

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>10-V-08760-RAH</b>
	)	
<b>JOSEPH G. CAVALLO,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 108210,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I.     INTRODUCTION**

The issue in this matter is whether Joseph G. Cavallo (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 petition 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**

The verified petition in this matter was filed on September 20, 2010. The Office of the Chief Trial Counsel of the State Bar of California (OCTC) filed its response to the petition on October 27, 2010, indicating that it opposed the petition to the extent that it intended to hold petitioner to his burden of proof.<sup>2</sup>

Petitioner was represented in this matter by attorney David A. Clare. OCTC was represented by Deputy Trial Counsel Agustin Hernandez and Jessica A. Lienau.

On October 29, 2010, the parties filed a stipulation waiving the hearing in this matter and stipulating to submit this matter solely on the petition and OCTC's response.<sup>3</sup>

On November 1, 2010, the court filed an order submitting this matter for decision.<sup>4</sup>

## **III. JURISDICTION**

Respondent was admitted to the practice of law in California on June 3, 1983, and has been a member of the State Bar of California at all times since.

## **IV. FINDINGS OF FACT**

### **A. Underlying Disciplinary Proceedings**

On October 20, 2009, the California Supreme Court issued an order in *In re Joseph Gerard Cavallo on Discipline*, Supreme Court case no. S175650 (State Bar Court case no. 05-C-04453), suspending petitioner from the practice of law for five years; staying execution of such suspension; and placing petitioner on probation for five years subject to certain conditions, including a minimum three-year suspension from the practice of law (with credit given for the

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<sup>2</sup> OCTC alleges that respondent has failed to pay the disciplinary costs imposed in the underlying proceeding. However, OCTC also acknowledged that it did not possess sufficient facts to determine whether or not it affirmatively opposed the petition.

<sup>3</sup> However, on November 9, 2010, the parties filed a stipulation that petitioner has paid the disciplinary costs awarded to the State Bar in the underlying disciplinary proceeding.

<sup>4</sup> Admitted into evidence are the petition and attached Exhibits A-O; OCTC's response to the petition; and the parties' stipulation regarding costs filed on November 9, 2010.

period of petitioner's interim suspension which commenced on December 17, 2007). The order also provided that petitioner will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. Petitioner was also ordered to: (1) comply with the other conditions of probation recommended by the Hearing Department in its Decision filed on May 14, 2009; (2) take and pass the Multistate Professional Responsibility Examination (MPRE) during his period of suspension and provide proof of such to the State Bar's Office of Probation within the same time period; and (3) comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the order. The order also awarded costs to the State Bar. The Supreme Court order became effective on November 19, 2009.

**B. Nature of Underlying Misconduct**

The underlying disciplinary proceeding arose as a result of petitioner's conviction for illegally paying bail bondsmen for referring criminal defendants to him from 2003 to 2005. Between approximately June 1, 2003, and August 1, 2005, respondent had his business cards on display in the office of Xtreme Bail Bonds (Xtreme), allowed his co-defendants (who were the owners of Xtreme) to refer clients to him (for which he paid a fee), and had offered discounts to clients referred to him by Xtreme. His co-defendants rewarded jail inmates for referring clients to them. According to petitioner, there were approximately 30 cases over a two-year period. Petitioner admitted to paying for approximately 10-20 referrals. Petitioner paid between \$300 and \$500 per case, depending on what the co-defendants requested for him to pay.

Petitioner pleaded guilty on October 12, 2007, to one felony count of conspiracy to commit a crime (Penal Code section 182, subdivision (a)(1)) of capping in violation of Business and Professions Code section 6152, subdivision (a); one felony count of conspiracy to commit a

crime (Penal Code section 182, subdivision (a)(1)) of attorney recommendation by a bail licensee in violation of Insurance Code section 1814 and California Code of Regulations, title 10, section 2071; and one felony count of the crime of attorney recommendation by a bail licensee in violation of Insurance Code section 1814 and California Code of Regulations, title 10, section 2071. Petitioner admitted that he was guilty of the charges to which he pled guilty. Petitioner was sentenced to six-months' house arrest, three-years' formal probation, and was required to pay fines totaling \$18,336.36.

