

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 10-V-5696-LMA
)	
BROOKE POWELL HALSEY, JR.,)	DECISION
)	
Member No. 142330,)	
)	
A Member of the State Bar.)	
)	

I. Introduction

The issue in this case is whether petitioner Brooke Powell Halsey, Jr., 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 June 7, 2010, petitioner filed a verified petition for relief from actual suspension.

¹All further references to standard or std. are to this source.

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) responded to the petition, indicating that it did not have sufficient facts to determine whether or not it opposed the petition.

No trial was held as the matter was submitted on the pleadings by the parties. Petitioner was represented by counsel, Ellen A. Pansky. Deputy Trial Counsel Mark Hartman appeared for the State Bar. The court took the petition under submission on August 24, 2010.

III. Findings of Fact

The following findings of fact are based on the evidence submitted with the petition.

Petitioner was admitted to the practice of law in California on December 11, 1989, and has been a member of the State Bar since that time.

A. Petitioner's Underlying Disciplinary Background

In the underlying matter, petitioner was suspended for four years, execution of the suspension was stayed and he was placed on probation for five years on conditions, including actual suspension for three years and until he showed proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). (Supreme Court case no. S147283, effective January 12, 2007; State Bar Court case no. 02-O-10195.)

Respondent, a deputy district attorney at the time, was found culpable, in one homicide trial, of violations of sections 6106 and 6068, subdivisions (a) and (d) and rule 5-220 of the Rules of Professional Conduct for not revealing all exculpatory evidence, intentionally suppressing evidence that he knew or should have known he had an ethical duty to disclose, and of making misrepresentations to the court. In another matter, he was found culpable of violating rule 3-310(B)(2) for representing an adverse interest.

In mitigation, the court found that petitioner had no prior record of discipline over many years of practice; provided evidence of good moral character; and had done community service.

In aggravation, petitioner committed multiple acts of wrongdoing and harmed the public and the administration of justice.

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

The court finds by a preponderance of the evidence that petitioner has demonstrated the rehabilitation and present fitness to practice law, and so meets the requirements of this portion of standard 1.4(c)(ii).

1. *Petitioner's Compliance with Probation Conditions*

Since the imposition of discipline, petitioner has complied with conditions and requirements of probation, including submitting quarterly reports and statements attesting that he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation; being available to answer any inquiries of the Office of Probation regarding his compliance with the terms of his probation; and maintaining his contact information as required.

In addition, petitioner successfully completed the State Bar's Ethics School on August 2, 2007, and provided the Office of Probation with satisfactory proof of completion and passage of the test given at the conclusion of the session within one year of the effective date of the disciplinary order as required. He also took and passed the Multistate Professional Responsibility Examination (MPRE) in August 2009 and filed his declaration of compliance with rule 955, California Rules of Court (now rule 9.20) on February 20, 2007.

2. *Petitioner's Community Work*

Petitioner has made significant contributions to the community through his public service work. Since his suspension, petitioner created the Tiburon Salmon Institute (TSI) to teach children about the environment. Among other things, children grow trout from eggs and care for them for

five months out of the year while they grow in pens in the San Francisco Bay and then are released in the local watershed. TSI is starting a student-run aquarium in Tiburon with equipment donated by the California Academy of sciences. Petitioner also organizes and puts on public salmon releases twice a year where young children release small smolt salmon into the bay with the help of high school children that raised them.

Petitioner, as vice president of the Tyee Foundation, oversees its salmon-rearing project in Tiburon which, last year, released over 80,000 salmon into San Francisco Bay.

Petitioner is active with North Bay Trout Unlimited, helping with education and youth programs.

Petitioner has served on the Marin County Fish and Wildlife Advisory Commission for many years and is active in helping nonprofit organizations throughout Marin County receive fine money from citations written by game wardens in the county.

Petitioner is the Northern California representative on the Recreational Abalone Advisory Committee (RCAA) which helps form laws related to abalone fishing in California and reviews current laws regarding how the fishery is used to help preserve this dwindling resource.

Petitioner is an adjunct member of the board of advisors for the Romberg Tiburon Center for environmental studies, helping in the planning and development of this research center operated by San Francisco State University.

Petitioner is an advisor on the Dennis and Carol and Rockey Fund. In that capacity, he has recommended funding for many nonprofit organizations in Northern California through the Marin Community Foundation.

Petitioner and his family are very active in Westminster Presbyterian Church in Tiburon. He attends services regularly and has helped with teaching Sunday school and making food for the local homeless shelter on a regular basis.

3. Petitioner's Character References

Petitioner submitted 37 favorable reference letters from a wide variety of members of the community, including three attorneys, two pastors, many friends, family, former coworkers and people with whom he participates in volunteer activities, many of whom have known him for a long time, including some from high school and college days. They all believed petitioner to be rehabilitated and found him to be of good moral character. Many spoke of his deep remorse. They were aware of the full extent of petitioner's past misconduct and suspension from the practice of law.

