

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT—SAN FRANCISCO**

In the Matter of)	Case No. 05-R-02248-PEM
)	
SAMAN TAHERIAN,)	DECISION
)	
Petitioner for Reinstatement.)	
_____)	

I. INTRODUCTION

This matter comes before the court on a petition for reinstatement to the practice of law filed by petitioner Saman Taherian (petitioner). Petitioner is represented by Jerome Fishkin. The Office of Chief Trial Counsel of the State Bar (OCTC) is represented by Deputy Trial Counsel Robert A. Henderson.

The court finds that petitioner has clearly and convincingly satisfied the requirements for reinstatement to the practice of law, and hereby recommends that petitioner be reinstated to the practice of law.

II. SIGNIFICANT PROCEDURAL HISTORY

Petitioner Saman Taherian resigned with charges pending effective March 5, 1998. The petition for reinstatement was filed May 10, 2005. On January 20, 2006, the parties filed a first stipulation as to facts. A three-day trial was held January 24-26, 2006. The first stipulation as to facts was admitted into evidence. The court took this proceeding under submission on January 26, 2006.

III. FINDINGS OF FACTS

A. Petitioner's Background and Conduct Leading to Resignation

Petitioner was born in Teheran, Iran. After the Shah was overthrown, petitioner and his family left Iran and settled in California. Petitioner obtained a Bachelor of Science degree in finance from San Jose State University and a Juris Doctor degree from Cal Western School of Law. Petitioner was admitted to the California State Bar on June 6, 1994, and began practicing law in San Jose, California.

In 1996, petitioner participated in presenting false claims for two clients who were actually undercover agents from the California Department of Insurance who were investigating fraud by Dr. Hatam. Petitioner was unaware that they were undercover agents. Petitioner agreed to represent the undercover agents and attempted to settle personal injury claims on their behalf despite the fact he knew the claims were fraudulent.

Petitioner was arrested in August 1996. In an unrelated matter, the day before petitioner was arrested, he tried to pay Dr. Hatam an illegal referral fee. Shortly after his arrest, petitioner deleted from his records evidence of the illegal referral fee he tried to pay Dr. Hatam. On November 12, 1997, petitioner pled nolo contendere to a felony violation of Penal Code section 550(b) (conspiring with any person to present false claims for insurance benefits). On February 23, 1998, petitioner was sentenced to sixty days in the county jail with permission to do his confinement on school furlough. He was also placed on three years of formal probation and assessed restitution. (*People v. Saman Taherian*, Santa Clara County Superior Court case no. 198268.)

Two to three years after his conviction, petitioner testified as a prosecution witness in the trial of co-defendants, Drs. Betoushana and Karalian. In that trial he truthfully admitted to the attempted payment of a referral fee to Dr. Hatam.

On September 3, 1998, petitioner filed a motion pursuant to Penal Code section 17 to reduce his felony conviction to a misdemeanor. The motion was granted on February 19, 1999. Petitioner's probation ended on February 23, 2001. Petitioner now seeks readmission to the State

Bar. He readily admits his dishonest criminal behavior and professional misconduct and has a deep sense of remorse for this behavior and misconduct.

B. Rule 955 Compliance

In accepting petitioner's resignation from the State Bar, the Supreme Court ordered petitioner to comply with rule 955 of the California Rules of Court, which requires him to inform clients, opposing counsel and the courts of his resignation and ineligibility to practice law, and to file an affidavit with the State Bar Court attesting to his compliance with the subject rule.

Petitioner's rule 955 declaration of compliance was due April 14, 1998. He filed it on April 29, 1998. In it, he admitted, "My name appears as attorney of record on a few cases. But each and every one of those cases were settled, and need to be dismissed. Neither I nor my former clients shall prosecute those cases (most were filed just to protect the statute of limitation, and therefore were never served). All the cases will be dismissed by the appropriate court for lack of prosecution." At the time petitioner resigned, he had nine litigation matters in which he failed to file a dismissal or a substitution form.

Petitioner's untimely, but substantial, compliance with rule 955 alone does not require denial of his reinstatement. Otherwise, he would effectively be foreclosed from ever being readmitted regardless of the showing of rehabilitation otherwise made. Factors to consider include the length of time elapsed from the time of the rule 955 violation occurred, whether there has been injury to clients or whether the defect has significantly impaired State Bar proceedings. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1096-1097 [denying reinstatement on other grounds]; *In the Matter of Salyer* (Review Dept. 2005) 4Cal. State Bar Ct. Rptr. 816, 827.) Although it is clear that petitioner's compliance was less than perfect, there is no evidence that there has been injury to his clients or that his actions impaired any disciplinary proceedings against petitioner. Given the other strong evidence of rehabilitation, the court finds that petitioner's flawed compliance with rule 955 under these facts is not determinative of his rehabilitation.

