

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 10-V-09261-PEM
)	
DAVID EVAN JONES,)	DECISION RE PETITIONER'S
)	REQUEST FOR RELIEF FROM
Member No. 166794,)	ACTUAL SUSPENSION
)	
A Member of the State Bar.)	
)	

I. Introduction

The issue in this case is whether petitioner David Evan Jones 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 of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional 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 October 12, 2010, petitioner filed a verified petition for relief from actual suspension. On November 22, 2010, the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") filed a motion for an extension of time to file its response to the petitioner's petition.

¹All further references to standard(s) are to this source.

Petitioner did not object to the State Bar's request. On November 24, 2010, the court granted the State Bar's request. On December 9, 2010, the State Bar filed a response. The response did not oppose the petition.

On January 3, 2010, the court held a pretrial conference. Based on the State Bar's non-opposition and the evidence, as laid out below, the court issued an oral ruling granting petitioner's request for relief from actual suspension from the practice of law.

III. Findings of Fact

The following findings of fact are based on the petition filed by petitioner and the State Bar's non-opposition. Petitioner was admitted to the practice of law in California on December 10, 1993, and has been a member of the State Bar since that time.

A. Petitioner's Underlying Disciplinary Background

The underlying matter involves petitioner's 2008 felony conviction for false personation (Penal Code section 529). In that case, petitioner—who worked for the Fresno County District Attorney's Office—posted a female victim's photograph on two internet sites. Posing as the victim, petitioner provided her contact information and solicited individuals to contact her for sex. The victim, who was employed as a court employee, received phone calls at home and at work. Petitioner's on-line postings specifically revealed the victim's employer.

On July 29, 2008, petitioner pled guilty to a violation of Penal Code section 529. By violating Penal Code section 529, petitioner failed to support the laws of this state in violation of subdivision (a) of Business and Professions Code section 6068. Although Penal Code section 529 does not per se involve moral turpitude, in this case the facts and circumstances surrounding petitioner's conviction involved moral turpitude in violation of Business and Professions Code section 6106.

In mitigation, petitioner had no prior record of discipline in 12 years of practice and displayed spontaneous candor and cooperation with the State Bar during the proceedings. In aggravation, petitioner committed multiple acts of wrongdoing and his misconduct significantly harmed the victim.

As for discipline, it was stipulated that petitioner should be suspended for three years, that execution of the suspension be stayed, and that he be placed on probation for four years on conditions, including that he be actually suspended for two years and until he has shown 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). With minor modifications, the stipulation was approved by the State Bar Court hearing judge.

On December 2, 2009, the Supreme Court filed an order in case number S176783 in which it imposed the stipulated discipline on petitioner. This order became effective January 1, 2010. Petitioner was given credit for the period of interim suspension which commenced on August 27, 2008.

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

As illustrated below, petitioner asserts that he has been rehabilitated and possesses the requisite present fitness to practice law. The State Bar did not oppose or rebut this assertion.

1. Petitioner's Compliance with Probation Conditions

Other terms and conditions of petitioner's aforementioned probation required, among other things, that he file quarterly reports, successfully complete the State Bar's Ethics School, and take and pass the Multistate Professional Responsibility Exam ("MPRE"). At the time petitioner filed his verified petition for relief on October 12, 2010, he was in full compliance with the terms and conditions of his disciplinary probation, including, but not limited to, his satisfactory completion of the State Bar's Ethics School in May 2010, and his taking and passing the MPRE in March 2010.

Petitioner also demonstrated compliance with the terms and conditions of his underlying criminal probation.

2. Petitioner's Community Work

Petitioner has made significant contributions to the community through his public service work. Much of petitioner's community service was attested to by Rev. Robert Borges, the pastor of Our Lady of Perpetual Help Catholic Church in Clovis, California. Petitioner's services at Our

Lady of Perpetual Help have included, among other things, volunteering at its parochial school and serving as a youth sports coach.

Pursuant to the terms of his criminal probation, petitioner completed more than one thousand hours of community service. In addition to working at his church, petitioner also served at the Fresno Rescue Mission, where he acted as a mentor for men in the shelter's live-in drug and alcohol treatment program.

3. Petitioner's Acceptance of Responsibility and Remorse

Petitioner has demonstrated an understanding and insight into the nature and scope of his misconduct. He has expressed remorse and accepted responsibility for his actions. Petitioner's strict compliance with his disciplinary and criminal probation conditions, is additional evidence of his remorse.

4. Petitioner's Character References

In support of his petition, petitioner submitted favorable reference letters from H. Ronald Sawl, Esq.; Sallie Hunt; Jonathan M. Skiles, Esq.; Michael G. Idiart, Esq.; Tracy J. Jones; Rev. Robert B. Borges; Michael S. Frye, Esq.; Cynthia A. McLeod; James E. Olson; Roger T. Nuttall, Esq.; Antonio R. Alvarez, Esq.; Roberto R. Dulce, Esq.; Terry A. Wapner, Esq.; Rachel W. Hill, Esq.; Michelle L. Ganci; Michael J. Madrigal, D.D.S.; and Steven Achey. The State Bar did not rebut any of the evidence submitted.

Petitioner's reference letters strongly recommend his reinstatement to the practice of law based on his character, integrity, and work ethic. These reference letters were written by a wide variety of authors including attorneys, colleagues, friends, family, and his pastor. The court finds these reference letters are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

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

During his period of interim suspension, petitioner has maintained an active participation in the law by working for the law firm of Sawl & Netzer, in a non-attorney capacity. At Sawl &

Netzer, petitioner has conducted legal research; drafted discovery, motions, pleadings, and letters; and summarized records and discovery responses.

Petitioner has also spent much of his spare time reviewing, reading, and learning the law. He has read literature on evidence, civil procedure, contracts, and discovery. Petitioner has also gone to court to observe friends' and colleagues' trials and motions. As noted above, petitioner also took and passed the MPRE and completed the State Bar's Ethics School in 2010.

IV. Discussion

In this proceeding, petitioner has the burden of proving by a preponderance of the evidence that he has satisfied the conditions of standard 1.4(c)(ii). The court looks to the nature of the underlying misconduct as well as the aggravating and mitigating circumstances surrounding it 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.)

To establish rehabilitation, the court 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 "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.)

Petitioner has complied with all the terms and conditions of his disciplinary probation. He has actively participated in and studied the law, and has satisfactorily completed the State Bar's Ethics School and the MPRE.

More importantly, the authors of petitioner's reference letters, many of whom are practicing attorneys, agree that he is stable, fit, and ready to resume the practice of law. The court properly gave great weight to the reference letters written on petitioner's behalf by attorneys, who have a special interest in the ethical requirements of the profession. (*Cf., Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1095.) Attorneys have a keen sense of responsibility for the integrity of the legal profession and would not recommend an unfit individual for admission. (*In re Menna* (1995) 11 Cal.4th 975, 988.)

No evidence has been presented indicating less than exemplary conduct from the time of the imposition of the prior discipline; and it appears to the court that the conduct leading to the discipline is not likely to be repeated. Therefore, based on the above, the court finds that petitioner has demonstrated, by a preponderance of evidence, that he is rehabilitated, has present fitness to practice law, and has present learning and ability in the general law.

V. Conclusion

The court finds that petitioner 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 is hereby **GRANTED**. Upon the finality of this decision, petitioner's actual suspension from the practice of law pursuant to standard 1.4(c)(ii) is terminated.

Dated: January __, 2011

PAT McELROY
Judge of the State Bar Court