The State Bar Court found that the facts and circumstances surrounding petitioner's conviction involved moral turpitude. The court found in aggravation that petitioner had a prior record of discipline;<sup>5</sup> the conviction evidences multiple acts of misconduct; his misconduct harmed the administration of justice; and petitioner engaged in the misconduct for personal gain and personally profited from his misconduct. In mitigation, some mitigating weight was given to petitioner's physical and emotional health difficulties; petitioner was cooperative and candid with the State Bar during the disciplinary proceeding; petitioner demonstrated good character; had been a judge pro tempore for over 20 years and had provided pro bono services as an attorney; some weight in mitigation was also given for petitioner's showing of some remorse and his willingness to accept responsibility for his misconduct.

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

Petitioner has complied with his criminal sentence in all respects and paid the required fine in full.

On May 27, 2009, John G. Tomaszewski, the Deputy Probation Officer on petitioner's criminal matter, and Supervising Probation Officer Ronald A. De La Riva, petitioned the Orange

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<sup>5</sup> Petitioner was privately reproved on May 17, 1997, for engaging in false, misleading or deceptive advertisements and in advertisements containing impersonations and dramatizations without proper disclosure.

County Superior Court to modify petitioner's probation so that petitioner would be relieved of formal supervision. Following a hearing on May 27, 2009, the Honorable Robert R. Fitzgerald of the Orange County Superior Court granted the modification petition.

As of September 17, 2010, the date of the petition, petitioner has complied with all conditions of probation ordered by the Supreme Court. He has timely submitted all required quarterly probation reports; attended State Bar Ethics School in February 2010, passing the Ethics School test and submitting proof of such to the Office of Probation; passed the MPRE and submitted proof of such to the Office of Probation; complied with the requirements of rule 9.20 of the California Rules of Court; and has paid the disciplinary costs awarded to the State Bar.

Petitioner is ashamed and humiliated by his criminal conduct and takes full responsibility for his criminal acts. He feels he has learned a very painful and significant lesson in morality and ethics. He knows he could, and should, have resisted the temptation to engage in capping with bail bondsmen. He also understands that his feeling of financial vulnerability, which stemmed from fears existing since childhood, is not an excuse for his misconduct. He acknowledges that he is solely responsible for the public humiliation that came with the publicity about his criminal matter, which greatly hurt his family emotionally and financially. Petitioner knows he let down his family and feels pain about that each day.

Respondent has been receiving psychological therapy for many years in order to better understand his feelings and behavior and to improve himself. Therapy has greatly helped petitioner with managing impulse control, learning stress relief techniques and understanding himself, his emotional baggage, and learning to be fully accountable for his actions. Petitioner no longer looks to rationalize his criminal conduct because of the stressful circumstances for petitioner at the time.

During his suspension, petitioner has reflected more on what he really wants to accomplish in life. His family's support and love has reinforced what is really important to petitioner. He has slowed his pace, and his aggressive nature has subsided, allowing petitioner to become a calm, rational person, particularly in terms of achieving social, professional, personal and financial goals.

Petitioner has been diagnosed with recurrent depressive disorder, moderate; generalized anxiety disorder, and impulse disorder. Petitioner's psychotherapist, Michael Riskin, Ph.D., MFT, noted in a declaration (Exhibit G), that petitioner has discussed his criminal acts and the State Bar disciplinary case. Dr. Riskin stated in his declaration, "[Petitioner] has talked about this subject at great length and it has had a tremendous effect on him. As his understanding of the underlying emotions and behavioral causality have come to light, along with the concurrent mental re-education, he has taken full accountability and responsibility for his conduct. Not one time has he blamed the course of events and it's [sic] effect on his life, on others. To the contrary, he feels ashamed that he acted in a manner so disrespectful of the law and is self reproaching for placing his family in harm's way. He has repeatedly expressed remorse for his misconduct and violation of the law. . . . [¶] . . . I believe that a combination of Mr. Cavallo's insight into why the misconduct occurred, and his repeated vow to never commit further misconduct will positively effect his future practice as an attorney in the State of California. It is my opinion that Mr. Cavallo is presently a person of high moral character. He is honest and accountable for his misdeeds. It is further my opinion that he is trustworthy and has a high respect for the rights of others. It is also my opinion that Mr. Cavallo is presently fit, both morally and psychologically, to resume the practice of law."