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C. Petitioner's Conduct after Resignation

1. Further Education

In 1999, petitioner sought admission to the graduate computer engineering program at San Jose State University. He was accepted into the program and was awarded a Master of Science degree in computer engineering in August 2003. His master's project was a case study in United States intellectual property laws and litigation with particular focus on a major case entitled *Mentor v. Cadence*.

Before completing his master's project, petitioner was admitted into the Masters of Law (LLM) program in intellectual property at Golden Gate University in 2002 after fully disclosing the reason for his resignation from the bar. While pursuing his LLM, petitioner took a semester off to study for the patent bar exam. In October 2002, petitioner passed the patent bar exam. Before applying to take the patent bar exam and after passing the exam, petitioner fully disclosed to the United States Patent and Trademark Office (USPTO) the reason for his resignation from the bar. In February 2003, petitioner gained admission as an agent with the USPTO. In order to gain admission as an agent, petitioner had to pass a moral character inquiry.

2. Community Contribution

After his formal probation ended, petitioner volunteered as a big brother for Big Brothers Big Sisters of Santa Clara County. This is a private organization whose mission is to prepare the children of today to become the independent, successful adults of tomorrow. To that end it matches youths between the ages of six and 17 with mature, supportive adults. The adults not only share interests and hobbies with their little brothers and sisters, but they also provide the academic, emotional and social support they might not get enough of at home. The path to becoming a big brother involves several steps including orientation, interviews with staff, and background checks.

Petitioner has been a big brother to a now-15-year-old child since 2003. Petitioner spends every Wednesday evening and special occasions with his little brother enjoying activities including movies, the Malibu Grand Prix race track, biking and playing video games. In addition, petitioner and his little brother talk about life, including petitioner's prior misconduct.

Petitioner has been recognized by Big Brothers Big Sisters of America for his outstanding service to children. Furthermore, in the years 2004 and 2005 Big Brothers Big Sisters of Santa Clara County proudly recognized petitioner for his commitment and dedication as a big brother volunteer.

In 2003, petitioner became a Court-Appointed Special Advocate (CASA) volunteer for a 13-year-old child after fully disclosing his misconduct to CASA. CASA volunteers are officers of the juvenile dependency court who have completed a formal training course and complete 12 units a year of continuing education. The court appoints each volunteer, who is matched with a dependent of the juvenile court.¹ Volunteers' duties include spending quality, one-on-one time with his or her assigned child. CASA volunteers make regular court appearances on behalf of dependents and advise the court as to what is in the best interest of his or her assigned child.

As a CASA volunteer, he spends six hours every other Saturday with his child. His Saturday outings may include, among other things, breakfast, a trip to the Santa Cruz beach board walk, a trip to museums, attendance at a 49ers football game or a movie. Petitioner also spends ten hours a month discussing the child's issues with his school principal, therapist, social worker, guardians and case worker. He has made multiple court reports and appearances on behalf of his child.

3. *Therapy*

Petitioner has been in therapy with Dr. Rosemary Ellmer (Dr. Ellmer) since August 2002. Dr. Ellmer has a Bachelor of Arts degree in psychology from Stanford University, a Masters of Divinity degree from Pacific School of Religion Graduate Theological Union and a doctorate in clinical psychology from the University of Texas.² According to Dr. Ellmer, petitioner initially came to see her to deal with issues of stress around taking the patent exam and loss of a significant romantic relationship. As the therapist/patient relationship evolved, petitioner began

¹Dependents of the juvenile court are abused and neglected children who have been removed from parental custody because of the parents' conduct.

