

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

In the Matter of	)	Case No.: <b>10-V-05459-RAP</b>
	)	
<b>MATTHEW JEREMY COHEN,</b>	)	<b>DECISION ON PETITION FOR RELIEF</b>
	)	<b>FROM ACTUAL SUSPENSION</b>
<b>Member No. 199410,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

The issue in this matter is whether Matthew Jeremy Cohen (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. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)<sup>1</sup>

For the reasons set forth in this decision, the court finds that petitioner has shown, by a preponderance of evidence, that he has satisfied the requirements of standard 1.4(c)(ii). Therefore, the petition is **GRANTED**.

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<sup>1</sup> All further references to standard(s) or std. are to this source.

## **II. PROCEDURAL HISTORY<sup>2</sup>**

The verified petition in this matter was filed on June 1, 2010. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed its response on July 16, 2010. Petitioner was represented by attorney Kevin Gerry. The State Bar was represented by Deputy Trial Counsel Ashod Mooradian. The hearing was held on August 30, 2010. The matter was submitted for decision after the hearing.

## **III. JURISDICTION**

Petitioner was admitted to the practice of law in California on December 10, 1998, and at all times mentioned herein, has been a member of the State Bar of California.

## **IV. FINDINGS OF FACT**

### **A. Background Facts.**

Petitioner has an undergraduate degree in mechanical engineering from Binghamton University, a branch of the State University of New York. Petitioner graduated from law school in 1998 and, after passing the bar examination, immediately began working for Atnu Patel, the owner of various companies providing patent and trademark search services. While Mr. Patel provided the search services, petitioner's primary role was to give legal advice on the patent and trademark applications. Prior to commencing his work for Mr. Patel, however, petitioner had minimal experience in this area, primarily deriving from a brief internship and a course he took in intellectual property while in law school.

While in Mr. Patel's employ, petitioner handled the patent application of Dr. Jon M. Miller. Petitioner did not properly pursue the patent application of Dr. Miller. As a result of his failure to timely process the application, Dr. Miller's rights were abandoned and his patent was lost. Despite knowing that he had not timely handled the application, petitioner lied to Dr. Miller on at least one occasion about the status of the application, telling Dr. Miller that everything was proceeding properly. At some point, Dr. Miller learned of the problems with the Patent Office

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<sup>2</sup> This hearing is petitioner's third attempt to obtain relief from his actual suspension. On March 4, 2009, and December 1, 2009, the court issued a decision denying petitioner's request for relief from his actual suspension.

and filed a complaint against petitioner. Petitioner did not learn of this complaint until later, as set forth below.

Petitioner's employment terminated with Mr. Patel because Mr. Patel's "money ran out." In October 2001, petitioner began working for the firm of Cislo & Thomas in Santa Monica, California. He apparently left this firm in December 2001, and began working at Carr & Farrell in Palo Alto, California in February 2002.<sup>3</sup>

Prior to December 2002, petitioner received notice of Dr. Miller's complaint and the fact that the United States Patent and Trademark Office (USPTO) was seeking disciplinary action against petitioner. He did not notify anyone at his then-current employer of the pending investigation. On December 4, 2002, petitioner entered into a stipulation describing in detail petitioner's misconduct. Based on the stipulation, the USPTO ordered an 18-month suspension from practicing before the USPTO. After informing Carr & Farrell of this order, petitioner was terminated from the firm in January 2003.

On April 23, 2003, petitioner completed an application to work for Network Management Group (NMG), a position not involving the practice of law.<sup>4</sup> On his application for employment with NMG, petitioner stated that the reason he left Carr & Farrell was that he was "let go because of economy." In fact, that was not true. Petitioner acknowledged that this statement was a lie, but he indicated that he made the false statement because "he needed a job." This application was signed by petitioner under penalty of perjury. Petitioner was employed by NMG and worked there for about 4 1/2 years.

As a result of the imposition of discipline by the USPTO, the State Bar of California filed a reciprocal discipline case against petitioner on May 30, 2003 (case number 03-J-00044). On

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<sup>3</sup> The information presented at trial as to the starting and ending dates of these employments was in conflict. For example, the ending date at Cislo & Thomas is listed in exhibit 19 as "12/02," but the start date for his next job at Carr & Farrell is listed as "2/02." Petitioner also notes in exhibit 19 that he was looking for work from "12/02 - 2/02."

