

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-V-11775-RMT
CHRISTOPHER D. FERRARA,)	DECISION
Member No. 61102,)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

The issue herein is whether petitioner Christopher D. Ferrara (“petitioner”) has demonstrated, to the satisfaction of this court, his rehabilitation, present fitness to practice law, and present learning and ability in the general law, so that he may be relieved from his actual suspension to practice law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.4(c)(ii) (“standard”).)

The State Bar of California was represented by Deputy Trial Counsel Anthony J. Garcia and Melanie J. Lawrence of the Office of the Chief Trial Counsel (“State Bar”). Petitioner was represented by Arthur L. Margolis of Margolis & Margolis.

For the reasons set forth in this decision, the court finds that petitioner has shown by a preponderance of the evidence that he has satisfied the requirements of standard 1.4(c)(ii) and, therefore, that his actual suspension should be terminated. The court therefore grants petitioner’s petition to be relieved from his actual suspension from the practice of law.

II. SIGNIFICANT PROCEDURAL HISTORY

On April 10, 2006, petitioner filed a Verified Petition for Determination of Rehabilitation, Present Fitness to Practice and Learning and Ability in the General Law Pursuant to Standard 1.4(c)(ii) (“petition”).

On August 2, 2006, the State Bar filed its Response to petitioner's petition opposing said petition for relief from actual suspension.

On August 21, 2006, petitioner filed a motion for an order limiting the scope of this standard 1.4(c)(ii) proceeding and disallowing certain evidence that the State Bar intended to offer ("motion"). Specifically, petitioner's motion requested that the State Bar be precluded from asserting that the facts and circumstances surrounding petitioner's conviction were different from the findings encompassed within the Supreme Court's final disciplinary order in the conviction proceeding underlying this standard 1.4(c)(ii) proceeding. Furthermore, petitioner requested that any evidence that the State Bar offered to support its attempt to evade the binding effect of the Supreme Court's final disciplinary order be disallowed. Specifically, petitioner requested that State Bar Exhibits 1-11 be precluded unless they were being offered for some other purpose and were otherwise admissible.

On August 25, 2006, the State Bar filed an opposition to petitioner's motion indicating that the evidence was being offered for impeachment purposes only and to contradict petitioner's assertion that he is presently rehabilitated and fit to practice law.

On September 6, 2006, petitioner filed a response to the State Bar's opposition to said motion.

On September 6, 2006, the court issued an order granting petitioner's motion to limit the scope of the proceedings and to disallow the State Bar's proposed exhibits. However, in its order, the court noted that one possible indication of rehabilitation may be petitioner's recognition and acceptance of the totality of his misconduct not just of the facts to which the parties stipulated. Furthermore, the court noted that the State Bar is entitled to impeach petitioner at the time of trial and is not precluded from doing so at that time by use of appropriate means.

On September 8, 2006, the State Bar filed a motion requesting that the court reconsider its September 6, 2006, order. Petitioner filed an opposition to said motion for reconsideration on September 11, 2006, and on September 15, 2006, the court denied the State Bar motion for reconsideration.

On September 21, 2006, the State Bar filed a Notice in Lieu of Subpoena requesting the attendance of petitioner at the hearing pursuant to Code of Civil Procedure section 1987.

On September 21, 2006, petitioner filed a pleading seeking to withdraw his request for a hearing and requesting that this matter be submitted on the record. On September 22, 2006, the State Bar filed an opposition to petitioner's request. These requests were denied by the court at the pretrial conference held on September 25, 2006.

On September 22, 2006, the parties filed their respective pretrial statements.

On September 22, 2006, petitioner filed a Motion to Quash the Bar's Notice in Lieu of Subpoena. The court denied this motion at the pretrial conference on September 25, 2006, as the court wanted to see and hear the petitioner testify in person.

The hearing in this matter was held on September 29, 2006. Petitioner's Exhibit A, the verified petition with attachments, and State Bar Exhibit 1, a quarterly report filed November 14, 2005, were admitted into evidence. The State Bar did not attempt to impeach petitioner with the use of any of the exhibits previously disallowed by the court.

The State Bar filed its closing argument brief on October 6, 2006. Petitioner filed his reply to the State Bar's closing argument brief on October 13, 2006, and this matter was submitted for decision on said date.

III. FINDINGS OF FACT

A. Jurisdiction

Petitioner was admitted as a member of the State Bar of California on December 18, 1974.

B. Underlying Disciplinary Proceedings

Petitioner was convicted on November 6, 2000, of violating 18 U.S.C. § 1957: Engaging in Monetary Transactions Involving Property Derived from Specified Unlawful Activity.

Pursuant to an order of the Review Department filed March 22, 2002, effective April 22, 2002, petitioner was placed on interim suspension as a result of his conviction of 18 U.S.C. § 1957, a felony involving moral turpitude.

The Review Department of the State Bar Court issued an order on April 3, 2002, referring the matter to the Hearing Department of the State Bar Court for a hearing and decision recommending the discipline to be imposed as the statutory criteria for summary disbarment had not been met.