² See Dr. Ellmer's resume (petitioner's exhibit V).

to deal with other more significant issues, including the issue of his criminal conviction and his subsequent resignation from the State Bar. With respect to his criminal conviction and the behavior surrounding it, petitioner was particularly interested in discussing what led him to engage in this behavior and whether he was at risk for repeating this behavior.³

In Dr. Ellmer's opinion, petitioner does not suffer from any major disorders or personality disorders that place him at risk for repeating his misconduct. Her sense is that, at the time of the misconduct, he was motivated by greed, power, and status and that he was not a self-reflective person. Dr. Ellmer opines that he is now a self-reflective person who is not interested in power, money and status. She finds that he is sincerely motivated by giving back to the community by his involvement with Big Brothers Big Sisters and CASA. She believes that he is deeply remorseful for his misconduct. She does not believe that he is at risk for repeating the misconduct and strongly endorses his reinstatement to the State Bar.

D. Petitioner's Rehabilitation

Petitioner was a candid and credible witness at the hearing. His demeanor and testimony evidenced a passion about helping his little brother and his child advocate through their tough adolescent years. Petitioner has devoted significant time to volunteering quality time with his little brother and child advocate.

Petitioner takes full responsibility for his misconduct. He is extremely remorseful for the conduct that led to his conviction and incarceration in the county jail. He is well aware of the harm caused to the legal profession as a result of his actions and, to that end, has strived to make amends for the wrongs he has committed as a lawyer. Today, petitioner does not measure success by how much money he makes or how recognized he is by the community at large. Rather, petitioner now measures success by how much he helps people and the recognition he receives from his family, friends, little brother and child advocate.

³She has had a total of 48 therapeutic sessions with him and continues to see him on an as-needed basis.

Petitioner describes himself as a person who values honesty and understands that success is not measured by the amount of money one makes. He is no longer motivated by money and the need for recognition. Dr. Ellmer's testimony corroborated petitioner's view of himself.

E. Petitioner's Character Witnesses

Petitioner's character witnesses uniformly praise his high ethical and moral values and his commitment to his volunteer work. They were aware of the reasons leading to his resignation from the State Bar. Among the more salient witnesses⁴ were the following:

1. *Nicole Harada*

Nicole Harada (Harada) received a Bachelor of Arts degree in cultural anthropology from the University of California at Santa Barbara. She was the case worker at Big Brothers Big Sisters of Santa Clara County that matched petitioner with his little brother. Harada testified that as a big brother, petitioner has been honest, reliable, caring and responsible. She has been impressed that petitioner is still a big brother because the national average for remaining a big brother is two years.

Petitioner revealed to Harada the circumstances surrounding his resignation from the State Bar. Her knowledge of these facts did not change her opinion that petitioner is honest, reliable, caring and responsible.

2. *Maryam Imam*

Maryam Iman (Imam) has been a California attorney since 1993. She also has a master's degree in engineering. Imam first met petitioner in the late 1980's at an Iranian Lawyers Association meeting. Currently, Imam has weekly contact with petitioner. He has done some legal work for her. Imam is aware of his past misconduct, but nevertheless, is impressed with his

⁴ Petitioner submitted and the court admitted into evidence the deposition transcripts of Nolan Wohl, Jennifer Ellard, and Kambiz Zand, M.D. The court has read those deposition transcripts and finds that their testimony as to petitioner's honesty and integrity does not differ from the testimony of all the witnesses cited below. Similarly, a number of other witnesses who testified in court not mentioned in this decision also testified to petitioner's trustworthiness and compassion.

character. She testified that he is a person of integrity and that it was a privilege to work with him and know him. She strongly recommended petitioner's reinstatement to the State Bar.

3. *Veda Guerrero*

Veda Guerrero (Guerrero) is the mother of petitioner's little brother. She testified that petitioner has positively influenced her son. She describes petitioner as a consistent, caring role model for her son. She attributes petitioner's dedication and consistency for the tremendous positive change she has seen in her son. Guerrero is aware of the circumstances surrounding petitioner's resignation from the State Bar. She noted that, in her personal experience, people change. She feels that petitioner learned from his misconduct and that he is now a person of integrity and honesty. He has responsibly and diligently taken on his role as big brother to her son and engaged in no behavior that would cause her to call into question his moral character. Guerrero strongly endorses petitioner's petition for reinstatement.

5. *Michael Durgavich*

Michael Durgavich (Durgavich) received a Bachelor of Arts degree from the University of Virginia. He met petitioner when together they attended Cal Western Law School together. Durgavich has been a member of the State Bar since 1994. For the last five years, he has seen petitioner at least every other month. Durgavich is familiar with the circumstances of petitioner's criminal case and his resignation from the State Bar. He is convinced that petitioner is remorseful. Durgavich believes petitioner has good moral character as petitioner has always demonstrated honesty and fairness in all his dealing with him. Durgavich strongly endorses petitioner's reinstatement to the practice of law.

