

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

In the Matter of)	Case No. 07-V-12782-PEM
GRADY MARTIN DAVIS,)	DECISION
Member No. 96388,)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

The issue in this case is whether petitioner Grady M. Davis has established 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. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)¹

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, finds that his actual suspension should be terminated. Accordingly, the court **GRANTS** petitioner's petition for relief from actual suspension from the practice of law.

II. SIGNIFICANT PROCEDURAL HISTORY

On July 17, 2007, petitioner filed a second verified petition for relief from actual suspension.²

¹All further references to standards are to this source.

² On September 5, 2006, petitioner filed his first verified petition for relief from actual suspension. On October 23, 2006, the Office of the Chief Trial Counsel of the State Bar of

On September 24, 2007, the State Bar filed a statement of non-opposition to petitioner's request for relief from actual suspension. Neither the State Bar nor the petitioner has requested a hearing in this matter.

III. FINDINGS OF FACT

The following findings of fact are based on the September 5, 2006 petition, the July 17, 2007 petition, and the court's February 16, 2007 decision.

Petitioner was admitted to the practice of law in California on December 23, 1980, and has been a member of the State Bar since that time.

A. Petitioner's Prior Disciplinary Proceedings

Respondent has three prior records of discipline:

1. In 1992, in his first prior record of discipline, respondent was suspended for two years, stayed, and placed on probation for two years with conditions for failing to promptly return unearned fees, failing to deposit client funds into a trust account, and failing to uphold the laws of this state, which misconduct involved four client matters and occurred between 1984 and 1991. (Supreme Court case No. S023124, effective January 3, 1992; State Bar Court case No. 86-O-10394.)
2. In 2001, in his second prior record, respondent was suspended for two years, stayed, was placed on probation for two years and was actually suspended for 30 days for failing to avoid the representation of interests adverse to a client, which misconduct spanned from 1996 to 1998. (Supreme Court case No. S093316, effective March 11, 2001; State Bar Court case No. 98-O-01733.)
3. In 2003, in his third prior record of discipline, the underlying matter, respondent stipulated to four years of stayed suspension, five years of probation and three years

California (State Bar) filed a response to the petition, opposing petitioner's request for relief from suspension on the ground that petitioner had not shown his present rehabilitation and present fitness to practice law. A trial was held on February 6, 2007, and the court took the petition under submission that same day. On February 16, 2007, the court denied petitioner's request for relief. However, the court ordered that petitioner be allowed to file a subsequent petition for relief from suspension four months from the date the February 16, 2007 decision was filed.

of actual suspension and until he has shown proof satisfactory to the State Bar Court of respondent's rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). His misconduct involved seven client matters, including failing to perform services competently, failing to return unearned fees, violating a court order, and failing to uphold the laws of this state. (Supreme Court case No. S110191, effective January 10, 2003; State Bar Court case No. 97-O-14856 et al.)

B. Petitioner's Legal Learning

Petitioner completed more than 53 hours of MCLE courses and regularly reads the publications from California Attorneys for Criminal Justice and the California Public Defenders Association, which contain legislative updates, review of new cases, and articles on practicing criminal defense. The State Bar has never challenged petitioner's present learning and ability in the general law.

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

1. *Petitioner's Arrest and Concealment*

On August 19, 2006, petitioner was arrested for driving a motor vehicle under the influence of an alcoholic beverage in violation of Vehicle Code section 23152, subdivision (a). The arrest was based upon the observations by arresting officer of petitioner's driving a motor vehicle, his admission to consuming one beer, and his performance on the field sobriety tests. On September 15, 2006, a formal complaint alleging violations of Vehicle Code sections 23152, subdivisions (a) and (b), was filed against petitioner.

On September 5, 2006, when petitioner filed his petition for relief from actual suspension in this matter, he did not mention the arrest in his petition.

On November 9, 2006, petitioner participated in an administrative hearing at the Department of Motor Vehicles (DMV). On December 8, 2006, the DMV set aside the suspension of petitioner's suspension of his driving privilege because the hearing officer found that petitioner was not driving a motor vehicle when he had .08% or more by weight of alcohol in his blood. On January 1, 2007, respondent entered a nolo contendere plea to a violation of Vehicle Code section 23103 (reckless

driving).³ Pursuant to the Order of Judgment and Probation, petitioner's plea of nolo contendere was to a dry reckless driving; there was no reference to alcohol in the conviction.

2. Petitioner's Compliance With Supreme Court's Disciplinary Order

Prior to petitioner's arrest, he was in full compliance with the terms of his probation. He filed all his quarterly reports; filed his California Rules of Court, rule 955, declaration on February 19, 2003; completed the State Bar Ethics School on December 4, 2003; passed the Multistate Professional Responsibility Exam on August 12, 2005; completed payment of restitution and sent copies of the cancelled checks to the Office of Probation; and paid all disciplinary costs.

3. Therapy

In addition, petitioner participated in ongoing therapy with Scott. D. Brandt, Ph.D., a clinical psychologist, to address the reasons for his suspension. His therapy consisted of 30 two-hour psychotherapy sessions from August 2003 to at least February 2007. Petitioner has addressed significant issues in his life. He believes that the primary reason for his misconduct was that he was emotionally "burnt out" and exhausted. More importantly, through therapy, petitioner has developed the necessary tools to deal with the stress that contributed to his misconduct.

In his September 2006 petition, petitioner admitted that he is an alcoholic and that he has been in and out of Alcoholics Anonymous (AA) and/or recovery since 1998. At that time the longest period he had gone without drinking or relapsing was nine to ten months.