On May 19, 2003, a Stipulation Re Facts, Conclusions of Law and Disposition (“stipulation”), executed by petitioner, petitioner’s counsel and Deputy Trial Counsel David T. Sauber, was filed with the court in State Bar Court Case No. 01-C-02565. The stipulation was approved by the Honorable Alban Niles of the State Bar Court.

On October 1, 2003, the Supreme Court issued an order in Supreme Court matter S117426 (State Bar Court Case No. 01-C-02565) suspending petitioner from the practice of law for five years, staying execution of said suspension, and placing petitioner on probation for five years on conditions including that petitioner be actually suspended from the practice of law for the first 42 months of his probation and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. Petitioner was given credit towards the 42-month period of actual suspension for the period of petitioner’s interim suspension which commenced on April 22, 2002.

C. Nature of Underlying Misconduct

Petitioner pled guilty on November 6, 2000, to a violation of 18 U.S.C. § 1957: Engaging in Monetary Transactions Involving Property Derived from Specified Unlawful Activity (“money laundering”). Pursuant to a Plea Agreement executed on September 5, 2000, petitioner was sentenced to two years of probation with conditions, including 200 hours of community service, and paid \$290,000 as a civil forfeiture and a \$50 assessment.

Petitioner’s criminal matter arose out of an investigation by the Internal Revenue Service and the Drug Enforcement Administration. The investigation focused on the drug smuggling and money laundering activities of several people. The investigation led to the investigation of brothers Paul and Michael Miller (“the Millers”). It was learned during the investigation that the Millers had undertaken large-scale marijuana smuggling during the 1970s and 1980s. In 1997, both Millers were arrested. On April 30, 1998, the Millers entered guilty pleas at the U.S. District Court in Boise, Idaho. Subsequently, the Millers were sentenced to one year of imprisonment and five years of probation. It was petitioner’s work for the Millers which led to his criminal conviction.

In 1981, petitioner met Michael Miller (“M. Miller”) through a mutual friend. M. Miller

informed petitioner that he had some money that he wanted to invest in real estate in Hawaii, but he did not want his name on the deed. Petitioner sought advice from another attorney regarding how to make the type of transaction M. Miller had requested. Petitioner was subsequently referred to an individual in Hong Kong named Fong Hup. Petitioner flew to Hong Kong and met with Fong Hup. Fong Hup agreed at this meeting to set up a Hong Kong corporation named Orsica and open a bank account in the name of Orsica. Orsica was created by Fong Hup in 1982. Subsequently, Orsica was used for drug smuggling and money laundering activities.

Pursuant to the Plea Agreement, the basis of petitioner's conviction was that between February 18 and March 10, 1987, petitioner knowingly engaged and attempted to engage in monetary transactions in criminally derived property that was of a value greater than \$10,000, such property having been derived from a specified unlawful activity, that is, the felonious importing, receiving, concealing, buying, selling and otherwise dealing in controlled substances and money laundering, in violation of Title 18 U.S.C. § 1957.¹

Petitioner drafted and mailed a letter on February 18, 1987, to M. Miller's Hong Kong money manager, Fong Hup, directing the transfer of \$32,300 in United States currency from M. Miller's Hong Kong shell corporation bank account (held in the name of Orsica Limited), to M. Miller's personal account in Hong Kong. Petitioner also directed Fong Hup to locate a textile company in Hong Kong which did not do business in the United States. These instructions were given as part of an attempt to create an apparent source of legitimate income for M. Miller, even though he was not legitimately employed.

The source of the money transferred into M. Miller's personal account to accomplish this scheme came from M. Miller's long-term drug smuggling, drug trafficking, and money laundering activities. Petitioner knew that the money involved in the transaction was derived from such activity.

¹Although the Stipulation Re Facts, Conclusions of Law and Disposition entered into by the parties in State Bar Court Case No. 01-C-02565, the disciplinary matter which underlies this standard 1.4(c)(ii) proceeding, sets forth the code section as 1987, this appears to be a typographical error (see attachment B to petitioner's Exhibit A.)

Furthermore, the court notes that it was not until May 1997 that the government surprised petitioner with search warrants.

Petitioner's felony conviction of violating 18 U.S.C. § 1957, Engaging in Monetary Transactions Involving Property Derived from Specified Unlawful Activity, involved moral turpitude warranting discipline pursuant to sections 6101 and 6102 of the Business and Professions Code.

In aggravation, petitioner's misconduct was surrounded by or followed by dishonesty.

In mitigation, petitioner: (1) had no prior record of discipline; (2) was cooperative and open during the State Bar's investigation; (3) provided a significant amount of assistance to the United States Attorney's Office and case agents during the criminal investigation; (4) presented character letters from more than 30 individuals, from both the general community and the legal community, attesting to his good character both before the date of the conduct which led to his conviction and after that time; and (5) had been actively involved in community volunteer events and in pro bono legal services in Hawaii. It was also noted that the conduct constituting the conviction had occurred over 15 years earlier, and that there had been no reported instances of other discipline or misconduct during that time period.

