciplinary orders and appears to have turned the corner in terms of her problems. She complied with all outstanding conditions, which was no small job. She filed quarterly reports, including proof of ongoing medical treatment; she filed quarterly financial statements; she completed the educational requirements, including ethics school, trust account school, and continuing education courses; and she developed a law office management plan.

In addition, since January 2004, she has worked at a law firm, and has been given increased responsibilities as a result of a good track record with her employer. (See below.)

Petitioner is currently on probation and in compliance with the terms of her probation. She In addition, she continues in LAP and complies with the conditions of that program. She meets regularly with her probation monitor, who provides favorable reports to the Office of Probation. Petitioner appears to have gained an understanding of what led to the problems in her practice, and more importantly, to have obtained treatment and put in place the safeguards necessary to avoid similar problems should her health become impaired again.

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

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

1 On August 8, 2003, Petitioner took and passed the Multistate Professional Responsibility
2 Examination. In addition, between July 26, 2004 and August 9, 2004, Petitioner completed 10 hours
3 of continuing education courses as required by the conditions of her probation in the second
4 disciplinary matter. In September 2004, Petitioner also completed ethics school and trust accounting
5 school, which were also required as conditions of that probation.

6 In January 2004, Petitioner began working as a calendar clerk, word processor and secretary
7 for a litigation firm. Prior to employment, she disclosed her illness, her status with the State Bar,
8 and her participation in LAP. Subsequently, after full disclosure of Petitioner's suspension, the
9 employer obtained permission from a select group of clients for Petitioner to work on their cases as
10 a research assistant and law clerk. Thereafter, under the direct supervision of an experienced
11 attorney, Petitioner prepared motions, pleadings and discovery. As a result of Petitioner's work, the
12 employer offered her employment as an attorney once her license is reinstated.

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

15 **VI. DISCUSSION**

16 In order to be relieved of her actual suspension, Petitioner has the burden of proving in this
17 proceeding, by a preponderance of the evidence, that she is rehabilitated, has present fitness to
18 practice and present learning and ability in the general law.

19 The Court looks to the nature of the underlying misconduct as well as the aggravating and
20 mitigating circumstances surrounding it to determine the point from which to measure Petitioner's
21 rehabilitation, present learning and ability in the general law, and present fitness to practice before
22 being relieved from his actual suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal.
23 State Bar Ct. Rptr. 571, 578.)

24 To establish rehabilitation, the hearing department must first consider the prior misconduct
25 from which Petitioner seeks to show rehabilitation. The amount of evidence of rehabilitation varies
26 according to the seriousness of the misconduct at issue. Second, the court must examine Petitioner's
27 actions since the imposition of her discipline to determine whether her actions, in light of the prior
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1 misconduct, sufficiently demonstrate rehabilitation by a preponderance of the evidence. (*In the*
2 *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 prior discipline; and
5 must demonstrate "that the conduct evidencing rehabilitation is such that the court may make a
6 determination that the conduct leading to the discipline ... is not likely to be repeated." (*In the*
7 *Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

8 Regarding the issue of whether Petitioner has sufficiently demonstrated, by a preponderance
9 of the evidence, her rehabilitation and present fitness to practice law, the Court will first examine
10 Petitioner's prior misconduct, the aggravating and mitigating circumstances surrounding the
11 misconduct, and any other circumstances of misconduct.

12 In the underlying disciplinary matter, Petitioner was found culpable of misconduct in a single
13 client matter, specifically, abandonment of her client's bankruptcy matter. Petitioner was employed
14 in March 1999, but failed to file the bankruptcy petition until May 2000. Not only did Petitioner fail
15 to advise the client when she finally filed the petition, but also she failed to notify the client of the
16 first meeting of creditors. When neither Petitioner nor the client showed up for the meeting, the
17 court dismissed the petition. Petitioner did not tell the client about the dismissal of the petition.
18 Petitioner was found culpable of violating rule 3-110(A) (failing to perform legal services
19 competently), and sections 6068(m) and (i) (failing to keep the client informed of significant
20 developments in her case, and failing to cooperate with the State Bar's investigation of the client's
21 complaint, respectively).

22 In mitigation, it was noted that Petitioner had no prior record of discipline for 8 ½ years prior
23 to commencement of the misconduct.

24 In aggravation, it was noted that Petitioner's misconduct evidence multiple acts of
25 wrongdoing; Petitioner's misconduct harmed significantly her client; Petitioner demonstrated
26 indifference toward rectification of her misconduct by waiting nearly two months to file the
27 bankruptcy petition, after being contacted by the State Bar inquiring about the case.

28 Petitioner's misconduct resulted from Petitioner's disabling clinical depression, which in

1 June 1999, began to effect her practice and she was unable to tend to her practice. In the underlying
2 matter, Petitioner did not file the bankruptcy petition until May 2000, which was more than a year
3 after she was hired by the client. Petitioner did not participate in the disciplinary proceeding that
4 arose out of this client matter, again because of her ongoing illness.

5 Petitioner's illness is now under control. She is not only receiving treatment for her illness,
6 but she is also participating in LAP. She is on probation, and is in compliance with the terms of her
7 probation. She regularly meets with her probation monitor, and is working in a supervised setting.

8 In fact, she has been offered employment as an attorney once her license has been reinstated. In
9 essence, Petitioner has made the necessary showing to have her suspension terminated.

10 **VII. CONCLUSION**

11 Based on the foregoing, the Court finds that Petitioner has established by a preponderance
12 of the evidence her rehabilitation, present fitness to practice and present learning and ability in the
13 general law.

14 Accordingly, Petitioner's petition for relief from actual suspension from the practice of law
15 pursuant to standard 1.4(c)(ii) is GRANTED. It is further ordered that Petitioner's actual suspension
16 from the practice of law in the State of California is hereby terminated and she is entitled to resume
17 the practice of law in this state upon the payment of all applicable State Bar fees and previously
18 assessed costs.

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23 Dated: February 10, 2005



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28 RICHARD A. PLATEL
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 Los Angeles, on February 10, 2005, I deposited a true copy of the following document(s):

DECISION, filed February 10, 2005

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

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

ELLA S CHATTERJEE A/L
2712 N ASHWOOD STREET
ORANGE CA 92865

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

DAVID SAUBER, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 10, 2005**.


Angela Owens-Carpenter
Case Administrator
State Bar Court