6. *Ramod Nader*

Ramod Nader (Nader) received a Bachelor of Science degree in electrical engineering from the University of Santa Clara and, later, a Juris Doctor degree from the University of San Clara. He was admitted to the State Bar in 2002. He is currently employed as a patent attorney with Hitachi. One of his first contacts with petitioner was when he hired him as his attorney in 1994 on a business-related matter. He considers petitioner a good friend and, in the last three years, has seen him twice a month. He is aware of petitioner's criminal behavior and resignation.

He still believes that petitioner is a person of good moral character and strongly endorses petitioner's reinstatement.

7. Rod Jarrar

Rod Jarrar (Jarrar) received a Bachelor of Science degree in electrical engineering at San Jose State University where he first met petitioner. They have know each other for about 16 years and are in contact once a month. Jarrar is currently a senior products engineer at Chrontel. He is aware of the circumstances of petitioner's criminal and disciplinary history. He thinks petitioner has done much to rehabilitate himself by being a big brother and a CASA volunteer and, therefore, deserves a second chance. He strongly believes that petitioner has good moral character. If they found an appropriate opportunity, he would go into business with petitioner.

8. Hussam Khadder

Hussam Khadder (Khadder) has a Bachelor of Science degree and Master's degree in computer engineering. He met petitioner 18 years ago at San Jose State University and are in weekly contact. Khadder currently works at Intel as a products engineer. It is apparent to Khadder that petitioner is ashamed of his prior conduct and no longer identifies with the negative values it represented. Petitioner no longer is interested in instant success and wealth. Rather, he thinks more about his family and making a difference in the lives of his little brother and child advocate. He finds petitioner to be person of good moral character who would not revert to his prior conduct. Khadder recommends petitioner's reinstatement.

9. James Anderson

James Anderson (Anderson) has a doctorate in mathematics and a Master's degree in electrical engineering from the University of Minnesota as well as two other Master's degrees in control theory and mathematical physics. Currently, Anderson is a research scientist at Xilinx. Anderson first met petitioner at Quicksilver where they were both employees. He has monthly contact with petitioner, including attending social events at petitioner's home. Anderson is familiar with petitioner's criminal conviction and resignation from the State Bar. He believes that petitioner has paid a high price for his misconduct and that he has learned from his mistake. He does not believe that petitioner will ever again discredit himself or his profession. He

believes that petitioner is a moral person and would not hesitate going into business with him. He strongly supports petitioner's reinstatement to the practice of law.

10. Dr. Hamid Moshataghi

Dr. Hamid Moshtaghi (Moshtaghi) has a Bachelor of Science degree in civil engineering, a Master's degree in water resources and a doctorate in soil physics. Currently, he is a licensed contractor who builds homes. He has known the petitioner for six or seven years after meeting him at a local gym. He has social contact with petitioner on a monthly basis. He is aware of petitioner's criminal conviction and resignation from the State Bar. However, he still believes petitioner is an honest person and has no reservations about his moral character.

11. Celine Benny

Celine Benny (Benny) holds a Bachelor of Arts degree and a Master of Social Work degree (MSW). She is currently employed as a social worker with the Department of Children Services in Santa Clara County. She has known petitioner for two years in her capacity as the social worker for the child on whose behalf petitioner advocates. She coordinates with petitioner in assessing the services that the child needs. She has contact with petitioner at least four or five a month as well as with the child. She finds that the child looks forward to meeting with petitioner and wants petitioner to remain in his life even after his court dependency is dismissed. She believes that petitioner is an extremely committed CASA volunteer and serves as a positive role model for his child. Likewise, Benny is aware of petitioner criminal conviction and his resignation from the State Bar. She believes that petitioner has taken responsibility for his mistakes and has attempted to rectify them by contributing to the community.

12. Dr. Ahmed Raffi

Dr. Ahmed Raffi (Raffi) is a licensed chiropractor who was in private practice for 14 years. Currently, Raffi is licensed real estate agent. He met petitioner 10 years ago at a gym. He has contact with petitioner at least twice a week. He is fully aware of petitioner's criminal conviction and the circumstances surrounding petitioner's resignation from the State Bar. He knows that petitioner realizes he made a terrible mistake years ago and is totally remorseful about it. He believes that petitioner is an honest person and has no reservations about his moral

character. His belief in petitioner's honesty is so strong that he has made petitioner guardian for his young son in the event something should happen to him and his wife. He also shares a joint business account with petitioner.