D. Petitioner's Evidence

1. Background

Petitioner is 61 years of age and has been married for over 35 years. Petitioner and his wife have lived in Hawaii for over 30 years.

Petitioner believes his background demonstrates that his conviction does not reflect his character. Petitioner graduated from the University of Southern California in 1967 and then enlisted in the United States Air Force, where he requested a Vietnam assignment after flight training. Petitioner flew approximately 1000 combat hours and was awarded a Unit Citation, three Air Medals for valor in combat, and a Distinguished Flying Cross. In 1971, petitioner was permitted to resign from the Air Force with an honorable discharge with full benefits.

After leaving the Air Force, petitioner went to law school because he wanted to change things. He interned for the Public Defender's Office, worked with nearby Native Americans, participated in a new prison project and was involved in anti-war protests.

In 1974, petitioner graduated from law school and became a member of the State Bar of California. He began work as a non-paid intern with the California Indian Legal Services in

Escondido.

In 1975, he became a member of the Hawaii Bar. From 1975 to 1978, petitioner worked with the Public Defenders' Office in Hawaii. Petitioner went into private practice in Hawaii in 1978. His practice consisted of personal injury, criminal law, family law and civil rights cases, including a great deal of pro bono work for Native Hawaiians.

Petitioner formed a partnership with others in 1979 which lasted for 16 years. The partnership, Robinson, Ferrara & Chur performed the same kind of work petitioner had done previously, but the firm eliminated criminal and family law in the late 1980's.

In 1995, petitioner established his own solo firm which he closed when he was suspended by the Hawaii Supreme Court in June 2004.

Over the course of his practice, petitioner has tried over 75 jury trials to verdict, both criminal and civil, in federal and state courts, with over 60 significant bench trials and appellate appearances before the Hawaii Supreme Court and the Ninth Circuit Court of Appeals. For the 17 years prior to his suspension from the practice of law in Hawaii, petitioner concentrated in the areas of personal injury, including medical negligence, products liability, aviation, civil rights, automobile accidents and toxic torts. Petitioner has also handled criminal cases ranging from white collar offenses to murder. At the time of his suspension from the practice of law in Hawaii, at least 90% of petitioner's practice was devoted to product liability cases, including asbestos, breast implants, aircraft, heavy machinery and serious automobile and motorcycle accidents. The other 10% were miscellaneous matters and pro bono cases.

Petitioner's cooperation with the government in the criminal investigation, which ultimately led to petitioner's criminal conviction, was extensive, immediate and substantial. Petitioner cooperated with the government for several years, and his cooperation led to the convictions of the Millers as well as the forfeiture of millions of dollars of the Millers' property.

Although he believed he had several viable defenses to his criminal matter, petitioner accepted complete responsibility for his actions, accepted a plea agreement, and pled guilty.

Petitioner's criminal matter had a significant financial impact on petitioner.

Petitioner felt extremely sad for his family, as his conviction and the Bar proceedings made

the news.

Petitioner reported his conviction to the Federal Aviation Administration, and his medical certificate was put on hold for several weeks. However, he was reinstated.

2. Rehabilitation and Present Fitness to Practice Law

A. Criminal Probation

Petitioner has completed his criminal probation, which was terminated on November 5, 2002.

B. Discipline Imposed by the Hawaii Supreme Court

On May 7, 2004, the Hawaii Supreme Court imposed reciprocal discipline on petitioner as a result of the discipline imposed by the California Supreme Court due to petitioner's felony conviction. The Supreme Court of Hawaii suspended petitioner for 42 months, effective June 6, 2004. Petitioner was also ordered to comply with the conditions imposed by the California Supreme Court in its October 1, 2003, suspension order. Petitioner cannot resume the practice of law in Hawaii until he is reinstated, and petitioner cannot be reinstated in Hawaii until he is reinstated in California.

Petitioner practiced law in Hawaii up until his suspension by the Hawaii Supreme Court. Especially in the last few years before his suspension, petitioner had been until the tensions of trial practice, specifically because he did not know whether or not he would be practicing law in the next month. Aside from the conviction which resulted in his suspension in California and Hawaii, petitioner has had no other discipline. He has never had a complaint lodged against him by an attorney, client or court.

C. Employment

Following his suspension by the Hawaii Supreme Court, petitioner found himself for the first time in 30 years unemployed and with a federal conviction. Petitioner was barely employable due to the post-September 11, 2001, security measures, particularly at the airports. However, he still considered himself very fortunate, as he had a great wife and family, and he and his family were in good health. However, petitioner did obtain employment. Petitioner is presently employed as an aviation consultant and full-time commercial pilot, flying tours and air charters in the Hawaiian Islands.