The court found particularly valuable the declarations of attorneys Theodore Bayer, Gregory Jacobs, Donna Ryan and of Douglas Huneke, petitioner's minister, all of whom knew the nature and extent of petitioner's misconduct, found it aberrational and attested to his high moral character.

Theodore F. Bayer, has been a California lawyer since 1976. He has known petitioner for over five years and is a member of the Westminster Presbyterian Church, where Bayer and Karen, petitioner's spouse, are Elders. They have socialized and done volunteer work together. They have had lengthy conversations about petitioner's suspension and the impact it has had on his life. Bayer suspects that it is the major personal crisis of petitioner's adult life and it has led to much soul-searching. Their conversations have confirmed for Bayer that petitioner has emerged as a much stronger, more committed and more grounded person and lawyer who has taken full responsibility for his misconduct. Bayer believes that that petitioner "fully appreciates how, in the interest of over-zealous advocacy, he allowed his core values of truth, honesty and integrity to be compromised, and how painful the stark acknowledgement of that reality can be." He also

believes that the misconduct was highly aberrational and that petitioner is “now clear that his core values must always be honored and that his actions must always be in concert with those values.” He would gladly refer clients to him as they would be considering retaining a lawyer “who, among other exemplary qualities, has a deep appreciation of the ethical constraints of the law and a clear sense of his purpose and values.”

Douglas K. Huneke has been a member of the clergy and a parish minister and university chaplain for 41 years. He also has taught, lectured and published on topics of professional and personal ethics at the university and seminary levels, generally in the areas of moral values and behavior during the Nazi era. He has also served as the chair and secretary of the Permanent Judicial Commission of the Presbytery of the Redwoods which heard cases involving clergy and church concerns related to ethical behavior. He is a pastor at petitioner’s church, Westminster Presbyterian Church, and has known him quite well for over five years and less so for longer than that.

In their conversations, petitioner has evidenced to Pastor Huneke that he takes full responsibility for his misconduct. Petitioner “has done much soul-searching, reflection and work on his own moral values and professional ethics as regards the case against him and the quality of lawyer he seeks to be when reinstated. I experience his sincerity, earnestness, and commitment relative to his professional calling, his values, and his standing as a constructive and contributing member of the California State Bar and his community. The entire matter . . . has been a humbling and difficult experience that has generated in [him] important and sustaining reflection and insights that should by any measure ensure that he will act responsibly in the future.” The misconduct was inconsistent with the man Pastor Huneke knows. He “reasonably believes that there will be no further ethical or moral lapses in [his] personal and professional life, the essential lessons have been

learned and the sensitivities much more acutely attuned.” He would not hesitate to make referrals to petitioner.

Gregory John Jacobs is a retired Assistant District Attorney from the Sonoma County District Attorney’s Office. During his tenure there, he handled all types of cases, from misdemeanors to capital crimes and had supervisory duties as well. He met petitioner in 1990 when petitioner came to work for the Sonoma County District Attorney’s Office and Jacobs assisted in training new attorneys. He had the opportunity of observing petitioner in the courtroom but also assisted him in his assignments. They also became friends. He noted that petitioner had a lot of empathy for crime victims, particularly the most vulnerable. He worked hard to win his cases but always exhibited a desire to be fair to both sides and a respect for the court. He trusted petitioner to handle the most serious cases and still does. There is no question in his mind that the misconduct was unintentional and aberrational. Petitioner has taken responsibility for his actions in a most public way. He has no reservation about petitioner being allowed to practice again and would not hesitate to refer anyone to him for legal assistance.

Donna Lee Ryan has been a California attorney since 1979 and worked at the Sonoma County District Attorney’s Office for 20 years, chiefly as a trial attorney specializing in crimes against women and children. She and petitioner became good friends as their offices were nearby and they often worked long hours. She believes that petitioner is ethical, honorable and of good moral character. She would not hesitate to refer clients to him. She knows that he has “thought long and hard” about his misconduct and that he completely accepts responsibility for it and that he has “rededicated himself to doing good for his family and his community in the interim.” Ryan believes that “this an aberrant incident in the life of a young man who has ordinarily brought great credit upon the profession.” “As an attorney who was an ethical prosecutor, and, as a defense attorney who understands the need for vigilance in matters of discovery, [Ryan] applaud[s] the

State Bar's efforts to forcefully remind prosecutors of their ethical responsibilities." However, petitioner is not and has never been venal or malicious. She believes that he will spend the rest of his life "bringing honor to the profession and competently and compassionately serving the needs of his clients within the ethical rules and the bounds of the law."

The State Bar did not rebut any of the evidence submitted.

In summary, all of the letters strongly recommend petitioner's reinstatement to the practice of law. Accordingly, in this proceeding, petitioner has shown that his favorable character references letters from attorneys, friends, his pastor, family and former coworkers are entitled to considerable weight. The court finds the favorable character evidence to be of sufficient value to support petitioner's rehabilitation and present fitness to practice.

C. Petitioner's Present Learning and Ability in the General Law

In August 2009, petitioner took and passed the Multistate Professional Responsibility Examination. Petitioner also completed the State Bar Ethics School on August 2, 2007.