<sup>4</sup> Petitioner was a "third party proposition player" at a casino. In this capacity, he played various card games at a casino's tables using the casino's money, and then paid back the "winnings." He was promoted to operations supervisor, supervising others playing at the tables. As a supervisor, he handled approximately \$50,000 to \$200,000 in "winnings" per day.

June 12, 2003, petitioner stipulated to misconduct in the State Bar matter,<sup>5</sup> resulting in Supreme Court order S118202 which was filed on October 22, 2003. In that State Bar matter, the Supreme Court suspended petitioner from the practice of law for two years and until he demonstrated the requirements set forth in standard 1.4(c)(ii); the execution of such suspension was stayed; and petitioner was placed on three years' probation with conditions, including that petitioner be actually suspended for one year and until he made restitution in the amount of \$5,000, plus interest, to Dr. Miller and furnishes proof of such to the Office of Probation. If petitioner remained on actual suspension for two years or more, the Supreme Court order provided that petitioner would remain on actual suspension until he had shown to the State Bar Court satisfactory proof of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii). As part of his probation, petitioner was also ordered to submit quarterly reports and provide proof of attendance at the State Bar's Ethics School and passage of the Multistate Professional Responsibility Examination (MPRE). The Supreme Court order also awarded costs to the State Bar.

In November 2003, petitioner filed a petition seeking a discharge in bankruptcy. Petitioner listed the State Bar costs and the restitution to Dr. Miller as debts for which discharge was sought. The court granted petitioner's petition and the debts were discharged.

Between January and October 2004, petitioner failed to timely file three quarterly reports required under his State Bar probation. Petitioner was notified of his failure to timely file the reports by the Office of Probation, but he still failed to comply with this probation condition. The Office of Probation filed a motion to revoke petitioner's probation. Petitioner did not participate in that proceeding, although he was given proper notice. By decision dated January 11, 2005, the Honorable Pat McElroy, Judge of the State Bar Court, recommended that petitioner's probation be revoked; that the previously-ordered stay of execution of the suspension be lifted; and that petitioner be actually suspended for two years and until he provides to the State Bar Court satisfactory proof of his rehabilitation, fitness to practice, and present learning

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<sup>5</sup> In aggravation, the parties stipulated that petitioner's misconduct significantly harmed a client, the public or the administration of justice. In mitigation, petitioner displayed candor to the State Bar during disciplinary proceedings.

and ability in the general law pursuant to standard 1.4(c)(ii).<sup>6</sup> Judge McElroy found that petitioner's conduct significantly harmed the administration of justice, and that petitioner demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. By order S118202 dated May 12, 2005, the Supreme Court adopted Judge McElroy's recommended discipline.

On October 17, 2007, petitioner completed an application for employment with Weldon Tax Advisory Services (WTAS), a subsidiary of HSBC Group. In that application, petitioner cited the reasons for leaving Carr & Farrell as a "career change." The position for which he was applying was not a legal position, but rather, a job in operations. Petitioner did not disclose any of his problems with the State Bar to his prospective employers at WTAS. This application was not signed under penalty of perjury; rather, petitioner agreed that the information was "true and complete to the best of [his] knowledge." He was hired by WTAS and remained there until 2008.

***B. Rehabilitation and Present Fitness to Practice Law.***

During petitioner's suspension, he was married. He now has two children.

On August 8, 2008, petitioner passed the MPRE with a scaled score of 109. On September 22, 2008, petitioner paid the costs owed to the State Bar and Minimum Continuing Legal Education (MCLE) non-compliance fees. On or about September 23, 2008, petitioner paid the restitution and interest thereon owed to Dr. Miller. On or about October 2, 2008, petitioner attended and completed the State Bar Ethics School.

In 2008, after the birth of his second child, petitioner recognized a need to get back to the practice of law. He realized that he needed to "make good" on all of the mistakes he made in the past. The birth of this child and the concomitant responsibilities associated with raising a family and owning a home, all have made petitioner realize the importance of paying attention to the important people in one's life, including family and clients. He now feels that he is more mature

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<sup>6</sup> Petitioner was given credit towards his actual suspension for the period of his involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (d).

than he was when he committed the misconduct and seeks an opportunity to apply that maturity to his relations with clients as an active attorney.

Petitioner acknowledges that he was disappointed when he learned that his second petition had been denied by the court in December 2009. Although disappointed, he has continued in his efforts to return to the practice of law.