D. Compliance with Discipline Imposed by the California Supreme Court

Petitioner's 42-month period of actual suspension ended October 22, 2005, although petitioner will remain on actual suspension until his petition pursuant to standard 1.4(c)(ii) is granted by the court and that ruling becomes final and he pays all applicable fees and costs.

Other than as set forth below, petitioner has complied with all terms of his probation imposed by the California Supreme Court, including complying with rule 955 of the California Rules of Court (renumbered to 9.20 effective 1/1/07) and providing proof of his passage of the Multistate Professional Responsibility Examination ("MPRE").

Petitioner has submitted, and continues to submit, all required quarterly reports to the State Bar's Office of Probation. However, petitioner did submit one quarterly report untimely. Petitioner's quarterly report due October 10, 2005, was not filed until November 14, 2005.

E. Remorse/Recognition of Wrongdoing

At the time of his misconduct, petitioner focused on his understanding that M. Miller was no longer actively engaged in the marijuana business; that he was only purchasing personal assets; and that M. Miller had never personally told petitioner what the source of the money was, although petitioner had reached his own conclusions. In his declaration attached to his petition,² petitioner states:

I allowed those considerations to cloud my judgment and support my fragile rationalizations which I used to allow myself to act as I did. In fact, my entire relationship with the client was totally misguided and, I know, stupid.

Regarding the impact this criminal matter has had on his life, petitioner states in his petition:

The impact this event has had on my life is nothing sort of devastation. It was and still is a nightmare, something I think about every hour of every day. It does not go away. . . . [I]t changed my life.

Petitioner further stated in his petition:

The impact on my life and my family has been enormous but we are moving on. I loved the law, I worked very hard for my clients - they always came first. I liked working in the system, changing things, making a difference, helping the injured little guy against huge

²Declaration of Christopher D. Ferrara attached to petitioner's Exhibit A.

corporations and insurance companies. I was a good lawyer. I made a big mistake.

Finally, petitioner states in his petition:

I want to practice law again. I never, in over 29 years of practice, hurt a client. However, I did break the law and degraded the profession. For that I am truly sorry. I have learned much since then and truly believe that I have become a better person. After practicing for several years, I took being a lawyer for granted. Not now. After all this, I will never feel that way. The profession has the highest standards and rightly so. I know that I can meet those standards and will be a better lawyer because of my experience.

F. Pro Bono/Charitable Activities

Petitioner has been a member of several bar associations and has contributed extensive pro bono time and work during his legal career, both before and after his criminal misconduct and conviction, and after his suspension from the practice of law in California. For example, petitioner was appointed around 1985 as an arbitrator for the First Circuit Court of Hawaii and continued to serve pro bono until his suspension in Hawaii in 2004. He also served from 2000 until his Hawaii suspension in 2004 at the Na Keiki Law Center for the Volunteer Legal Services of Hawaii, providing free legal services to indigent people needing guardianships for special children.

Petitioner was required, as part of his criminal probation, to perform community service. Petitioner worked with Kids First, a program administered by the First Circuit Court, helping kids cope with the trauma of their parents' divorce. After petitioner's community service obligation was satisfied, he continued with the program from 2000 until his Hawaii suspension in 2004. In the period from July 1, 2003 to June 2004, petitioner contributed 60 hours of service to the Judiciary of Hawaii as a Kids First Group Facilitator.

In 2004, petitioner also donated his time and aircraft to transport a group of children for the American Cancer Society. In 2005, petitioner participated in the Multiethnic Cohort Study by the University of Hawaii's Cancer Research Center of Hawaii which researches the causes of cancer. In 2006 and previously, petitioner has participated in the EAA Aviation Foundation's Young Eagles Program, introducing kids to aviation, and Angels Flight, flying sick people, usually cancer victims, to Honolulu from other islands for medical treatment.

G. Character Evidence

Several members of the legal profession in California and Hawaii submitted letters on petitioner's behalf attesting to petitioner's good moral character and present learning and ability in the general law. Each of these individuals support petitioner's reinstatement to the practice law.

(1) Robert W. Shaffer, Jr.

California attorney Robert W. Shaffer, Jr. ("Mr. Shaffer") has known petitioner since September 1971 when they met in the registration line on the first day of law school. Over the years, Mr. Shaffer and petitioner have maintained close contact with each other. They have stayed in each other's homes and frequently speak on the telephone. Mr. Shaffer considers petitioner a good and close friend. Mr. Shaffer is well aware of the circumstances surrounding petitioner's criminal conviction, having read the stipulation in connection with petitioner's California disciplinary matter. Mr. Shaffer also attended petitioner's criminal sentencing hearing. In his declaration,³ Mr. Shaffer states:

I strongly believe that [petitioner] possesses the highest of moral character. He is scrupulously honest in his dealings with friends, acquaintances and the public at large consistently exhibiting the highest standard of integrity and trustworthiness. . . . [Petitioner] has always been honest with me and our mutual friends and acquaintances. This incident is an aberration; and, in fact, were it to reflect [petitioner's] true character, we would not be friends today.