Since that time, petitioner has maintained current in the law by reading slip opinions regularly. He also studied and researched the law regarding conservatorship when a family member had such a need.

Petitioner has also kept current and the law through his volunteer work. For example, petitioner helped in the training of animal control officers with a local judge; studied current evidence laws and standards related to courtroom testimony; and helped another local judge in talking to high school students about the jury system. He studied the law related to both petit and grand juries, both civil and criminal. Moreover, as a member of the RAAC, he must stay current on all laws affecting law enforcement and fishing as it applies to abalone. He has also been active in discussing matters with fish and game wardens so that they may interact better with their

prospective district attorneys. Petitioner is also currently enrolled in a trust and estate practice program put on by Continuing Education of the Bar.

Based upon the record as a whole, the court finds that petitioner has demonstrated by a preponderance of the evidence that he possesses present learning and ability in the general law, and so meets the requirement of this prong of standard 1.4(c)(ii) .

IV. 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 practice, and present learning and 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.)

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 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: (1) strict compliance with the terms of probation in the underlying disciplinary matter; (2) exemplary conduct from the time of the imposition of the prior discipline; and (3) "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.)

"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.)

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

As to whether petitioner has sufficiently demonstrated, by a preponderance of the evidence, his rehabilitation and present fitness to practice law, the court must first consider petitioner’s prior misconduct, the aggravating and mitigating circumstances surrounding said misconduct and any other circumstances of misconduct.

Petitioner’s prior misconduct was very serious. As a deputy district attorney at the time, he was found culpable, in one homicide trial, of violations of sections 6106 and 6068, subdivisions (a) and (d) and rule 5-220 of the Rules of Professional Conduct for not revealing all exculpatory evidence, intentionally suppressing evidence that he knew or should have known he had an ethical duty to disclose, and of making misrepresentations to the court. In another matter, he was found culpable of violating rule 3-310(B)(2) by representing an adverse interest. In mitigation, the court found that petitioner had no prior record of discipline over many years of practice; provided evidence of good moral character; and had done community service. In aggravation, petitioner committed multiple acts of wrongdoing and harmed the public and the administration of justice.

The remaining issue is whether he has shown rehabilitation and whether the conduct leading to his discipline is “not likely to be repeated.”

Petitioner complied with the terms of his probation. There have been no further incidents of misconduct. To the contrary, he has used his time to pursue efforts to protect the environment and to teach others about doing the same. Moreover, the evidence demonstrates that petitioner has undergone introspection and a reconsideration of his values. He is also remorseful for his misconduct.

As discussed, *ante*, petitioner presented strong evidence of good character through the favorable reference letters from attorneys, a pastor, friends and family, all of whom believed in his fitness and moral character. Favorable reference letters from attorneys and judges are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) The letters introduced in support of the petition show that petitioner has been open and forthright in providing those who submitted character references on his behalf with a full understanding of the nature and scope of his prior misconduct. All of those who submitted letters of reference strongly support petitioner's request for relief from suspension. Those who wrote the reference letters believe that petitioner expresses sincere remorse for his misconduct. They believe that petitioner is committed to avoiding any misconduct in the future.

Consistent with his introspection and commitment to his core values, petitioner has worked to serve his community, including founding the TSI and continuing to work with the RAAC. Petitioner's "[p]ost misconduct pro bono work and community service are factors evidencing rehabilitation and present moral qualifications." (See *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 430.)

After carefully reviewing and weighing all the evidence, the court finds that petitioner has shown by a preponderance of the evidence that he is rehabilitated and has the fitness to practice law.

In particular, petitioner has demonstrated an understanding and insight into the nature and scope of his past misconduct. He has accepted responsibility for all prior acts of misconduct and has expressed remorse for his behavior. Additionally, petitioner has talked openly with others about the mistakes of the past. He has established a strong support system through his church, and his community activities. The fact that petitioner understands his professional responsibilities and has a proper attitude towards his prior misconduct is evidence of rehabilitation. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317.)

Accordingly, the court finds, by a preponderance of the evidence, that petitioner is rehabilitated such that the misconduct in the underlying matter is unlikely to recur. Based on the foregoing, the court concludes that petitioner has shown: (1) strict compliance with his probation conditions; (2) exemplary conduct; and (3) that the conduct leading to the prior discipline is not likely to be repeated.

B. Petitioner’s Present Learning and Ability in the Law

Besides taking the MPRE and Ethics School, as discussed previously, petitioner has maintained current in the law by reading slip opinions regularly and through his volunteer work.

Therefore, based upon evidence presented in this proceeding and upon the findings of fact set forth above, this court concludes, by a preponderance of the evidence, that petitioner has present learning and ability in the general law.

V. Conclusion

The court finds that petitioner Brooke Powell Halsey, Jr., 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 this court, that he is rehabilitated, that he is presently fit to practice law, and that he has 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**.

Dated: September ____, 2010

LUCY M. ARMENDARIZ
Judge of the State Bar Court