

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>09-V-11354-DFM</b>
	)	
<b>CHARLES G. LESTER,</b>	)	
	)	<b>DECISION</b>
<b>Member No. 160084,</b>	)	
	)	
A Member of the State Bar.	)	

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**INTRODUCTION**

The issue in this matter is whether **CHARLES G. LESTER** ("petitioner") has demonstrated, to the satisfaction of this court, 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 pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct ("standard 1.4(c)(ii)") located in Title IV of the Rules of Procedure of the State Bar of California ("Rules of Procedure").

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). Therefore, the court grants petitioner's petition to be relieved from actual suspension.

**SIGNIFICANT PROCEDURAL HISTORY**

Petitioner's current suspension arises from a Supreme Court order, issued on March 14, 2001 and effective April 14, 2001. (S094271) That order was based on a Stipulation re Fact,

Conclusions of Law and Disposition and Order entered into by petitioner and the State Bar and approved and filed by this court on September 12, 2000.

Under the terms of both the Stipulation and subsequent Supreme Court order, petitioner was actually suspended from the practice of law for a period of three years, dating back to June 25, 2000<sup>1</sup>, and until he presented proof satisfactory to this court of his rehabilitation, fitness to practice, and learning and ability in the general law as set out in standard 1.4(c)(ii).

Petitioner has remained on suspended status since the filing of the Supreme Court's order. During that time he complied with the conditions of his probation that he take and pass both the MPRE and the State Bar Ethics School. His probation has now ended.

On March 19, 2009, petitioner filed the instant Petition for Relief from Actual Suspension. On April 30, 2009, the State Bar filed an Opposition to the Petition.

The matter was initially set for hearing on June 24, 2009, but was continued on the written request of both parties until September 25, 2009.

Hearing was commenced and completed on September 25, 2009. At the request of the parties, they were given the option until October 2, 2009 to submit post-trial briefs. The matter was then submitted for decision. Petitioner was represented throughout this proceeding by Theodore Cohen. The State Bar was represented by Deputy Trial Counsel Margaret Warren.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Jurisdiction**

Petitioner was admitted to the practice of law in California on December 1, 1992, and has been a member of the State Bar since that time.

#### **Background/Prior Misconduct and Discipline**

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<sup>1</sup> Petitioner had agreed to go inactive during the pendency of the disciplinary proceedings, effective June 25, 2000. It was agreed that he should be given credit for that period of inactivity.

From the time he was admitted to the Bar in 1992 until December 2006, petitioner has suffered occasional, but recurring episodic periods of lack of control regarding alcohol and various controlled substances. During that time he was the substance abusers' equivalent to the "little girl with the curl." On most days he was good. But on those few days when he was bad, he was very, very bad. His binges frequently resulted in him being arrested.

**First Discipline – October 24, 1998**

Petitioner was admitted to the practice of law on December 1, 1992. Quoting from a prior decision by this court in 1999, he was first disciplined in 1998 as a result of the following misconduct:

*"From April 1993 until enrollment as an inactive member of the State Bar on December 1, 1996, Petitioner incurred complaints to the State Bar from, at least, 18 clients. In these matters, petitioner received fees and failed to perform the services for which he had been retained, leaving clients unprotected and vulnerable. He failed to refund unearned fees and misappropriated the funds. Petitioner admitted that he failed to respond to inquiries from his clients and failed to inform his clients of significant developments in their matters. He also failed to give an accounting when requested to do so. Petitioner stipulated that these matters involved moral turpitude and other misconduct warranting discipline.*

*Just prior to enrollment as an inactive member, Petitioner was arrested at least six times for being under the influence of controlled substances, to wit, methamphetamine and/or cocaine. To these charges, Petitioner entered pleas of nolo contendere in the Municipal Court of Citrus, Rio Hondo and Pomona. This criminal conduct did not involve moral turpitude but did involve other misconduct warranting discipline.*

*By May 1998, when Petitioner and the State Bar entered into a stipulation in the above matters, Petitioner had refunded all funds except \$196.00 plus 10% interest from February 1, 1994 in the Sweet Matter. On December 4, 1996, Petitioner sent the Client Security Fund \$300.00 in full payment in this matter.”*

On September 24, 1998, the Supreme Court issued an disciplinary order including, inter alia, five years of probation and actual suspension of two years and six months and until petitioner presented proof to this court under standard 1.4(c)(ii). In calculating the period of his actual suspension, the Supreme Court’s order gave petitioner credit for his period of inactive enrollment which commenced on December 1, 1996.

As the termination of that minimum period of mandated actual suspension approached, petitioner filed a petition to seek to show his rehabilitation, fitness, and other qualifications under standard 1.4(c)(ii) to return to active practice. On March 12, 1999, a decision was rendered by this court restoring petitioner to the practice of law on June 1, 1999.

### **Second and Ongoing Current Discipline**

Within two months after petitioner had been restored to active practice, he was again having bad days:

- On August 1, 1999, he was arrested for driving under the influence (Vehicle Code, §23152) and being under the influence of a controlled substance. (Health and Safety Code, §11550(a).)
- On August 28, 1999, he was arrested and charged with battery and being under the influence of drugs, after getting into a physical altercation with another man at a motel.