Petitioner has often expressed to Mr. Shaffer his deep remorse about his very poor judgment in getting involved in the matter that led to his criminal conviction.

Petitioner and Mr. Shaffer have discussed current legal issues, and it is Mr. Shaffer's understanding that petitioner has remained current with changes in the law by taking CLE courses. Mr. Shaffer also noted that Petitioner actively practiced law in Hawaii until June 3, 2004.

(2) Timothy D. Cohelan

California attorney Timothy D. Cohelan ("Mr. Cohelan") has known petitioner since 1971 when they enrolled in the same law school class. Over the years, Mr. Cohelan has remained in contact with petitioner. However, in the last ten years, Mr. Cohelan has had the occasion to work

³Declaration of Robert W. Shaffer, Jr. attached to petitioner's Exhibit A.

with petitioner professionally as co-counsel on several important class action matters in Hawaii.

Over the years, Mr. Cohelan has observed petitioner's decision-making skills which have been characterized by sound judgment, ethical behavior, and a consistent awareness of the interests of the clients. Petitioner has enjoyed a reputation as an ethical, hardworking and determined advocate for his clients' causes. Mr. Cohelan has considered the stipulation in the California disciplinary proceeding and is "of the opinion that, without question, any rehabilitation which would be required by [petitioner's] former defalcation has occurred and his continued practice would be exemplary in every way."⁴

(3) Greg H. Takase

Hawaii attorney Greg H. Takase ("Mr. Takase") has known petitioner since January 1998 when he began working for petitioner on a part time basis as an independent contractor. In 1999, Mr. Takase began working full time for petitioner as an associate attorney. Mr. Takase considers petitioner a close friend and mentor. Before Mr. Takase began working for petitioner full time, petitioner explained to Mr. Takase that he was under investigation by the federal government and discussed the facts and circumstances that led to the investigation. Mr. Takase has also read the stipulation filed in connection with petitioner's California disciplinary matter.

After Mr. Takase left petitioner's firm, he has continued to keep in touch with petitioner, meeting petitioner approximately two to three times per month. Mr. Takase noted that having worked with petitioner, he believes that petitioner's honesty and integrity in the legal profession is without question.

Mr. Takase meets with petitioner on a regular basis and has sought his knowledge and opinion regarding various legal issues on insurance coverage and case evaluations. In their discussions, they have talked about various recent Hawaii Supreme Court cases and their implication on personal injury and no-fault litigation.

Mr. Takase opined that petitioner is fit to practice law.

⁴Declaration of Timothy D. Cohelan attached to petitioner's Exhibit A.

(4) Francis T. O'Brien

Hawaii attorney Francis T. O'Brien ("Mr. O'Brien") has known petitioner for approximately ten years both personally and professionally. During this time, petitioner and Mr. O'Brien have been co-counsel on a number of different cases. Since his California and Hawaii suspensions, petitioner and Mr. O'Brien have continued to have contact both on the telephone and in person.

Mr. O'Brien is aware of the facts and circumstances which led to petitioner's suspensions in Hawaii and California, as he has read the stipulation in petitioner's California disciplinary matter. He has also discussed the facts and circumstances which led to the suspension orders with petitioner both before and after these orders were entered.

Mr. O'Brien is of the opinion that petitioner is a man of great personal integrity and honesty. Mr. O'Brien believed this before petitioner was suspended, and he believes it today. Petitioner did not duck the responsibility for what happened and, in conversations with Mr. O'Brien, petitioner has acknowledged the seriousness of the offenses and has expressed an understanding that what was done was wrong. Mr. O'Brien has spoken with petitioner and has seen petitioner on a regular basis during the period he has been on suspension, and petitioner has continued to show the same level of honesty and integrity that Mr. O'Brien had experienced during their prior association. Petitioner has also expressed remorse for the actions that led to his suspension.

Prior to petitioner's suspension, he was highly respected within the Hawaii Bar for his character and ability. However, despite his suspension, petitioner continues to be held in high esteem by the Hawaii Bar.

Since petitioner's suspension, Mr. O'Brien has continued to use him as a resource to discuss aspects of his cases with him. From these conversations, Mr. O'Brien believes it is clear that petitioner has kept current with the law. In Mr. O'Brien's opinion, petitioner's present legal skills far exceed those of the average practitioner, and he believes that petitioner presently has all the legal tools necessary to engage in the practice of law. Mr. O'Brien states, "As far as I am concerned [petitioner] presently possesses the competence and high moral standards required of all attorneys

in the State.”⁵

It is Mr. O’Brien’s belief that if petitioner is reinstated, petitioner will uphold high standards of practice in the future.

(5) Dennis W. Potts

Attorney Dennis W. Potts (“Mr. Potts”), who is licensed in both California and Hawaii, has known petitioner for more than 20 years, and during that time, had occasion to work with petitioner on certain cases and against him on others.

Mr. Potts is aware of the facts underlying petitioner’s California and Hawaii suspensions, having read the stipulation filed in petitioner’s California disciplinary matter.