Included in the petition were declarations from eight additional character witnesses who have known petitioner anywhere from at least five to forty years. Most of these declarants have

known petitioner for over 20 years. Six of these declarants are attorneys. Each of these declarants was aware of the nature of petitioner's criminal misconduct and his disciplinary proceeding and support petitioner's return to the active practice of law. Many declarants spoke of petitioner's remorse. He was described as honest, as being a good man, as genuine in his integrity, as having character of the highest quality, as being trustworthy, and as being of good moral character.

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

In 2010, petitioner completed 25.5 hours of minimum continuing legal education accredited courses in topics such as expert witnesses, digital forensics, elimination of bias, legal ethics, damages, transfer tax, substance abuse/stress, copyrights and trademarks, trial practice, legislative intent, and structured settlements. Petitioner has also consistently continued to read and study the *Daily Journal* legal newspaper and the following legal books and treatises:

*California Evidence Benchbook; Searches & Seizures[,]* *Arrests and Confessions; California Drunk Driving Law; California Deposition and Discovery Practice; Cross-Examination of Witnesses; The Methods of Attacking Scientific Evidence; California Criminal Law/Witkin & Epstein; Alcohol and Impaired Driver; California Evidentiary Foundations; and Eyewitness Identification*. Some of petitioner's character witnesses who are attorneys also noted petitioner's legal knowledge and his efforts to stay current in the general law.

**V. DISCUSSION**

Standard 1.4(c)(ii) provides, in relevant part, that normally actual suspension imposed for two years or more must 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 the attorney 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 relieving petitioner 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 the continuing legal education courses he has taken; his reading and studying of the *Daily Journal* legal newspaper and other legal books and treatises; his completion of Ethics School; his passage of the MPRE; and his discussions with other attorneys.

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 underlying disciplinary proceeding arose as a result of serious misconduct by petitioner which occurred in connection with his practice of law. Petitioner’s conviction arose from his illegally paying bail bondsmen for referring criminal defendants to him from 2003 to 2005. The State Bar Court found that the facts and circumstances surrounding petitioner’s conviction involved moral turpitude. The court found in aggravation that petitioner had a prior record of discipline; the conviction evidences multiple acts of misconduct; his misconduct harmed the administration of justice; and petitioner engaged in the misconduct for personal gain and personally profited from his misconduct. In mitigation, some mitigating weight was given to petitioner’s physical and emotional health difficulties; petitioner was cooperative and candid with the State Bar during the disciplinary proceeding; demonstrated good character; had been a judge pro tempore for over 20 years and had provided pro bono services as an attorney; and some weight in mitigation was given for petitioner’s showing of some remorse and a willingness to accept responsibility for his misconduct.

Since his conviction, petitioner has complied with his criminal sentence in all respects and paid the required fine in full. In addition, petitioner was relieved of his formal criminal probation supervision in late May 2009.

Petitioner has complied with all probation conditions and other requirements ordered by the Supreme Court in his underlying disciplinary proceeding, including timely submitting all required quarterly probation reports; attending and passing State Bar Ethics School; passing the

MPRE; complying with rule 9.20 of the California Rules of Court; and paying all disciplinary costs awarded to the State Bar in the underlying disciplinary matter.

Petitioner has demonstrated remorse and has taken full responsibility for his criminal conduct. Petitioner has been receiving psychological therapy for many years in order to better understand his feelings and behavior and to improve himself.

Character witnesses, most of whom have known petitioner for over 20 years, described him as honest, as being a good man, as genuine in his integrity, as having character of the highest quality, as being trustworthy, and as being of good moral character. Notably, most declarants specifically discussed petitioner's remorse for his wrongdoing.

Based on the above, the court finds that respondent is remorseful and has taken responsibility for his past misconduct and has engaged in psychotherapy and self-reflection to avoid engaging in further misconduct in the future. Finding that the conduct leading to petitioner's criminal conviction and suspension from the practice of law is not likely to recur, the court finds that petitioner has demonstrated, by a preponderance of evidence, his rehabilitation and present fitness to practice law.

## **VI. 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 **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 its Order filed on October 20, 2009, in Supreme Court case no. S175650, has expired;

2. This decision has become final, which include 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: March \_\_\_\_\_, 2011

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RICHARD A. HONN  
Judge of the State Bar Court