Since April 2008, and continuing to the time of this hearing, petitioner has been meeting regularly with colleagues who are lawyers in order to again familiarize himself with the law. Many of these individuals testified by way of declaration on petitioner's behalf, indicating their support of his return to active practice. All of these persons spoke very highly of petitioner's dedication to restarting his career. They also were all impressed with petitioner's willingness to examine the reasons he faced the disciplinary problems and his commitment to correcting the errors he made, in order to avoid repeating them in the future. All who knew petitioner from before the meeting sessions started agreed that petitioner had dramatically matured during this period of introspection. All have acknowledged that they are aware that petitioner's prior petition was denied by the court, but that petitioner has continued in his effort to be reinstated.

In addition, petitioner's father-in-law testified by way of declaration on petitioner's behalf. He commented on how petitioner turned his life around and his commitment to returning to the practice of law. Even though his son-in-law's petition was denied in March 2009, and December 2009, his father-in-law noted that petitioner has continued in his efforts to be returned to active status, and he believes petitioner is ready to return to the practice of law. He had several conversations with petitioner about his goal of returning to the practice of law, and petitioner's father-in-law was impressed at the dedication petitioner showed in attempting to reach that goal.

Dr. Miller, in a declaration attached to the petition, notes that petitioner has "profusely apologized" to him about his mistakes and paid him the restitution he owed, with interest. Dr. Miller felt that petitioner had matured, and that he would not make the same mistakes again.

**Facts Allegedly Undermining Petitioner's Rehabilitation/Fitness to Practice.**

Since the court's December 1, 2009, decision denying petitioner's petition for relief from actual suspension, petitioner has been employed at two jobs. In or about January 2010, petitioner was hired as a parking valet for a Los Angeles hotel. Petitioner works 30 to 40 hours a week as a parking valet. In addition, since March 2010, petitioner has been employed as a "secret shopper" for a local company.

Petitioner did not disclose his past State Bar Court disciplinary record with his employers prior to being hired. There is nothing on the record to indicate whether petitioner was required to make a disclosure of his past record to his parking valet employer. Petitioner did not believe his prior discipline as an attorney was relevant to his application as a parking valet. Petitioner testified that after he was employed as a valet, he notified his employer of his past disciplinary record. Petitioner testified that his employer is supportive of his efforts to regain his law license and that disclosure would not have affected his hiring.

Petitioner also filled out an employment application for the position of "secret shopper." Although the application did not specifically ask for disclosure of petitioner's past State Bar disciplinary record, the application did ask an applicant to certify that the applicant had not knowingly withheld any information that might adversely affect his chances for employment. Petitioner did not believe that his past State Bar problems were relevant to the position of "secret shopper" or that his past would adversely affect his chances for employment. Accordingly, petitioner did not disclose his prior State Bar record. Sometime after he filed his petition in this matter, petitioner disclosed his State Bar record to his "secret shopper" employer. Petitioner testified that his employer supported his efforts to regain his law license.

In December 2009, petitioner applied to the State of California, Department of Insurance, for an individual license. Petitioner disclosed his prior State Bar record on the application. Petitioner, however, is still employed as a parking valet and secret shopper.

Although disclosure of his past State Bar disciplinary record would have been the safe and desirable route to take when filling out the applications for parking valet and secret shopper, based on the evidence at the hearing, the court cannot find that petitioner committed an act of

misconduct, or that this conduct undermines the evidence of his rehabilitation and present fitness to practice law.

**C. Present Learning and Ability in the General Law.**

As noted above, petitioner has met with several attorneys on a regular basis since April 2008 to discuss various aspects of the practice of law and to obtain counseling on ways to avoid the pitfalls of operating a practice. In these meetings, the group would discuss case law, current issues in criminal law, calendaring systems, conflict checks, constitutional issues, and jury procedures, among other such topics. They would also discuss ethical issues in general, and petitioner's issues in particular. Most of the time, petitioner would set the agenda for these meetings so that they could cover the issues in an organized fashion.

While at the offices of lawyers in this group, and on his own at home and at the library, petitioner would review the CalBar website and various magazines, including California Defender, California Bar Journal, Orange County Lawyer, and Los Angeles Lawyer. He would also review the Daily Journal advance sheets and various other books and resource materials from Continuing Education of the Bar.