Based on Mr. Potts’ experience in working with petitioner, Mr. Potts notes that petitioner has always exhibited a high degree of professionalism, honesty and ethical standards as a practicing attorney. Mr. Potts has remained in regular and close contact with petitioner since his suspension and believes that petitioner possesses the high moral standards which are required of attorneys licensed in California.

Petitioner and Mr. Potts continue to discuss pertinent legal issues that relate to a wide variety of subjects on a regular basis. Mr. Potts therefore believes that petitioner remains conversant with what is going on in the law on both a national and local level.

In Mr. Potts’ opinion, petitioner is fit to practice law at this time.

3. Present Learning and Ability in the General Law

Petitioner practiced law in Hawaii until June 6, 2004. After that, he remained in close contact with the attorney who purchased his law practice. Petitioner and this attorney try to get together weekly to discuss cases and changes in the law that may impact the cases he took over. Also, on a weekly basis, he talks with other friends about cases and recent developments. Several character declarants noted that petitioner has present learning and ability in the general law.

Petitioner took and passed the March 2005 MPRE. Petitioner has also attended CLE classes and listened to tapes. Petitioner has completed the following:

⁵Declaration of Francis T. O’Brien attached to petitioner’s Exhibit A.

1. Getting Your Evidence & Expert Testimony Admitted into Court in Hawaii - live lecture - six hours.
2. Twelve hours of 2005 State Bar of California MCLE audio programs:
 - a. Trust Accounting for Less Than \$30;
 - b. Copyright/Peer to Peer File Sharing;
 - c. Sarbanes-Oxley in the Real World;
 - d. Avoiding & Getting Out of Water;
 - e. Bias and the Legal Profession;
 - f. Stress, Depression, Drug, Alcohol;
 - g. Disputes: Settlement, ADR or Litigation;
 - h. Dealing with Difficult People;
 - i. Effective Pretrial Strategies for Civil Litigators; and
 - j. Seven Habits of Effective Trial Lawyers.
3. During 2006, petitioner has taken the following additional recorded classes from the State Bar of California totaling approximately four to six hours:
 - a. Criminal Liability for Corporations, Executives, and Employees: Strategies, Prevention, Responsibility, Mitigations and Consequences - one hour;
 - b. Current Events in Legal Ethics and Discipline - one hour;
 - c. Avoiding Conflicts of Interest for the General Practitioner and Reducing Malpractice Complaints - one hour;
 - d. 10 Dumb Things to Avoid When the State Bar Calls! Ethical Ways to Prevent Attorney Discipline - one hour; and
 - e. Attorney-Client Confidentiality Under Attack - approximately two hours.⁶

⁶The court notes that although petitioner's declaration attached to Exhibit A does not list this course as being taken by petitioner, attachment I to Exhibit A, the supporting documents relating to the MCLE classes listed in petitioner's declaration, reflects petitioner's purchase of this course.

In total, since 2005, petitioner has completed 22-24 hours of continuing legal education.

IV. DISCUSSION/CONCLUSIONS OF LAW

In order to be relieved of his actual suspension, petitioner has the burden of proving in this proceeding, by a preponderance of the evidence, that he is rehabilitated, has present fitness to practice and present learning and ability in the general law. (*In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 293-294.)

In determining the point from which the court must measure rehabilitation, present fitness to practice and present learning and ability in the general law before relieving an attorney of actual suspension under standard 1.4(c)(ii), the court looks to the nature of the prior misconduct. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

In determining the nature and amount of rehabilitation that may be required to comply with standard 1.4(c)(ii), it is appropriate to consider the nature of the misconduct, as well as the aggravating and mitigating circumstances surrounding the misconduct which led to petitioner's discipline. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 578.)

As the Review Department noted in *In the Matter of Murphy*:

[I]n the absence of extraordinary circumstances, rehabilitation in relief from suspension matters must be measured by the disciplined attorney's conduct from the time of the imposition of the last discipline that led to the suspension.

[A]s a minimum, the petitioner in relief from suspension proceedings, where a standard 1.4(c)(ii) condition has been ordered must show strict compliance with the terms of probation, and must show by a preponderance of the evidence, exemplary conduct from the time of the imposition of the last prior discipline. Having made such a showing, petitioner must additionally, by a preponderance of the evidence, show that the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline or other need for rehabilitation is not likely to be repeated.

In weighing such a determination, the court should look to the nature of the underlying offense or offenses; any aggravation, other misconduct or mitigation that may have been considered; and any evidence adduced that bears on whether the cause or causes of such misconduct have been eliminated. . . . The State Bar is . . . entitled to rebut any such showing. There must be sufficient evidence upon which the trier of fact can base a determination that the causes of the misconduct have been eliminated and that there is a reasonable basis to believe such misconduct will not recur.

(*Id.* at p. 581.)