- On March 12, 2000, petitioner was arrested for being under the influence of drugs after being observed mumbling and opening doors of cars parked in a gas station.

Petitioner eventually pleaded nolo contendere to Driving Under the Influence (Vehicle Code, §23152), Battery (Pen. Code, §242), and two counts of Being Under the Influence of A Controlled Substance (Health and Safety Code, §11550(a)), all misdemeanors. In the criminal proceeding, he was sentenced to concurrent sentences including 365 days in jail, three years probation, and several other conditions appropriate to his substance abuse problem. He was allowed to serve his jail time at the Salvation Army residential Drug Abuse Treatment program, which he had begun in late April 2000. It was because of these convictions that the Supreme Court issued its order in 2001, suspending petitioner for a minimum of three years, dating back to June 25, 2000 and until he presented proof satisfactory to this court of his rehabilitation, fitness to practice and learning and ability in the general law as set out in standard 1.4(c)(ii).

### **Misconduct Since Last Discipline**

Since petitioner was suspended in 2001, he has been convicted on two additional occasions of being under the influence of a controlled substance. Petitioner pled no contest in October 2003 to a violation of Health and Safety Code section 11550; he was arrested in October 2006 and pled guilty to a violation of section 11550 in May 2007.

Since his arrest in October 2006, petitioner readily acknowledges one final relapse, at Christmas 2006. It is undisputed that he has been clean and sober since December 28, 2006, a period now approaching three years.

### **Rehabilitation and Present Fitness to Practice**

In order to be relieved of an 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 has present learning and ability in the general law. (Rules Proc. of State Bar, rule 634; *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 293-294.)

To establish rehabilitation, this court must first consider the prior misconduct from which petitioner seeks to show rehabilitation. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.) The amount of evidence of rehabilitation required before relief from suspension will be granted varies according to the seriousness of the misconduct at issue. In sum, petitioner must demonstrate "that 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." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

To establish his present fitness to practice, petitioner must establish (1) that he has been rehabilitated from his prior misconduct and (2) that he presently possesses the requisite good moral character to practice law in this state. (Cf. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630, 634; see also §§ 6060, subd. (b), 6062, subds. (a) & (b); *In the Matter of Terrones, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 298-299.) Establishing the requisite good moral character is almost always done by showing both (1) an "absence of conduct imbued with elements of 'moral turpitude' " (*In re Menna, supra*, 11 Cal.4th at p. 983) and (2) acts demonstrating that one possesses the traits of "honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process" (Rules Regulating Admission to Practice Law, rule X, § 1; cf. *In re Gossage* (2000) 23 Cal.4th 1080, 1095; *In re Menna, supra*, 11 Cal.4th at p. 983). Petitioner's present fitness to practice remains in issue until

his actual suspension is actually terminated. (Cf. *In the Matter of Kirwan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 635.)

The State Bar accurately summarizes the issue before this court as follows: “Has Petitioner-- in view of his lengthy history of, and prolonged struggles with, alcohol and drug abuse,--been in meaningful and sustained recovery long enough for the Court to be reasonably assured that petitioner is highly unlikely to succumb to his addictions and will not pose danger to the public, the profession, and the courts if he is restored to the practice of law[?]” The Court concludes that petitioner has satisfied his burden of proof and has convinced the Court that the answer to this issue is an affirmative one.

In his petition and at the hearing of this matter, petitioner presented documentary evidence and testimony from numerous sources making clear that there has been a significant change in petitioner’s commitment to staying substance-free in the last three years. That change is, in many ways, a direct product of his seeking the assistance of the State Bar’s Lawyers Assistance Program in 2006.

Through the Lawyers Assistance Program, petitioner agreed and was required to participate in regular group sessions and random drug testing. At the hearing of this matter, Kirby Palmer, his LAP group facilitator testified on petitioner’s behalf. In addition to being a certified substance abuse evaluator, Mr. Kirby has also functioned in the role of assessing for the Department of Transportation whether and when individual truck drivers with prior substance abuse problems should be returned to the highways. Mr. Kirby discussed petitioner’s changed approach and personality since 2006, talked about the amount of time and energy petitioner regularly commits to his recovery, and described him as being “extremely serious” about

remaining sober. He opined that he knew of no reason why petitioner should not be reinstated to the practice.

Through LAP, petitioner was also referred, at petitioner's request, to Dr. Daniel Skenderian, a clinical psychologist, for individual therapy. Dr. Skenderian both submitted a sworn declaration and testified at the hearing of this matter. His credentials and knowledge in this area are outstanding. Among his credentials, in the past he was a member in the past of the Diversion Evaluation Committee of the California Board of Dental Examiners, working with impairment issues for practicing dentists. His testimony at the hearing was direct, credible, and highly persuasive. He was both a highly impressive and most helpful witness to the Court.