After petitioner was arrested he began to go to AA more often and for the first time he got a sponsor. The last time petitioner had a drink was August 19, 2006, the day he was arrested.

³ Under Vehicle Code section 23103.5, when the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of any alcoholic beverage or the ingestion or administration of any drug by the defendant in connection with the offense.

In December 2006, petitioner committed himself to the Lawyer Assistance Program (LAP).⁴ Since his commitment to LAP, respondent has been going to AA meeting everyday and been randomly testing for the presence of alcohol on a weekly basis. Furthermore, on April 1, 2007, after the court's denial of his September 2006 petition, petitioner entered Serenity Knolls, a residential chemical dependency recovery program. Petitioner completed the program on April 29, 2007. While in that program petitioner attended all meetings, participated in all recovery activities, and completed all program assignments.

4. *Community Work*

Petitioner has made significant contribution to the community by his public service work. He and his family went to New Orleans after hurricane Katrina and helped with the rebuilding of that city. He has received recognition for his work in that regard from Senator Barbara Boxer. Petitioner has also been involved in numerous pro bono school and athletic activities. He volunteers weekly as a classroom aide at his children's elementary school.

5. *Character References*

At the February 2007 hearing, petitioner submitted 13 good character declarations, 12 of which were from attorneys. Many of the attorneys who submitted declarations, have known him for more than 20 years. They all attested to petitioner's good reputation as a criminal defense attorney and extensive community work. They further attested to his honesty, integrity, trustworthiness, and dedication to his clients. And the witnesses strongly supported his return to the practice of law.

IV. CONCLUSIONS OF LAW AND DISCUSSION

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

⁴LAP is a confidential, professional program offering assistance to California attorneys experiencing problems with substance use, depression, stress, or with their legal career. It offers long term structure, peer support, and an individualized recovery plan for substance abuse and mental health concerns.

practice and present learning ability in the general law. (Rules Proc. of State Bar, rule 634; *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.

A. Petitioner’s Present Learning and Ability in the General Law

The State Bar does not challenge petitioner’s present learning and ability in the general law. Based upon evidence presented at petitioner’s February 2007 hearing and upon the findings of fact set forth above, this court concludes that petitioner has present learning and ability in the general law.

B. Petitioner’s Rehabilitation and Present Fitness to Practice Law

The State Bar and the court agree that petitioner has demonstrated rehabilitation and present fitness to practice law. To establish rehabilitation, the court must first consider the prior misconduct from which petitioner seeks to show rehabilitation. The amount of rehabilitation evidence varies according to the seriousness of the misconduct at issue. Second, the court must examine petitioner’s actions since the imposition of his discipline in order to determine whether his actions, in light of the prior misconduct, sufficiently demonstrate rehabilitation by a preponderance of the evidence. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.) Petitioner must show strict compliance with the terms of his probation in the underlying disciplinary matter, exemplary conduct from the time of the imposition of the prior discipline, and “the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline ... is not likely to be repeated.” (*Ibid.*)

“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.” (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

Here, petitioner’s prior misconduct involved repeated failure to provide legal services with competence, failure to return unearned fees, wilful disobedience or violation of court orders, and failure to support the laws of this state. The aggravating circumstances surrounding the misconduct were two prior records of discipline, including failure to uphold the laws of this state, failure to

promptly return unearned fees, failure to deposit client funds into a trust account and failure to avoid the representation of interest adverse to a client.

The behaviors that gave rise to petitioner's suspension are unclear, as there is no indication from the stipulation that petitioner had emotional or physical difficulties. However, petitioner has admitted that he has been an active alcoholic at least since 1998 which is the time frame during which the misconduct occurred. Thus, this court concludes that many of the problems that led to petitioner's suspension from the practice of law were the result of his alcohol addiction. Since the August 19, 2006 arrest, petitioner has diligently sought to permanently rid himself of his addiction. To this end, petitioner has actively participated in a recovery program including a residential treatment program, and abstained from alcohol use for over a year.

This court previously denied petitioner's petition because he was not forthright at the time of his 2006 arrest for driving under the influence of alcohol and his attempt to conceal it from the State Bar. The court also took into consideration petitioner's failure to address his alcohol abuse issues. Presently, after carefully reviewing and weighing the evidence, the court finds that petitioner has adequately addressed the shortcomings that existed at the time of his prior petition and has shown by a preponderance of the evidence that he is rehabilitated and has the present fitness to practice law. To this end, petitioner has actively participated in a recovery program and abstained from alcohol use for more than one year.

In conclusion, petitioner has shown that he had complied with the terms of his probation in the underlying disciplinary matter, has exhibited exemplary conduct from the time of his last petition, and has established that the conduct leading to the discipline is not likely to be repeated.

Accordingly, the court finds that petitioner has demonstrated, by a preponderance of the evidence, that he is rehabilitated and has present fitness to practice law.

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V. DISPOSITION

Based on the foregoing, the court finds that petitioner has established by a preponderance of the evidence his rehabilitation, present fitness to practice and present learning and ability in the general law.

Accordingly, petitioner's petition for relief from actual suspension from the practice of law pursuant to standard 1.4(c)(ii) is hereby **GRANTED**. It is further ordered that petitioner's actual suspension from the practice of law in the State of California is hereby terminated and he will hereafter be entitled to resume the practice of law in this state upon the payment of all applicable State Bar fees and any previously assessed costs.

Dated: September 26, 2007

PAT McELROY
Judge of the State Bar Court