The court therefore first looks at the nature of petitioner's misconduct and the aggravating and mitigating circumstances surrounding such misconduct. In petitioner's criminal matter, petitioner was convicted of violating 18 U.S.C. § 1957: Engaging in Monetary Transactions Involving Property Derived from Specified Unlawful Activity ("money laundering"), a felony involving moral turpitude, which resulted from his relationship with M. Miller, whom petitioner had met in 1981. M. Miller informed petitioner that he had some money that he wanted to invest in real estate in Hawaii, but he did not want his name on the deed. Petitioner sought advice regarding how to make this type of transaction and was subsequently referred to an individual in Hong Kong named Fong Hup. Petitioner flew to Hong Kong and met with Fong Hup, who agreed to set up a Hong Kong corporation named Orsica and open a bank account in the name of Orsica. Orsica was created by Fong Hup in 1982 and was subsequently used for drug smuggling and money laundering activities.

On February 18, 1987, petitioner drafted and mailed a letter to M. Miller's Hong Kong money manager, Fong Hup, directing the transfer of \$32,300 in United States currency from M. Miller's Hong Kong shell corporation bank account (held in the name of Orsica Limited), to M. Miller's personal account in Hong Kong. Petitioner also directed Fong Hup to locate a textile company in Hong Kong which did not do business in the United States. These instructions were given as part of an attempt to create an apparent source of legitimate income for M. Miller, even though he was not legitimately employed. Petitioner knew that the source of the money transferred into M. Miller's personal account to accomplish this scheme came from M. Miller's long-term drug smuggling, drug trafficking, and money laundering activities.

In aggravation, petitioner's misconduct was surrounded by or followed by dishonesty. However, extensive mitigating factors were also found, including that petitioner: (1) had no prior record of discipline; (2) was cooperative and open during the State Bar's investigation; (3) provided a significant amount of assistance to the United States Attorney's Office and case agents during the criminal investigation; (4) presented character letters from more than 30 individuals, from both the general community and the legal community, attesting to his good character both before the date of the conduct which led to his conviction and after that time; and (5) had been actively involved in

community volunteer events and in pro bono legal services in Hawaii. In addition, it was also noted that the conduct constituting the conviction had occurred over 15 years earlier, and that there had been no reported instances of other discipline or misconduct during that time period.

After reviewing and considering the evidence in this matter, the court finds that petitioner has established, by a preponderance of the evidence, his rehabilitation and present fitness to practice law. Petitioner's criminal probation was terminated on November 5, 2002, and he was suspended from the practice of law in California in the Fall of 2003. However, even after his suspension from the practice of law in California, petitioner continued to practice law in Hawaii up until his suspension by the Supreme Court of Hawaii in June 2004. Although petitioner continued to practice law in Hawaii for some time after his conviction and California suspension, aside from the conviction which resulted in his suspension in California and Hawaii, petitioner has had no other discipline. He has never had a complaint lodged against him by an attorney, client or court. Furthermore, the court notes that it has now been nearly 20 years since the specific misconduct which led to: (1) his criminal conviction nearly six years ago; and (2) his suspension from the practice of law in California three years ago.

Petitioner's declaration attached to his petition for termination for his actual suspension (petitioner's Exhibit A) makes clear his sincere remorse and his recognition of his wrongdoing. Petitioner acknowledged that his relationship with M. Miller was "misguided" and "stupid" and that "fragile rationalizations" were used by petitioner to permit himself to act as he did. In particular, the court notes the following passage from petitioner's declaration:

. . . I did break the law and degraded the profession. For that I am truly sorry. I have learned much since then and truly believe that I have become a better person. After practicing for several years, I took being a lawyer for granted. Not now. After all this, I will never feel that way. The profession has the highest standards and rightly so. I know that I can meet those standards and will be a better lawyer because of my experience.

Petitioner continued to be involved in pro bono work until his suspension in Hawaii in 2004 and has continued to be involved in charitable activities benefitting children and cancer victims.

In addition, petitioner, by way of declarations, presented very favorable character evidence from several attorneys attesting to his high moral character and his remorse for his wrongdoing. All

these declarants support the termination of petitioner's period of actual suspension.

Furthermore, petitioner has complied with all terms of his probation imposed by the California Supreme Court, including taking and passing the MPRE and complying with rule 955 of the California Rules of Court (renumbered to 9.20 effective 1/1/07).⁷ Petitioner has also completed his 42 month period of actual suspension and remains actually suspended only because of the standard 1.4(c)(ii) requirement attached to his suspension.

However, despite the favorable evidence discussed above, the State Bar attempted to rebut petitioner's showing of rehabilitation and present fitness to practice law. First, the State Bar contends that petitioner made misstatements and omissions in his petition, and that he was concealing material facts and not being entirely truthful with the court. The State Bar also contends that petitioner attempted to minimize his misconduct and therefore does not appreciate the nature of his misconduct. However, after a careful and thorough review of petitioner's standard 1.4(c)(ii) petition, the court does not find any merit to such contentions by the State Bar. In particular, the court notes that petitioner attached a copy of the stipulation to his petition as an exhibit which sets forth fully the facts and circumstances surrounding petitioner's criminal conviction and which forms the basis for the discipline imposed by the Supreme Court in the disciplinary matter which underlies this standard 1.4(c)(ii) proceeding. The court also finds that the candid statements made by petitioner in his petition and the declarations of petitioner's character declarants reveal that petitioner does fully appreciate the nature of his misconduct; that he accepts responsibility for his prior misconduct; and that he appreciates and understands his professional duties.