Dr. Skenderian noted the long history of unsuccessful efforts at recovery by petitioner in the past, but then described, in considerable detail, the changes in petitioner's attitudes and in his approach to his recovery during the last several years. Dr. Skenderian described petitioner as now highly motivated to remain sober, opined that his potential for success is high, and recommended that petitioner be reinstated.

The Court also heard testimony and received a sworn declaration in support of petitioner's reinstatement from Greg Dorst, a certified addiction specialist. Mr. Dorst has known petitioner for a number of years through his work with the Other Bar and also described the change in petitioner's attitudes and commitment to recovery in the last three years. He also testified about petitioner's much increased commitment to helping others who are seeking to achieve sobriety. Similar testimony was received from attorneys Lawrence Kuhlman and David Carmichael, long-time acquaintances of petitioner, who also supported petitioner's reinstatement.

The opinions of Dr. Skenderian and the addiction experts emphasized that petitioner's prospects for remaining sober are greatly enhanced by petitioner's remaining in an organized



program of recovery. During petitioner's own testimony, he testified credibly to his remorse over his past activities and failures, to his commitment to staying sober, and to his plans for continued participation in recovery programs. In fact petitioner's past and current participation in such programs is quite impressive. He has progressed from being a mere participant in group sessions to being a leader and a mentor. In a typical week, he attends programs conducted by numerous differing groups (such as AA, The Other Bar, the Lawyers Assistance Program, and the Johnson House) on six of the seven days of the week. He now also has an active role in the scheduling and leading of these meetings. He describes Sunday as his day off.

In addition to the above testimony, the Court was presented with declarations of other individuals, including a number of attorneys, urging petitioner's reinstatement as a practicing attorney. (*In re Menna* (1995) 11 Cal.4th 975, 988 [additional weight may be given to supportive testimony of attorneys].) In contrast, no lay or expert witnesses were called by the State Bar to oppose petitioner's reinstatement or to dispute the testimony given on his behalf.

The Court concludes that petitioner has demonstrated by more than a mere preponderance of the evidence "that 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." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.) It finds that he has demonstrated his rehabilitation and that he presently possesses the requisite good moral character to practice law in this state.

### **Present Learning and Ability in the General Law**

To establish that he possesses the requisite present learning and ability in the general law, petitioner must prove both that he has increased knowledge of the law and that he is able in it. (*In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 901.) While

there is little authority on precisely what petitioner must show to sustain his burden, the breadth and depth of the educational effort and actual employment experience he demonstrated in the instant proceeding is comparable to those reported instances where suspended attorneys have been found sufficiently educated to satisfy the requirements of Standard 1.4(c)(ii). (See, e.g., *In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 577 [attorney established legal learning and ability by completing 52 hours in MCLE courses and working as a paralegal while on actual suspension]; *In the Matter of Terrones, supra*, 4 Cal. State Bar Ct. Rptr. at 301 [100 hours of educational programs and 200 hours studying estate planning, taxation, and other business related laws was adequate education regarding general law]; see also *In re Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. 883, 890, a reinstatement case where petitioner had been admitted in 1991, resigned with charges pending in 1994, and was reinstated in 2006. Evidence that petitioner had been working in law related jobs, had completed 24 hours of continuing legal education, had passed the MPRE, and had subscribed to legal newspapers constituted clear and convincing evidence of present ability and general learning in the general law.)

Here, petitioner has continued to work in law-related jobs throughout the time he has been ineligible to practice. With the knowledge and approval of the WCAB, he worked for a number of years as the hearing representative of his employer in workers compensation proceedings. Thereafter, since October 2007, he has worked as a paralegal in private law firms. His work has included preparing and answering motions, drafting pleadings, and legal research. A number of attorneys, including the two attorneys employing him during that time, have submitted declarations attesting to his knowledge and abilities (“His ability as a lawyer is high

caliber.”). Finally, a petitioner presented proof of completion for more than 100 hours of continuing legal education since the beginning of 2007.

The court concludes that petitioner has the requisite general knowledge and ability in the law to satisfy the requirements of standard 1.4(c)(ii).

### **CONCLUSION**

As expressly stated in Section 6230 of the Business and Professions Code, “It is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.” The Lawyers Assistance Program was created and is funded and manned to serve that purpose. It has functioned admirably in this situation. Although the State Bar required petitioner to demonstrate over its opposition that he is now rehabilitated and qualified to return to active practice, his success in proving those facts is not a loss for the State Bar. Rather, it is a cause for congratulations.

Based on the foregoing, the court finds that petitioner has demonstrated by a preponderance of the evidence that he has present learning and ability in the general law, that he is rehabilitated and has present fitness to practice law.

Accordingly, it is ordered that the Petition for Relief from actual suspension pursuant to standard 1.4(c)(ii) is 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 shall hereafter be entitled to resume the practice in this state upon his payment of all applicable State Bar fees and outstanding previously assessed costs, if any there be.

Dated: October \_\_\_\_, 2009

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DONALD F. MILES  
Judge of the State Bar Court