In April 2008, petitioner took and passed the MPRE. In October 2008, petitioner successfully completed State Bar Ethics School. At petitioner's March 2009, hearing, petitioner had completed 22 hours of on-line continuing legal education courses and had also completed a number of non-accredited hours. For his November 2009, hearing, petitioner completed 23 hours of on-line continuing legal education courses. For this hearing, petitioner had completed an additional 23 hours of on-line continuing legal education courses.

At his November 2009, hearing, petitioner testified that he has attended "a couple" of arraignments in Orange County Superior Court, since it is his goal to eventually practice in the criminal defense area.

**D. Discussion.**

Standard 1.4(c)(ii) provides, in relevant part, that normally actual suspension imposed for two years or more shall require proof satisfactory to the State Bar Court of the attorney's

rehabilitation, present fitness to practice and present learning and ability in the general law before he or she will be relieved of the actual suspension.

In this proceeding, petitioner has the burden of proving, by a preponderance of the evidence, that he has satisfied the requirements of standard 1.4(c)(ii). The court looks to the nature of the underlying misconduct to determine the point from which to measure petitioner's rehabilitation, present learning and ability in the general law, and present fitness to practice before being relieved from his actual suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

With respect to petitioner's present learning and ability in the general law, the court finds that petitioner has shown, by a preponderance of the evidence, that he currently possesses present learning and ability in the general law based on his discussions with other attorneys, his continuing legal education, his passage of the MPRE, his completion of State Bar Ethics School, and his review of advance sheets, various law journals and other books and legal resource materials.

Regarding the issue of rehabilitation, “[i]t is appropriate to consider the nature of the misconduct, as well as the aggravating and mitigating circumstances surrounding that misconduct . . . in determining the amount and nature of rehabilitation that may be required to comply with standard 1.4(c)(ii).” (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 578.)

Furthermore, in determining whether petitioner's evidence sufficiently establishes his rehabilitation, the hearing department must first consider the prior misconduct from which petitioner seeks to show rehabilitation. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. Second, the court must examine petitioner's actions since the imposition of his discipline 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 probation in the underlying

disciplinary matter; exemplary conduct from the time of the imposition of the prior discipline; and 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.)

The conduct that prompted this court to initially take action was serious. Failing to perform competently for a client can be understood in the context of petitioner's age, maturity, and inexperience. Lying about that incompetence is another matter entirely. After those lies were revealed, petitioner could have begun his rehabilitation process. But he fell down again: in 2003, he lied once more on his job application, this time, under penalty of perjury. Later, in 2004, he failed to comply with the terms of his probation. When this was brought to his attention, he ignored the problem. He even ignored the State Bar Court proceeding filed against him, permitting that proceeding to be resolved, without his participation, in 2005. Finally, in 2007, petitioner was less than forthright in his application for employment with WTAS.

Since then, petitioner has made substantial gains in his rehabilitation process. Several years have passed since his misconduct. He has recognized his misconduct and has taken steps to learn strategies to prevent such misconduct from recurring. Petitioner is now more mature and has examined the reasons he faced disciplinary problems. He has made amends to Dr. Miller and has exhibited remorse for his past wrongdoing.

In March 2009, and December 2009, the court found that petitioner was on the right path, but it is a long path and he had a way to go. Now, however, the court finds that petitioner has demonstrated his rehabilitation and present fitness to practice law. As such, petitioner has satisfied the requirements of standard 1.4(c)(ii), and the court **GRANTS** petitioner's petition for relief from actual suspension.

## **V. CONCLUSION**

The court finds that petitioner has satisfied the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct by demonstrating, by a preponderance of the evidence and to the satisfaction of the court, that he is rehabilitated, presently fit to practice law, and has present learning and ability in the general law.

Accordingly, the petition for relief from actual suspension from the practice of law is hereby **GRANTED**.

Petitioner will be entitled to resume the practice of law in this state when all of the following conditions have been satisfied:

1. The actual suspension imposed by the California Supreme Court in Orders filed on October 22, 2003, and May 12, 2005, in Supreme Court matter S118202, has expired;
2. This order has become final, which includes the expiration of the time for seeking reconsideration and review (Rules Proc. of State Bar, rules 224, 300, 639 and 640);
3. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and
4. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Dated: September 8, 2010.

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RICHARD A. PLATEL  
Judge of the State Bar Court