Furthermore, in view of the fact that the State Bar did not give petitioner notice that his probation reports would be an issue in this proceeding, and as petitioner therefore did not refresh his recollection about his filing of such reports prior to his testimony in this proceeding, the court further does not find that petitioner's inaccurate testimony regarding the one late quarterly report was an attempt to minimize his misconduct and demonstrates that petitioner is untruthful as the State Bar so contends.

⁷Petitioner's failure to timely file one quarterly report will be discussed *infra*.

Second, the State Bar's contention that not enough time has passed since the termination of petitioner's federal probation and State Bar periods of probation⁸ to assess petitioner's rehabilitation has been rejected by the Review Department in *In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 580-581.)

Third, the State Bar's contention that petitioner tried to base his showing of good character on acts performed during the period he was committing criminal acts is without merit. Rather, petitioner has demonstrated that he has been committed to charitable, community and pro bono activities for approximately 24 years.

Finally, any bias which petitioner's character declarants may have has been considered by the court. Nevertheless, the court finds nothing to undermine the credibility of these very favorable character declarants, all of whom: (1) support the termination of petitioner's actual suspension; (2) have known petitioner for many years; and (3) are fully aware of the misconduct which led to petitioner's criminal conviction and his disciplinary suspensions in Hawaii and California.⁹

Although petitioner's late filing of one quarterly report does undermine his evidence of rehabilitation, in considering the totality of the evidence of rehabilitation presented by petitioner, the court finds that petitioner has demonstrated, by a preponderance of the evidence, his rehabilitation and present fitness to practice law in this state. The court finds that there is sufficient evidence to find that the cause of petitioner's misconduct has been eliminated, and that there is a reasonable basis to believe that such misconduct will not recur. Most notably, petitioner continued to practice law for over 16½ years after his criminal conduct (approximately ten of which occurred before he was aware of any criminal investigation) without any complaint lodged against him by an attorney, client, or court and without any other discipline other than that based on the criminal conduct set forth herein. Petitioner has demonstrated his remorse and recognition of wrongdoing; has complied with his criminal probation which has been terminated; has demonstrated his reputation for high moral

⁸The court notes that petitioner remains on probation in the disciplinary matter which underlies this standard 1.4(c)(ii) proceeding.

⁹Other contentions of the State Bar not specifically addressed in this decision have been considered and rejected by the court as unmeritorious.

character; and has engaged in charitable and pro bono activities. In short, petitioner's conduct has been exemplary. Therefore, upon consideration of the nature of petitioner's misconduct, the aggravating factor, and the extensive mitigating circumstances surrounding petitioner's misconduct, the court finds that petitioner has demonstrated, by a preponderance of the evidence, his rehabilitation and present fitness to practice law.

The court also finds that petitioner has demonstrated, by a preponderance of the evidence, his present learning and ability in the general law. Petitioner practiced law in Hawaii until June 6, 2004. Since 2005, petitioner has completed a total of 22-24 hours of continuing legal education and took and passed the March 2005 MPRE. Also, on a weekly basis, he talks with friends about cases and recent developments in the law. Furthermore, several character declarants attested to petitioner's present learning and ability in the general law.

The State Bar also attempted to rebut petitioner showing of present learning and ability in the general law. Nevertheless, the State Bar's contention that proof of the MCLE hours taken by petitioner was an insufficient demonstration of present learning and ability in the general law is without merit. Petitioner has taken approximately 22-24 hours of MCLE courses since 2005. In addition, petitioner's character declarants repeatedly noted that he has current learning and ability in the general law based on discussions they have had with petitioner. Furthermore, the State Bar's contention that, as several hours of MCLE courses were required as a condition of petitioner's disciplinary probation, they should be discounted, is wholly without support.

The court therefore finds that petitioner has demonstrated, by a preponderance of the evidence, of his present learning and ability in the general law.

V. CONCLUSION

The court therefore finds that petitioner has satisfied the requirements of standard 1.4(c)(ii) and that he has demonstrated, by a preponderance of the evidence and to the satisfaction of the court, that he is rehabilitated, presently fit to practice law, and that he possesses present learning and ability in the general law.

Accordingly, petitioner's petition to be relieved from his actual suspension from the practice of law is hereby **GRANTED**. Upon the finality of this Decision, petitioner's actual suspension from

the practice of law in the State of California is hereby terminated, and he will be entitled to resume the practice of law in the State of California upon payment of all applicable State Bar fees and costs.

Dated: October 31, 2006

ROBERT M. TALCOTT
Judge of the State Bar Court