

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-R-11900-LMA
)	
ANTHONY RUSSELL ARNEST)	DECISION
)	
)	
Petitioner for Reinstatement.)	
_____)	

Petitioner Anthony Russell Arnest seeks to be reinstated as a member of the State Bar of California. He filed a petition for reinstatement to the practice of law on April 14, 2009. Petitioner represented himself. The State Bar was represented by Deputy Trial Counsel Michael J. Glass of the Office of the Chief Trial Counsel.

In a response filed August 17, 2009, the State Bar stated that it opposed the petition to the extent that it intended to hold petitioner to his burden of proof. The State Bar further indicated that it was not currently aware of any conduct or factual basis upon which to affirmatively oppose petitioner's reinstatement.

On November 6, 2009, the parties filed a joint pretrial stipulation as to facts, admission of documents and waiver of hearing.

The matter was submitted for decision on November 12, 2009.

Petitioner has demonstrated, by clear and convincing evidence, that he has satisfied the requirements for reinstatement to the practice of law. Therefore, the court recommends that petitioner be reinstated to the practice of law in California.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Petitioner's Background

Petitioner was admitted to the practice of law in the State of California on November 29, 1979, and was a member of the State Bar until he resigned *without charges pending*. His resignation was accepted by the Supreme Court effective May 28, 1999, in case no. S077944.

Petitioner submitted a declaration in support of his reinstatement. He indicated that the reason he resigned his license stemmed exclusively from unexpected personal changes in his life. When his divorce became final, circumstances made it necessary to pursue an employment path with dependable income and "regular" work hours to support his role as a full-time single parent. At the time, it did not look to him like that path could include a law practice and he felt that continued maintenance of an inactive license was an unnecessary expense on a substantially smaller budget. Petitioner regrets the pressures and certainties that precipitated the unnecessary decision to relinquish his license. His daughter was having a very difficult time following the divorce and having consistent income and predictable work hours were the most important factors in making his decision to resign his license.

When the housing industry began to collapse in 2007, petitioner was unexpectedly laid off from his job. Although he was able to find related work in 2008, both his employment and housing industry as a whole, he believes, will remain unstable for the foreseeable future. Many of his personal and professional friends have suggested that petitioner consider returning to the practice of law. Petitioner's daughter is now a young adult on her own. He feels that the circumstances are right for him to pursue this career change and continue to do the work that he has spent a career developing. Therefore, petitioner seeks reinstatement as a member of the California State Bar.

B. California Rules of Court, Rule 9.10(f), and Rule 665(c), Rules of Procedure of the State Bar

To be reinstated to the practice of law, a petitioner who resigned without charges pending must establish by clear and convincing evidence that he has passed a professional responsibility examination, has present moral qualifications for reinstatement and has present ability and

learning in the general law. (Cal. Rules of Court, rule 9.10(f); Rules Proc. of State Bar, rule 665(c).)

C. Professional Responsibility Examination

Petitioner has complied with California Rules of Court, rule 9.10(f), by taking and passing the August 2009 Multistate Professional Responsibility Examination.

D. Character Witnesses

Three attorneys testified in writing as to petitioner's moral character and present learning and ability in the general law in support of his reinstatement. The witnesses were: Mary Lynn Coffee, Robert L. Kinkle and F. Scott Jackson.¹

The character witnesses all substantiated petitioner's excellent moral character, honesty, integrity and trustworthiness. They uniformly support his readmission to the State Bar.

E. Moral Qualifications

As to moral qualifications, 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 1041.) Petitioner has proven by clear and convincing evidence the requisite good moral character for reinstatement to the practice of law. He has demonstrated that he is fit to practice law in California in view of his nearly-blemish-free 20-year career as an attorney prior to his resignation and the evidence of his present good moral character. Petitioner presented three credible character witnesses who attest to his high moral character and skills. ²

"Letters of recommendation and the favorable testimony, especially that of employers and attorneys, are entitled to considerable weight. [Citations.]" (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

¹ The documents in the court's file, including the parties' stipulation, reference a letter from attorney Paul Singarella but it could not be located in the filed documents.

² On its own motion, the court judicially notices its records which indicate that, by order no. S051673 (State Bar Court case no. 93-O-18642), filed April 19, 1996, discipline was imposed consisting of one year's stayed suspension and two years' probation on conditions including 90 days' actual suspension, among other things. The State Bar and petitioner stipulated to culpability of violating rule 4-100(A) of the Rules of Professional Conduct in one client matter. There were no aggravating circumstances. Mitigating factors were no client harm (client and creditors received all funds to which they were entitled); candor and cooperation; no prior discipline; and objective steps taken to remedy the situation.

The State Bar does not oppose petitioner's evidence of good moral qualifications for reinstatement.

F. Present Learning and Ability in the General Law

The court finds by clear and convincing evidence that petitioner possesses present learning and ability in the general law required for reinstatement. Prior to and at the time of his resignation, petitioner managed commercial, retail and residential title insurance and escrow coordination for his employer's business interests, affiliates and relationship-oriented clients. Petitioner was also responsible for acquiring and developing self-storage facilities, marketing for available properties, property and site analysis, contract negotiations, due diligence, title, escrow and closing ordination, entitlements and processing. Post resignation, he worked in various capacities in the housing industry ultimately becoming director of entitlements, government relations and high-density residential development for Shea Homes of Southern California. His job responsibilities grew to include a great deal of coordination of in-house or outside counsel retained by his employers. He had exposure to and experience in virtually every area of residential real estate practice and law.

Petitioner's duties and responsibilities since his resignation demonstrate that petitioner possesses the required present learning and ability in the general law. During the last 10 years, petitioner also attended on average 4 to 6 professional seminars annually on relevant topics associated with his areas of work and responsibility. Petitioner also participated in several local and regional government and industry taskforces which were established to work on specific issues, legislation or concerns affecting the city or county governments, state and federal agencies and local property owners and other interested stakeholders.

In concert with his current employment, for the last year petitioner has undertaken to do some voluntary, unpaid work assignments with attorney Robert L. Kinkle to re-familiarize himself with bankruptcy law and the new rules and regulations that have been enacted since 2005. One of petitioner's goals if reinstated to the practice of law is to become active in the bankruptcy community where he can utilize his relevant real estate, finance and business experience.

In addition, petitioner's character witnesses attest to his legal knowledge and ability in the general law. For example, attorney Kinkle was so impressed with petitioner's deep knowledge of the law, work ethic and honesty in several complex and procedurally difficult matters that he asked petitioner's employer, who had retained Kinkle's firm, to assign him to Kinkle's firm as a paralegal assistant on the employer's behalf. In the course of that relationship and under the auspices of Kinkle's Rutter Group pass, petitioner has completed 41.5 hours of MCLE-approved classes in 2009 in subjects including ethics, discover, bankruptcy, communication skills, and elimination of bias, among other things. He has also reviewed other materials relating to bankruptcy. Kinkle has indicated the intent to make petitioner a partner in his bankruptcy law firm upon his reinstatement to the practice of law.

III. RECOMMENDATION

For the foregoing reasons, the court concludes that petitioner has sustained his burden by clear and convincing evidence by establishing: (1) that he passed the Multistate Professional Responsibility Examination; (2) that he possesses present moral qualifications; and (3) that he has present learning and ability in the general law for reinstatement to the practice of law in California. Accordingly, the court recommends that the petition for reinstatement be **GRANTED** and that petitioner, **ANTHONY RUSSELL ARNEST**, be reinstated as a member of the State Bar of California.

Dated: February _____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court