F. Petitioner's Present Learning and Ability in the Law

At the hearing, the parties stipulated that petitioner possesses present learning and ability in the general law.

IV. CONCLUSIONS OF LAW AND DISCUSSION

To be reinstated to the practice of law, petitioner must establish by clear and convincing evidence that he has passed a professional responsibility examination, has present ability and learning in the general law, has been rehabilitated and has present moral qualifications for readmission. (*In the Matter of Giddens* (Rev.Dept 1990) 1 Cal.State Bar Ct. Rptr.25, 30; Cal. Rules of Court, rule 951(f); Rules of Proc. of State Bar, rule 667.)

A. Professional Responsibility Examination

Petitioner complied with California Rules of Court, rule 951(f), and rule 665(a), Rules Proc. State Bar, by passing the Multistate Professional Responsibility Examination in March 2005.

B. Present Learning and Ability in the General Law

It is undisputed and the court finds by clear and convincing evidence that petitioner possesses present learning and ability in the general law. Moreover, at the hearing on this matter, the parties stipulated that petitioner possesses present learning and ability in the general law.

C. Petitioner's Rehabilitation and Good Moral Character

This case turns on the determination of petitioner's rehabilitation and present moral qualifications for reinstatement. The question before the court is "whether petitioner is a fit and proper person to practice law at this time." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1051.)

In a reinstatement proceeding, the petitioner bears a heavy burden of proving his or her rehabilitation and "must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092.) The showing of rehabilitation needed is commensurate with the nature and

seriousness of the underlying misconduct. (*In re Menna* (1995) 11 Cal.4th 975, 986; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1068-1069.) Proof of that rehabilitation must include a lengthy period of unblemished and exemplary conduct. (*In re Menna, supra*, 11 Cal.4th at p. 989.)

After careful consideration of the facts presented in the instant proceeding, the court finds that petitioner has proven by clear and convincing evidence his overall rehabilitation and the requisite good moral character for reinstatement to the practice of law. The court has examined petitioner's evidence in light of the misconduct which led to his resignation. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403).

Petitioner worked voluntarily and extensively with his therapist, Dr. Ellmer, to address the reasons for his misconduct and the likelihood of a reoccurrence. Dr. Ellmer opined that he was not at risk for recidivism. He is now self-reflective and deeply remorseful about his misconduct. She believes that petitioner is motivated by giving back to the community rather than by power, money and status. She strongly recommended his reinstatement.

Petitioner's rehabilitation and good moral character has also been established in several other areas. "Post misconduct pro bono work and community service are factors evidencing rehabilitation and present moral qualifications." (*In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 430.) Petitioner has devoted significant time to volunteering services to his community. He has extensive involvement with the Big Brothers Big Sisters program. He also is a CASA volunteer and spends a significant amount of quality time with a dependent child of the juvenile court of Santa Clara County.

Petitioner's character witnesses, including several attorneys, also demonstrate his rehabilitation and good moral character. Favorable character testimony and reference letters from employers and attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

Another consideration is the passage of an appreciable period of time since petitioner's misconduct. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1095.) The last incident of reported misconduct occurred in 1996. For nearly nine years between the time of the misconduct and the

time he filed this petition for reinstatement,⁵ petitioner has conducted himself in an exemplary manner by going to school and participating in community service. “The law looks with favor upon the regeneration of erring attorneys and should not place unnecessary burdens upon them.” (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811, citing *In re Gaffney* (1946) 28 Cal.2d 761, 764; *In re Andreani* (1939) 14 Cal.2d 736, 749.) In consideration of the nature of the underlying misconduct and petitioner's subsequent rehabilitation, the court recommends his reinstatement.

IV. CONCLUSION AND RECOMMENDATION

For the foregoing reasons, the court concludes that petitioner has sustained his burden by clear and convincing evidence to demonstrate that he is rehabilitated and thus possesses the present moral qualifications for reinstatement to the practice of law in California. Accordingly, the court recommends that the petition for reinstatement be **GRANTED** and that petitioner **SAMAN TAHERIAN** be reinstated as a member of the State Bar of California upon payment of the fees and taking the oath required by law.

Dated: February 28, 2006

PAT McELROY
Judge of the State Bar Court

⁵Approximately four of those years elapsed between the time his probation ended and the time he filed the petition herein.